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February 17, 2005

Mark Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Ave. N.W.
Room 5423
Washington, D.C. 20001

Re: Friends of the Earth v. EPA,
Case No. 05-5015

Dear Mr. Langer:

Enclosed for filing in the above-referenced case are the following documents: (1) the motion by the Association of Metropolitan Sewerage Agencies and the Combined Sewer Overflow Partnership for Leave to Participate as Amici Curiae and (2) the Corporate Disclosure Statements of proposed amici.

Please contact me at 804-716-9021 or by e-mail at john@aqualaw.com if you have any questions about these filings.

Thank you for your assistance.

Sincerely,



John A. Sheehan

Enclosures

Copy to:

Howard Fox
Stuart Leeth
Scott Jordan

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FRIENDS OF THE EARTH,)	
)	
Appellant)	
)	
v.)	Case No. 05-5015
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, and)	
MICHAEL O. LEAVITT, Administrator,)	
United States Environmental Protection Agency)	
)	
Appellees.)	
)	
)	
)	

**MOTION BY THE ASSOCIATION OF METROPOLITAN SEWERAGE
AGENCIES AND THE COMBINED SEWER OVERFLOW PARTNERSHIP
FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE***

The Association of Metropolitan Sewerage Agencies (“AMSA”) and the Combined Sewer Overflow Partnership (“CSO Partnership”) submit this motion pursuant to Rule 29 of the Federal Rules of Appellate Procedure and Circuit Rule 29(b) for Leave to Participate as Amici Curiae in this case in support of the United States Environmental Protection Agency (“EPA”). Despite the fact that (1) the district court permitted AMSA and the CSO Partnership to participate as *amici* and specifically cited to their brief in its opinion, and (2) this Court previously granted the motion of AMSA to participate as an amicus before it ruled in this case that it lacked jurisdiction and transferred the case to the district court, Appellant Friends of the Earth (“FOE”) has again refused to consent to allow AMSA and the CSO Partnership to participate as amici curiae in this action. AMSA and the CSO Partnership submit the following in support of this motion.

I. The Interests of AMSA and the CSO Partnership

AMSA has represented the interests of the nation's publicly-owned wastewater treatment agencies ("POTWs") since 1970. AMSA is comprised of nearly 300 public agency members, who together provide the majority of the United States' population with sewer service. Collectively, AMSA's public agency members treat and reclaim over 18 billion gallons of wastewater each day. AMSA's members operate municipal wastewater treatment plants under federal and state laws and regulations in cities and towns across the United States, including the District of Columbia Water and Sewer Authority and nearly 20 other public agencies in Maryland and Virginia.

As an organization, AMSA strives to maintain a leadership role in the development and implementation of scientifically-based, technically sound, and cost-effective environmental and clean water programs to protect public and ecosystem health. AMSA member agencies are subject to the requirements of the federal Clean Water Act 33 U.S.C. § 1251 *et seq.* ("CWA") and related state requirements. Appellant's statutory interpretation in this case is contrary to how many federal and state regulatory agencies have interpreted the Clean Water Act in implementing programs under the Act. If Appellant's position were accepted by this Court, it could undermine important water quality programs being administered by EPA and the states and, specifically, the significant efforts of hundreds of communities nationwide to implement section 402(q) of the federal Clean Water Act. 33 U.S.C. § 1342(q). The Court's acceptance of Appellant's arguments would have ramifications far beyond the District of Columbia, and would significantly impact AMSA's member communities nationwide.

The CSO Partnership has been dedicated to representing the interests of communities with combined sewer systems nationwide since 1988. The CSO Partnership's approximately 80 members are located on both coasts, throughout the mid-west and from Maine to Virginia. The CSO Partnership's members strive to protect public health and the environment in an affordable and cost-effective manner. They are also regulated under federal and state laws regarding water pollution control. The CSO Partnership's members have invested hundreds of millions of dollars in the planning, design, permitting and construction of combined sewer overflow ("CSO") control facilities in accordance with their long-term CSO control programs. The funding for these controls has come from local resources, along with federal and state grants and loans. States like Virginia and Maryland as well as the federal government have provided CSO control grants through EPA's budget and direct earmarks by Congress for dozens of CSO control programs. The District of Columbia Water and Sewer Authority has received direct congressional grant funding for its treatment system as well as significant funding toward implementation of its CSO long-term control plan.

Generally, these enormous investments of public resources in CSO programs have not been designed to meet regulatory requirements expressed in terms of daily pollutant loadings, as Appellant here contends should be the case. Such a requirement would force almost every CSO community to redo much of its CSO control program planning and may well strand or severely limit the utility of hundreds of millions worth of CSO control infrastructure by CSO Partnership members.

Accordingly, AMSA and the CSO Partnership have a significant interest in the outcome of these proceedings.

II. Argument

AMSA and the CSO Partnership should be permitted to continue their participation in this case for several reasons. Rather than fully repeating the arguments made once to this Court and also made to the district court, AMSA and the CSO Partnership incorporate by reference their earlier briefs in support of their motions for leave to participate as amici curiae and, instead, make the following brief points.¹

First, this Court has already permitted AMSA leave to participate as amicus curiae in this case. Before the Court transferred this case to the district court, it granted the motion by AMSA and WASA for leave to participate. (Case No. 02-1123, consolidated with 02-1124, Order granting motion for leave to participate dated July 5, 2002). Thus, AMSA has already once been granted permission to participate as an amicus and makes this motion only to clarify its role and to join with the CSO Partnership as a joint amicus in this proceeding.

Next, because AMSA and the CSO Partnership were permitted to participate before the district court and the court specifically relied on the arguments presented in their brief, AMSA and the CSO Partnership are necessary to this appeal to again set forth the statutory arguments the district court found persuasive and to provide this Court with the technical background and insight necessary to understand what the implications and

¹ In the district court, the motion by AMSA and the CSO Partnership to participate as amici curiae as well as the merits brief are contained at civil docket number 21. The reply to Plaintiff's opposition is contained at civil docket number 23. The order granting the motion for leave to file amicus brief was entered on July 16, 2004. In the prior filed case in this Court, AMSA's motion for leave to participate as amicus curiae was filed on June 11, 2002.

ramifications would be if the Court adopted the statutory interpretation being advanced by Appellant.²

Finally, AMSA and the CSO Partnership propose to file a joint amicus brief that would not impose an additional burden on the parties.

Accordingly, this Court should permit the participation of AMSA and the CSO Partnership as amici curiae.

Respectfully submitted,



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Dated: February 17, 2005

² The district court relied upon the unique argument presented by AMSA and the CSO Partnership and cited to their brief. Friends of the Earth v. EPA, Memorandum Opinion at p. 3, 346 F.Supp.2d 182, 186 (D.D.C. 2004).

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FRIENDS OF THE EARTH,)	
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Appellant)	
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v.)	Case No. 05-5015
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UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, and)	
MICHAEL O. LEAVITT, Administrator,)	
United States Environmental Protection Agency)	
)	
Appellees.)	
)	
)	

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, the Association of Metropolitan Sewerage Agencies (“AMSA”) and the Combined Sewer Overflow Partnership (“CSO Partnership”) submit this joint corporate disclosure statement. AMSA is a trade association comprised of nearly 300 POTW members, who serve the majority of the United States’ sewer population and collectively treat and reclaim over 18 billion gallons of wastewater each day. AMSA’s members operate municipal wastewater treatment plants under federal and state laws and regulations in cities and towns across the United States. The CSO Partnership is a trade association representing communities with combined sewer systems. The CSO Partnership’s approximately 80 members are located on both coasts, throughout the mid-west and from Maine to Virginia. The CSO Partnership’s members strive to protect

public health and the environment in an affordable and cost-effective manner. They are also regulated under federal and state laws regarding water pollution control.

Neither AMSA nor the CSO Partnership have outstanding shares or debt securities and do not have parent companies, subsidiaries or affiliates with any outstanding shares or debt securities in the hands of the public.

Respectfully submitted,



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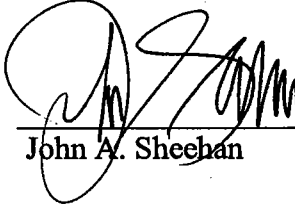
CERTIFICATE OF SERVICE

I, John A. Sheehan, hereby certify that on February 17, 2005, a true and accurate copy of (1) the Motion by the Association of Metropolitan Sewerage Agencies and the Combined Sewer Overflow Partnership for Leave to Participate as Amici Curiae and (2) the Corporate Disclosure Statements of Amici were sent by regular mail to:

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