

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CITY OF CINCINNATI,	:	
	:	
Plaintiff	:	
	:	CASE NO. C-1-03-731
v.	:	
	:	(Judge Weber)
UNITED STATES OF AMERICA	:	
	:	
and	:	
	:	
SECRETARY OF THE DEPARTMENT	:	
OF HEALTH AND HUMAN SERVICES	:	
	:	
Defendants.	:	
	:	

**MEMORANDUM OF *AMICI CURIAE* IN RESPONSE TO
ORDER GRANTING LEAVE TO RESPOND**

The National League of Cities (NLC), the National Association of Flood and Stormwater Management Agencies (NAFSMA), the Association of Metropolitan Sewage Agencies (AMSA), and the American Public Works Association (APWA) (collectively the “*Amici*”) submit this Memorandum in Response to the Court’s Order dated August 4, 2004, in which the *Amici* were given an opportunity to address issues raised in the Plaintiff’s motion to amend its complaint and in the other motions pending in this matter. The *Amici* are grateful for this opportunity to provide their views to the Court, but for the following reasons will not submit a formal brief on the motions referenced in the Court’s Order.

In previous discussions among counsel, *Amici* informed the Defendants that they did not intend to submit additional arguments on issues that had already been briefed by the parties and submitted to the Court. Rather, it was the intention of the *Amici* to participate at a later stage of

the litigation if substantive issues arose involving questions on which the collective experience of the *Amici* in the establishment and administration of stormwater management programs throughout the United States would be of benefit to the Court. It is our understanding that the Defendants relied upon these representations of counsel in electing not to oppose the Motion of the *Amici* for Leave to Participate in this matter.

Consequently, for the *Amici* to submit additional briefing on the parties' outstanding motions at this time would not only require that the Defendants be given an opportunity to respond, but also that they be allowed to oppose the Motion for Leave to Participate by the *Amici* in the first instance. Furthermore, the *Amici* believe that the issues raised in opposition to the Plaintiff's Motion to Amend its Complaint (doc. 23) have already been adequately addressed in Plaintiff's Response (doc. 26) and that the cases cited therein are dispositive in Plaintiff's favor. Filing of the amended complaint will essentially render moot the arguments advanced in Defendants' Motion for Judgment on the Pleadings (doc. 11).

Once again, the *Amici* express their appreciation for the opportunity to participate in these proceedings, and look forward to providing substantive argument and briefing to the Court if issues arise in the future where their collective experience and national perspective on the implementation of U.S. EPA's stormwater permit program will benefit the Court in reaching its decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2004, I electronically filed the foregoing Memorandum of *Amici Curiae* in Response to Order Granting Leave to Respond with the Clerk of the Court using the CMF/ECF system that will send notification of such filing to all parties of record.

/s/ David W. Burchmore
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