

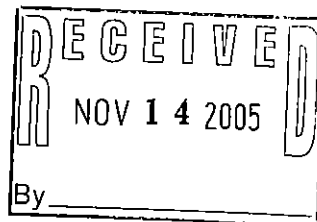
Jane Reyer, Attorney at Law

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November 9, 2005

Clerk of Appellate Courts
Supreme Court
305 Minnesota Judicial Center
25 Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155



Re: In the Matter of the Cities of Annandale and Maple Lake, Ct. App. No. A04-2033

Dear Sir or Madam,

Enclosed for filing in the above-referenced case are the original and four copies of Motion and Memorandum of Natural Resources Defense Council, Environmental Law and Policy Center, Midwest Environmental Advocates, and American Rivers for Leave to File an Amicus Curiae Brief, along with a Certificate of Service.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jane Reyer / NKS".

Jane Reyer

cc: Robert B. Roche
Janette Brimmer
Edward J. Laubach, Jr.
Susan Naughton
Molly McKee
Christopher M. Hood
Lloyd W. Grooms
Charles N. Nauen
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Nancy Stoner
Andrew Hanson
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STATE OF MINNESOTA
IN THE SUPREME COURT

In the Matter of the Cities of Annandale and
Maple Lake NPDES/SDS Permit Issuance for
the Discharge of Treated Wastewater, and
Request for Contested Case Hearing

Appellate Court No. A04-2033

**MOTION AND MEMORANDUM
FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF**

The Environmental Law and Policy Center of the Midwest, the Natural Resources Defense Council, Midwest Environmental Advocates, and American Rivers, hereinafter “Conservation Groups,” through their attorney, Jane Reyer, hereby move the Court for leave to file an amicus curiae brief in the above-referenced appeal. The Conservation Groups make their request pursuant to Minn. R. Civ. App. P. 127 and 129.01.

The Environmental Law and Policy Center (“ELPC”) is an environmental advocacy organization that, among many other projects, has been working to improve water quality in the rivers, lakes and streams of Midwest states through improved implementation of the Clean Water Act. In particular, ELPC has worked to increase controls on phosphorus pollution in waters in the Mississippi River watershed by advocating permit limits on phosphorus discharges and rules and standards that would lessen phosphorus pollution.

The Natural Resources Defense Council (“NRDC”) is a nonprofit environmental organization that has been in existence since 1970 and which has more than 600,000 members nationwide, and more than 11,000 members in Minnesota. It has a Water and Coastal Program that works at the national, regional, state, and local levels to protect

waterways from environmental degradation. NRDC has expertise developed over years of experience with the legal and regulatory framework in the Clean Water Act for the development and implementation of water quality standards and total maximum daily loads for impaired waters and wastewater treatment technologies and standards.

Midwest Environmental Advocates, Inc. ("MEA") is a nonprofit environmental law center in Madison, Wisconsin that provides technical assistance and legal representation to communities working for clean air, clean water, and clean government. MEA has been active in monitoring implementation of the Clean Water Act by the Wisconsin Department of Natural Resources ("WDNR"), including review of and, where appropriate, legal challenge to decisions made by WDNR under the Wisconsin Pollutant Discharge Elimination System ("WPDES") permit program. Since its founding in 1999, MEA has acquired considerable expertise in the regulatory framework of the Clean Water Act discharge permitting program, as well as water quality standards and Total Maximum Daily Loads. Most importantly, MEA filed an administrative challenge on behalf of Clean Water Action Council of Northeastern Wisconsin to WPDES Permit No. WI-0001848-07-0, Fort James Operating Company, for that facility's increased discharge of phosphorus to the lower Fox River, a large river similar to the Mississippi River that is on the 303(d) list of impaired waters for impairment by phosphorus. A decision by this Court in this case may affect the outcome, by persuasive authority, in that administrative challenge and therefore MEA has a stake in the outcome of the Court's decision here. Finally, Wisconsin shares the upper Mississippi River and Lake Pepin with the state of Minnesota. MEA brings a unique perspective on the effect the Court's decision may

have on Wisconsin's residents' interest in cleaning up and protecting Lake Pepin and the upper Mississippi River.

American Rivers is a national nonprofit conservation organization dedicated to protecting and restoring healthy natural rivers and the variety of life they sustain for people, fish, and wildlife. Established in 1973, American Rivers has 37,259 members nationwide, and 659 members in Minnesota. In addition to a national office, American Rivers has six regional or field offices and has worked extensively in the Great Lakes area. American Rivers works on a variety of river conservation issues, including work to safeguard and strengthen the Clean Water Act, through education and advocacy.

The Conservation Groups' interest in this matter is public in nature and relates to the interpretation and application of Clean Water Act regulations to protect lakes, rivers, and other water bodies in Minnesota. The interpretation of these regulations potentially affects all those who benefit from use of Minnesota's waterways, such as for drinking, swimming, fishing, farming, wildlife viewing, and boating.

An amicus brief from the Conservation Groups is desirable because they bring a perspective based on their experiences from across the country in interpreting Clean Water Act requirements so as to achieve the Clean Water Act goals of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. 33 U.S.C. 1251(a). The Conservation Groups have experience with a number of Clean Water Act program elements that are particularly relevant to disposition of the instant case, including the Total Maximum Daily Load program, anti-degradation requirements, numeric and narrative standards applicable to nutrient impairment of water bodies, and technology standards applicable to the treatment of wastewater by sewage treatment

plants. The Conservation Groups have relied on these programs to protect and restore water bodies nationwide. The Court would benefit from their perspective on the legal, technical, and environmental issues raised by the parties in the instant case.

The Conservation Groups' brief will be filed in support of the position advocated by appellee, Minnesota Center for Environmental Advocacy, for affirmance of the decision of the Court of Appeals of Minnesota. The Conservation Groups are aware that amici in support of appellants contend that affirmance of the decision below will stifle economic development in Annandale and Maple Lake. The Conservation Groups expect to provide scientific and technical information in addition to legal argument to assist the Court in evaluating their contention. In particular, the Conservation Groups have expertise with respect to the use of land treatment systems and other wastewater treatment systems that do not discharge phosphorus and with the use of cost-effective, technically advanced wastewater treatment approaches by sewage treatment plants to remove phosphorus that it would like to share with the court. The Conservation Groups also have experience with the impacts of phosphorus pollution on water bodies, including the physical, chemical, and biological integrity of those waters. If accepted as an amicus, we expect to share this information with the court as well.

If this motion is granted, Conservation Groups propose to serve and file their brief no later than seven days after the time allowed for the filing of MCEA's brief.

For these reasons, Conservation Groups respectfully request that they be granted leave to file an amicus brief in this matter in accordance with Minn. R. Civ. App. P.

129.02.

RESPECTFULLY SUBMITTED:

Date: Nov. 9, 2005

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STATE OF MINNESOTA
IN SUPREME COURT

In the Matter of the Cities of
Annandale and Maple Lake NPDES/SDS
Permit Issuance for the Discharge of
Treated Wastewater; and Request for
Contested Case Hearing

**AFFIDAVIT OF SERVICE
BY MAIL**

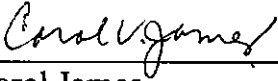
Court of Appeals No. A04-2033

Carol James, being duly sworn, says that on the 9th day of November, 2005, she served by placing in the U.S. Mail the following:

Motion and Memorandum for Leave to File an Amicus Curiae Brief


on the persons in this action by mailing to them, enclosed in an envelope, postage prepaid, and by depositing the same in a post office in Washington, DC, directed to said persons at the last known mailing address of said persons.

See attached Service List



Carol James

Subscribed and sworn to before me
this 9th day of November, 2005.



Notary Public

Craig Dylan Wyatt
Notary Public, District of Columbia
My Commission Expires June 14, 2007

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