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December 20, 2006

Benjamin Grumbles  
Assistant Administrator, Office of Water  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
**Mail Code:** 4101M  
Washington, DC 20460

**Re:** Office of Water November 15, 2006 guidance memorandum on establishing TMDLs in light of D.C. Circuit decision in Friends of the Earth v. EPA, No. 05-5015.

Dear Mr. Grumbles:

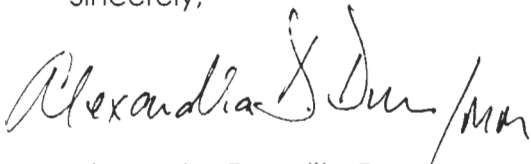
We are writing to provide you with a copy of the Supplemental Brief submitted to the U.S. Supreme Court by the National Association of Clean Water Agencies (NACWA) and the Wet Weather Partnership (WWP) in District of Columbia Water and Sewer Authority v. Friends of the Earth, No. 06-0119. Our brief responds to the Environmental Protection Agency's (EPA's) Brief in Opposition filed on November 22 opposing Supreme Court review of the case. EPA argued that the Supreme Court should decline to review this case based upon EPA's newly issued guidance on November 15, 2006 that purports to explain how, in light of the decision by the D.C. Circuit in this case, Total Maximum Daily Loads should be expressed and then translated in to permits.

As we explain in our Supplemental Brief, EPA's guidance does not resolve the ambiguity created by the appeals court decision. In fact, the guidance only compounds the ambiguity and does not provide clarity or certainty for the regulated community. Accordingly, we encourage you to review our Supplemental Brief and the arguments presented regarding the new TMDL guidance. We realize that EPA is not accepting formal comments on the policy, however, we believe the arguments presented in our Supplemental Brief address the key weaknesses of the

guidance in its current form. We hope that EPA will give serious consideration to revising the document to make it more comprehensive and helpful to both regulated entities and regulatory agencies.

Thank you for your consideration of our comments on the new guidance and for your ongoing work on this matter. We look forward to continuing to work with EPA on the TMDL issue and hope that our comments will serve as the basis for additional discussion on how to create meaningful TMDL guidance for the clean water community.

Sincerely,



Alexandra Dapolito Dunn  
NACWA General Counsel



John A. Sheehan  
AquaLaw PLC, Counsel for WWP

cc: Steven Neugeboren  
Jim Hanlon  
John Goodin

Enclosure(s)