

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

WILLIAM DOUGLAS ZWEIG, <i>et al.</i> ,)	
on behalf of themselves and all others)	
similarly situated,)	
)	
Respondents/Cross-Appellants,)	
)	Appeal No. ED96110 (consolidated
vs.)	with Nos. ED96165 and ED96393)
)	
THE METROPOLITAN ST. LOUIS)	
SEWER DISTRICT,)	
)	
Appellant/Cross-Respondent.)	
)	

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF
APPELLANT THE METROPOLITAN ST. LOUIS SEWER DISTRICT**

COMES NOW the National Association of Clean Water Agencies (NACWA), the National Association of Flood and Stormwater Management Agencies (NAFSMA), and the American Public Works Association (APWA) (collectively the “*amici*”) respectfully move this Court pursuant to Local Rule 375 for leave to file their brief as *amici curiae* which is submitted herewith and offered in support of the Appellant’s position with respect to one point raised on appeal. Pursuant to Missouri Rule of Civil Procedure 84.05(f)(3), consent to the filing of the brief was requested from counsel for the Respondents/Cross-Appellants William Douglas Zweig, et al., but was refused. Consent was also sought pursuant to Missouri Rule of Civil Procedure 84.05(f)(3) from counsel for the Metropolitan St. Louis Sewer District (“MSD”) who consented to the filing of the *amici* brief. In support of this Motion, the *amici* therefore state as follows:

The members of the *amici* represent municipal governments and a large number of city and county public works organizations responsible for the operation, oversight and management of municipal separate storm sewer systems; as well as agencies, companies and professionals involved in ensuring that such systems are designed, funded, operated and maintained in compliance with applicable laws and regulations.

NACWA represents the interests of nearly 300 of the nation's wastewater and stormwater management agencies. NACWA has 5 public utility members in the State of Missouri, including MSD. NACWA members serve the majority of the sewered population in the United States, and collectively treat and reclaim more than 18 billion gallons of wastewater each day. Numerous NACWA members are regulated by the Clean Water Act's permit program for municipal separate storm sewer systems.

NAFSMA is a national non-profit association of municipalities, special purpose public districts, and state agencies. Its members represent a broad nationwide spectrum of flood control, water conservation, stormwater management, wastewater, and other water-related districts, bureaus, departments, and other instruments of state and local government. NAFSMA's 100 member agencies serve a combined population of approximately fifty (50) million people.

APWA is an organization of 28,500 public works professionals, including city and county Public Works Directors responsible for stormwater management, water and wastewater services, waste collection, and other municipal services, including 534 members in Missouri. APWA members and their agencies are responsible for planning, budgeting, design and management of municipal stormwater programs.

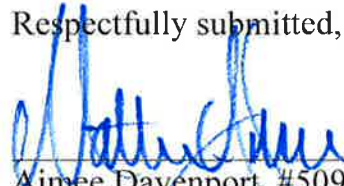
The *amici* have an interest in this litigation because their members are directly involved in the administration of stormwater utilities and the implementation of stormwater management programs mandated by Section 402(p) of the Clean Water Act and by the state and federal regulations implementing that provision. Over the past decade, the nature and complexity of the measures required in municipal stormwater permits has increased dramatically, and the cost of implementing those measures continues to escalate. Furthermore, U.S. EPA is currently engaged in a formal rulemaking process, to establish a comprehensive new program to reduce stormwater discharges from new development and redevelopment and make other regulatory improvements to strengthen its stormwater program, that will add significantly to the existing financial burden on stormwater management agencies. *See* 74 Fed. Reg. 69617 (Dec. 28, 2009).

In order to implement the requirements of their municipal stormwater permits, local stormwater authorities throughout the United States have devised appropriate funding mechanisms, including the creation of stormwater utilities and the collection of user fees and service charges to pay for the stormwater management activities. By far the most common approach to establishing an appropriate rate structure for such utilities is the use of impervious surface area to allocate costs based on each property's contribution of runoff to the stormwater management system. The trial court in this case held that MSD's Stormwater User Charge is an invalid tax, in part, because it found that there is no relationship between the amount of impervious area on a property and the volume of stormwater runoff or the stormwater management services provided by MSD. This

ruling calls into question the validity and implementation of similar programs established throughout the country using the approach employed by MSD, at a time when the need for reliable and certain funding mechanisms to support and expand those programs is particularly acute.

WHEREFORE, the *amici* request that their Motion for Leave to File a brief as *amici curiae* be granted by this Court and for such other and further relief as the Court deems just and appropriate.

Respectfully submitted,



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CERTIFICATE OF SERVICE

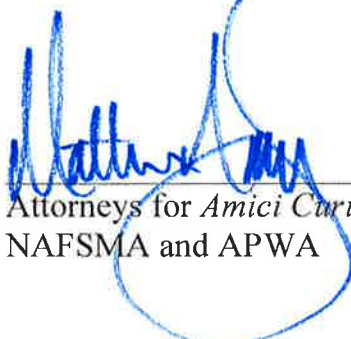
The undersigned hereby certifies that a copy of the foregoing was served on this 16th day of September, 2011, by U.S. Mail on:

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