

IN THE SUPREME COURT OF MISSOURI

WILLIAM DOUGLAS ZWEIG, <i>et al.</i> ,	)	
on behalf of themselves and all others	)	
similarly situated,	)	
	)	Circuit Court No. 08SL-CC03051
Plaintiffs-Respondents/Cross-	)	Court of Appeals No. ED96110
Appellants,	)	(Consolidated with Nos. ED96165 and
	)	ED96393)
vs.	)	Supreme Court No. SC92581
	)	
THE METROPOLITAN ST. LOUIS	)	Court of Appeals, Eastern District
SEWER DISTRICT,	)	Circuit Court for St. Louis County
	)	
Defendant-Appellant/Cross-	)	
Respondent.	)	

**MOTION FOR LEAVE TO FILE SUGGESTIONS IN SUPPORT OF**  
**APPLICATION FOR TRANSFER OF THE METROPOLITAN ST. LOUIS**  
**SEWER DISTRICT**

Pursuant to Rule 84.05(f)(1), the National Association of Clean Water Agencies ("NACWA") requests leave of Court to file its Suggestions in Support of the Application for Transfer to this Court filed by the Appellant Metropolitan St. Louis Sewer District ("MSD") on or about May 29, 2012. Counsel for MSD, Kevin Anthony Sullivan, has informed NACWA counsel that it consents to the filing of the proposed *amicus* filing; however, counsel for Respondents, Richard R. Hardcastle, III, has declined to consent to the *amicus* filing.

This matter is before the Court pursuant to MSD's Application for Transfer filed following the Opinion issued by the Eastern District Court of Appeals on March 27, 2012 in which the Trial Court's judgment that the MSD stormwater user charge is a tax subject to the Hancock Amendment was affirmed. NACWA incorporates by reference herein the

Application for Transfer and all associated exhibits and attachments to same, however, NACWA further sets forth the following points in support of this Motion.

NACWA is a national trade organization which represents municipal wastewater and stormwater utilities that are charged with the operation, oversight and management of municipal separate storm sewer systems, as well as agencies, companies and professionals involved in ensuring that stormwater sewer systems are designed, funded, operated and maintained in compliance with applicable laws and regulations. NACWA counts among its members nearly 300 of the nation's wastewater and stormwater management agencies including five public utility members in the State of Missouri. MSD is one of those five public utilities. Collectively, NACWA members treat and reclaim more than 18 billion gallons of wastewater and stormwater each day and serve the majority of the sewered population in this country.

As a national trade organization, NACWA includes advocacy as one of its primary purposes. As such, NACWA was instrumental in lobbying Congress for the most recent Amendment to the federal Clean Water Act, Section 313(c), which provided needed clarification relating to stormwater user fees based on a reasonable approximation of a property's contribution to a stormwater system in terms of the volume, rate of stormwater discharge or run-off - such as the impervious surface standard at issue in this litigation - as being reasonable service charges payable by governmental facilities. Furthermore, Courts across the country have held that the impervious area approach is a valid standard for stormwater billing, and that such billing programs are appropriately considered a utility service fee and not a tax. The Court should consider the Court of Appeals' ruling

on this issue, or Missouri risks becoming a national outlier in how its municipal stormwater utilities can bill for this vital service.

There are increasing requirements for stormwater management programs pursuant to Federal and State clean water laws. As an acknowledgment of these increasing regulatory mandates and resulting costs, many stormwater utilities across the country have adopted a fee system to pass these costs along to the users of the system in a more fair and equitable manner. The most common measurement being applied across the country by stormwater utilities is the use of impervious surface area as the basis for assessing stormwater charges as used by MSD and challenged by the Plaintiffs in the underlying lawsuit. The impervious area determination has become the industry standard because it is both supported by science and engineering and it is fair, practicable and easy to understand.

NACWA requests leave of this Court to provide its Suggestions in Support of MSD's Application for Transfer as its national viewpoint on this matter is distinct from that of MSD, but is one which will prove instructive to this Court. NACWA's national perspective on this issue is important to the Court's determination and will prove helpful when the Application for Transfer is decided.

Respectfully submitted,

/s/ Matthew A. Jacober

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served on this 31st day of May, 2012, through the electronic filing system and regular mail on:

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