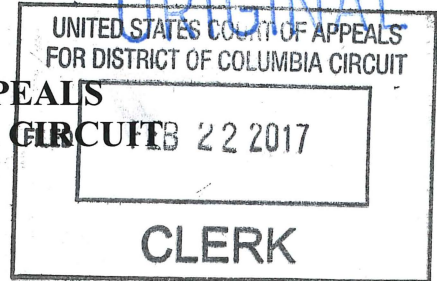


UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

FEB 22 2017

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT



RECEIVED

Center for Regulatory Reasonableness,

Petitioner,

v.

United States Environmental
Protection Agency,

Respondent.

17-1060

Docket: _____

PETITION FOR REVIEW

Pursuant to the grants of original jurisdiction under § 509(b)(1)(E) and § 509(b)(1)(F) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. §§ 1369(b)(1)(E) & (F), the Center for Regulatory Reasonableness (“CRR” or “the Center”), on behalf of its members, hereby petitions this Court for review of Respondent’s, United States Environmental Protection Agency (“EPA” or “the Agency”) actions in (1) approving and/or promulgating effluent limitations or other limitations subject to § 509(b)(1)(E), and (2) issuing a permit subject to § 509(b)(1)(F).

CRR challenges, *inter alia*, the Agency’s approval and/or promulgation of unlawful amendments to existing legislative rules (*e.g.*, 40


C.F.R. § 122.4, 40 C.F.R. § 122.26, § 122.28, 40 C.F.R. § 122.44(d), 40 C.F.R. §§ 122.32-36). CRR also challenges the creation of new regulatory requirements that are found nowhere in EPA's existing regulations or in the Act. These new and revised requirements are procedurally unlawful under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551, exceed EPA's CWA statutory authority, and, in some cases, violate the U.S. Constitution.

These new and revised rules were announced in the January 18, 2017 General Permit for "Stormwater Discharges from Small Municipal Separate Storm Sewer Systems" in New Hampshire (*see* Ex. A, NH MS4 General Permit) and the extensive Response to Comments document that accompanied the final permit. *See* Ex. B, EPA's Response to Comments Document available electronically at <https://www3.epa.gov/region1/npdes/stormwater/nh/2017-response-to-comments-sms4-nh.pdf>. (because this document is over 350 pages in length and available electronically, CRR has not appended it to its petition); *see also*, Ex. C, CRR's April 28, 2016 Letter to EPA HQ and Ex. D, EPA HQ's June 8, 2016, Letter to CRR (confirming EPA's Headquarters' position regarding unlawful rule amendments is reflected in the final Response to Comments for the General Permit).

CRR's Petition for Review encompasses (1) a facial challenge to the Agency's promulgations and approvals of effluent limitations and other

limitations under CWA § 509(b)(1)(E), (2) an as-applied challenge to the Agency's inclusion of such unlawful limitations and requirements in the General Permit for small New Hampshire stormwater dischargers under CWA § 509(b)(1)(F), and (3) a challenge to the Constitutionality of the federal MS4 program as enacted by Congress and as implemented by EPA. These challenges mirror those in a consolidated petition already before the D.C. Circuit. *See Center for Regulatory Reasonableness, et al v. EPA*, Docket 16-1246. While the earlier petition arose from a general permit issued by EPA Region 1 to Massachusetts MS4 permittees, the MA permit is virtually identical to the New Hampshire permit at issue in this petition and the endorsement from EPA Headquarters (Pet. Ex. D) applied to both permits. As such, CRR's claims and challenges in this matter overlap with the other proceeding.

Respectfully submitted,



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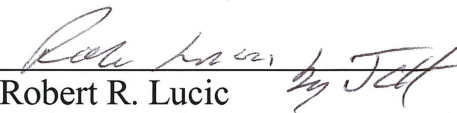


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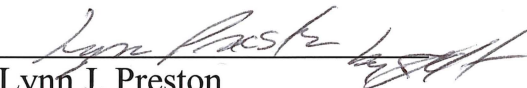
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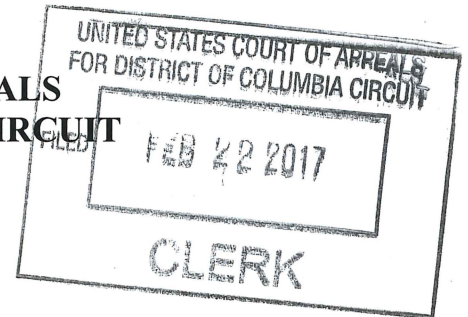
Attorneys for Petitioner

Dated: February 22, 2017

ORIGINAL

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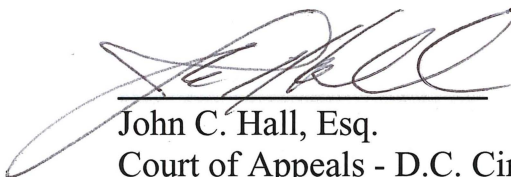
Petition for Review
Docket No. 17-1060**PETITIONER'S RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. and Circuit Rule 26.1, the undersigned, counsel for Petitioner, Center for Regulatory Reasonableness, certifies as follows:

The Center for Regulatory Reasonableness ("CRR") (a domestic for profit corporation established under Title 29 of the D.C. Code) is a multi-sector coalition of municipal and industrial entities from across the United States (including New Hampshire). CRR was created to address the full range of Clean Water Act compliance, permitting and regulatory issues facing these entities. CRR is dedicated to ensure that regulatory requirements applicable to such entities are based on sound scientific

information, allow for flexible implementation, and provide for attainable, cost-effective compliance options. CRR also makes certain that such requirements are only implemented after full consideration of public comments regarding the need for and efficacy of such requirements. Most, if not all, of CRR's members operate under National Pollutant Discharge Elimination System permits issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* CRR has no parent companies, and there are no other publicly-held companies that have a 10% or greater ownership interest in CRR. CRR has no outstanding shares or debt securities in the hands of the public.

Respectfully submitted,



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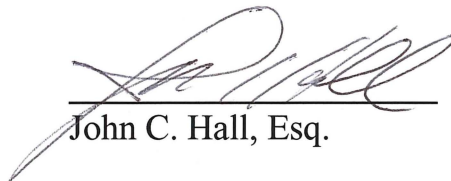
CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of February 2017, a copy of the foregoing **Petition for Review** and **Petitioner's Rule 26.1 Statement** was served on each of the following by Certified Mail, Return Receipt Requested:

Office of the Administrator
Ariel Rios Building
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Washington, D.C. 20460

United States Environmental Protection Agency
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1200 Pennsylvania Avenue, N.W.
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**Counsel for the Center for
Regulatory Reasonableness**