

3) Plaintiff Tennessee Clean Water Network (“TCWN”) is a citizen environmental organization with individual members who live and work in Chattanooga. As a result of the City’s violations of the Act, TCWN’s members see human waste and toilet paper in local waterways from their boats and from the shore, smell strong sewage odors, and curtail their recreational activities.

4) Section 505(a)(1) of the Act, 33 U.S.C. § 1365(a)(1), authorizes citizens to bring suit in federal court to enforce the Act. The Act’s “citizen suit provision” authorizes citizens to obtain an injunction and civil penalties against violators. Absent an appropriate order from this Court, the City will continue to violate the Act.

JURISDICTION AND VENUE

5) This Court has subject matter jurisdiction pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1331.

6) Plaintiff has complied with the pre-suit notice requirements of Section 505(b)(1)(A) of the Act, 33 U.S.C. § 1365(b)(1)(A). On August 2, 2010, Plaintiff mailed a Notice of Violations (“Notice”) to Defendant, the Administrator of the U.S. Environmental Protection Agency (“EPA”), the Regional Administrator of the EPA, and the Director of the Tennessee Department of Environment and Conservation Division of Water Pollution Control (“TDEC”). The Notice is attached hereto as Exhibit 1 and is incorporated by reference herein. More than 60 days have passed since the Notice was served on Defendant and these agencies.

7) Neither EPA nor TDEC has commenced and diligently prosecuted a civil or criminal action in a court of the United States or a State to redress the violations of the Act by Defendant.

8) Neither EPA nor TDEC had commenced and diligently prosecuted an administrative penalty action pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), or a comparable Tennessee law, to redress violations by Defendant prior to the service of Plaintiff's Notice. This suit is being commenced within 120 days of the service of Plaintiff's Notice.

9) Plaintiff will, upon receipt of a file-stamped copy of this Complaint, mail a copy of this Complaint to the Administrator of the EPA, the Regional Administrator of EPA Region 4, and to the Attorney General of the United States, as required by the Act.

10) Venue is appropriate in the Eastern District of Tennessee, pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this District.

PARTIES

11) Plaintiff Tennessee Clean Water Network is a nonprofit corporation organized under the laws of the State of Tennessee with its principal office in Knoxville, Tennessee. TCWN was organized, among other reasons, to advocate for strong polices and programs that result in more effective protection and restoration of Tennessee waters; to educate organizations, decision-makers, and the public about important water resource issues; and to ensure the protection and restoration of Tennessee's waters. TCWN is a membership organization, and has members who are injured by the violations of the Act described herein.

12) TCWN is a citizen within the meaning of 33 U.S.C. § 1365(a) and (g).

13) Defendant City of Chattanooga (the "City") is a municipality operating under a charter granted by the Tennessee Legislature. It has jurisdiction over the disposal of sewage and other wastes. The City owns and operates a sanitary sewer system, a system to convey a

combination of sanitary sewage and storm water, the Moccasin Bend Wastewater Treatment Plant (“Moccasin Bend”), overflow facilities, and associated pumping and discharge outfalls.

14) As a municipality, the City is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

STATUTORY BACKGROUND

15) Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits the discharge of any pollutant into navigable waters of the United States from a point source unless the discharge is both (a) covered by a National Pollutant Discharge Elimination System (“NPDES”) permit applicable to that point source, and (b) in compliance with the discharge limitations and other conditions set by such permit. In Tennessee, EPA has delegated the authority to implement the NPDES permitting to TDEC, subject to EPA oversight, pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b).

16) Sanitary sewage, and sanitary sewage combined with storm water, are pollutants within the meaning of the Act, 33 U.S.C. § 1362(6).

17) A wastewater treatment plant, sanitary sewer system and combined sewer system, and their manholes, outfalls, and other points of release, are point sources under the Act, 33 U.S.C. § 1362(14).

18) The Tennessee River and its tributaries in Chattanooga are navigable waters of the United States within the meaning of the Act, 33 U.S.C. 1362(7).

19) A violation of an NPDES permit issued by TDEC is a violation of the Act. Pursuant to Section 505(a)(1) of the Act, 33 U.S.C. § 1365(a)(1), a citizen who has been

adversely affected by such a violation may bring suit to enforce the permit. The Court may grant declaratory relief, issue an injunction, and impose a penalty for each day of each separate violation (\$32,500 per day for each violation of the Act, \$37,500 as of January 12, 2009, none of which can be paid to Plaintiffs).

CHATTANOOGA'S WASTEWATER SYSTEM

20) The Moccasin Bend Wastewater Treatment Plant treats the wastewater of Chattanooga and surrounding communities and then discharges it into the Tennessee River. Chattanooga's wastewater collection and transmission system ("CTS") consists of two systems to collect and transmit Chattanooga's wastewater to Moccasin Bend: (a) the separate sanitary sewer system ("SSS") handles sanitary sewage, which is comprised of domestic, commercial and industrial wastewater; and (b) the combined sewer system ("CSS") handles a combination of sanitary sewage and storm water runoff. Storm water in the CSS can exceed the capacity of the CSS or Moccasin Bend. When that happens, the CSS releases sanitary sewage combined with storm water runoff before it reaches Moccasin Bend. These are known as "combined sewer overflows" ("CSOs").

THE CITY'S NPDES PERMIT

21) Chattanooga's wastewater system is subject to NPDES permit TN0024210, issued by TDEC to the City ("NPDES Permit"). The current version of the NPDES Permit became effective on April 1, 2007. The prior version became effective on February 1, 2004, and was substantively identical to the current version in relevant part except that there was no daily maximum limit for E. coli in discharges from Outfall 001, Moccasin Bend treated effluent.

22) Section 2.1.13 of the 2007 NPDES Permit provides, and Section II.C.1 of the NPDES 2004 Permit provided:

All discharges shall be consistent with the terms and conditions of this permit. Any permit noncompliance constitutes a violation of applicable state and federal laws and is grounds for enforcement action, permit termination, permit modification, or denial of permit reissuance.

Section 2.1.4 of the 2007 NPDES Permit requires, and Section II.A.4(a) of the 2004 NPDES Permit required, that the “permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit.”

23) Sections 1.5 through 1.7 of the City’s 2007 NPDES Permit authorize, and Sections I.A.5 through I.A.7 of the 2004 NPDES Permit authorized, discharges of treated, but not disinfected, CSOs from six outfalls that release to the Tennessee River and two outfalls that release to Chattanooga Creek, only during periods of wet weather. Section 3.7(5) of the 2007 NPDES Permit prohibits, and Section III.G.5 of the 2004 NPDES Permit prohibited, CSOs during dry weather.

24) Section 2.1.15(a) through (c) of the 2007 NPDES Permit prohibits, and Section II.C.3(a) through (c) of the 2004 NPDES Permit prohibited, overflows from any other portion of the collection, transmission, or treatment system. Two outfalls known as West Bank Tide Gate CSO Outfall (“West Bank Outfall”) East Bank Tide Gate CSO Outfall (“East Gate Outfall”) do not provide any treatment and are not authorized to discharge overflows. Releases from the sanitary sewage system before the Moccasin Bend Wastewater Treatment Plant - known as “sanitary sewer overflows” (“SSOs”) - are also not authorized by the City’s NPDES permit.

25) Sections 1.1 through 1.4 of the City’s 2007 NPDES Permit limit the daily maximum concentration of E. coli in the treated effluent discharged by the Moccasin Bend Wastewater Treatment Plant out of Outfall 001 to 487 colonies per 100 milliliters. E. coli is measured because it is an indicator of fecal contamination.

26) The City's NPDES Permit contains a variety of monitoring and reporting requirements. Included in these is the requirement imposed by Section 1.1.10.a of the 2007 NPDES Permit and Section I.D.5(a) of the 2004 NPDES Permit to report the estimated quantities of any SSOs. The City's NPDES Permit also requires the City to report the levels of certain pollutants in the Moccasin Bend effluent on Discharge Monitoring Reports.

CLAIMS

COUNT ONE: UNAUTHORIZED OVERFLOWS FROM THE WEST BANK OUTFALL AND THE EAST BANK OUTFALL

27) Paragraphs 1-26 of this Complaint are hereby realleged and incorporated by reference herein.

28) The City discharges wastewater from the West Bank and East Bank Outfalls to the Tennessee River. These discharges occurred on at least those occasions listed in the Notice (Exhibit 1). From January 2006 through June 2010, the City reported 32 discharges totaling nearly 319 million gallons of untreated sewage to the Tennessee River through these outfalls.

29) According to the report of a November 4-5, 2009 inspection of the City's wastewater discharge system ("EPA Inspection Report"), the City has stated that the West Bank Outfall discharges when Moccasin Bend has reached treatment capacity. Also according to the EPA Inspection Report, the City has stated that the majority of discharges from the East Bank and West Bank Outfalls are caused by mechanical and/or electrical issues at pump stations.

30) The City's discharges from the East Bank and West Bank Outfalls are unauthorized overflows, violate Section 2.1.15(a), (b) and (c) of the City's 2007 NPDES Permit and Section II.C.3(a), (b), and (c) of the 2004 NPDES Permit, and are violations of the Act.

TCWN is unaware of any action by the City that has eliminated future discharges from the West Bank and East Bank Outfalls.

31) Each day on which Defendant discharges pollutants from the West Bank Outfall constitutes a separate violation of the NPDES Permit and of the Act.

32) Each day on which Defendant discharges pollutants from the East Bank Outfall constitutes a separate violation of the NPDES Permit and of the Act.

COUNT TWO: UNAUTHORIZED SANITARY SEWER OVERFLOWS

33) Paragraphs 1-32 of this Complaint are hereby realleged and incorporated by reference herein.

34) The City regularly discharges wastes throughout its wastewater collection and transmission system from points other than permitted outfalls. The City has reported 489 of these SSOs totaling nearly 35 million gallons on its Discharge Monitoring Reports and the accompanying Overflow Reports from January 2006 through June 2010. A list of these SSOs is included in the Notice (Exhibit 1).

35) According to the EPA Inspection Report, the City's SSOs are caused by pipe blockages, rain inflow and infiltration into the system, mechanical and electrical issues at pump stations, and power failure, among other reasons. SSOs are discharged from the CTS, often out of manholes. Many of these SSOs reach the Tennessee River and its tributaries in Chattanooga, including Chattanooga Creek, Dobbs Branch, Friar Branch, Mackey Branch, North Chickamauga Creek, and South Chickamauga Creek, among others, either directly or via ditches and storm drains. In addition, failures in the CTS often cause raw sewage to back up into residents' homes, city businesses, parks, and the streets of Chattanooga.

36) The City's SSOs are unauthorized overflows, violate Section 2.1.15(a) through (c) of the City's 2007 NPDES permit and Sections II.C.3(a) through (c) of the 2004 NPDES Permit, and are violations of the Act. TCWN is unaware of any action by the City that has eliminated future SSOs.

37) Each day on which the City discharges a SSO constitutes a separate violation of the NPDES Permit and of the Act.

**COUNT THREE: UNAUTHORIZED DISCHARGE OF DRY WEATHER
COMBINED SEWER OVERFLOWS**

38) Paragraphs 1-37 of this Complaint are hereby realleged and incorporated by reference herein.

39) The City has reported 19 CSOs totaling more than 4.7 million gallons on dates when it reports that there has been no rainfall. A list of dry weather CSOs is included in the Notice (Exhibit 1).

40) The City's dry weather CSOs are unauthorized discharges, violate Sections 1.5 through 1.7 and 3.7(5) of the City's 2007 NPDES Permit and Sections I.A.5 through I.A.7 and III.G.5 of the 2004 NPDES Permit, and are violations of the Act. TCWN is unaware of any action by the City that has eliminated future dry weather CSOs.

41) Each day on which Defendant discharges CSOs during dry weather constitutes a separate violation of the NPDES Permit and of the Act.

**COUNT FOUR: DISCHARGE OF EFFLUENT FROM MOCASSIN BEND
CONTAINING E. COLI IN EXCESS OF NPEDES PERMIT LIMITS**

42) Paragraphs 1-41 of this Complaint are hereby realleged and incorporated by reference herein.

43) On numerous occasions, Defendant has discharged treated sewage to the Tennessee River from the Moccasin Bend Wastewater Treatment Plant that contains concentrations of E. coli that exceed the daily maximum limit of 487 colonies per 100 milliliters imposed by Sections 1.1 through 1.4 of the City's 2007 NPDES Permit. A list of these discharges is included in the Notice (Exhibit 1). These discharges violate the Act. TCWN is unaware of any action by the City that has eliminated future discharges from the Moccasin Bend Wastewater Treatment Plant that exceed the daily maximum E. coli limit.

44) Each day on which Defendant discharges E. coli in excess of the applicable effluent limit constitutes a separate violation of the NPDES Permit and of the Act.

COUNT FIVE: FAILURE TO MONITOR AND REPORT THE ESTIMATED VOLUME OF SANITARY SEWER OVERFLOWS

45) Paragraphs 1-44 of this Complaint are hereby realleged and incorporated by reference herein.

46) Defendant routinely reports the location and date of an SSO without reporting the estimated quantity of the SSO. These reports violate Section 1.1.10a of the 2007 NPDES Permit and Section I.D.5(a) of the 2004 NPDES Permit, and thus the Act. Section 1.1.10a of the 2007 NPDES Permit requires, and Section I.D.5(a) of the 2004 NPDES Permit required, that "[a] summary report of known or suspected instances of overflows in the collection system other than through permitted outfalls ... shall accompany the Discharge Monitoring Report. The report must contain the date and duration of the instances of overflow and/or bypassing and the estimated quantity of wastewater released and/or bypassed." A list of these incomplete reports is included in the Notice (Exhibit 1). TCWN is unaware of any action by the City that has eliminated future incomplete reporting of its SSOs.

AS TO COUNTS ONE THROUGH FIVE INCLUSIVE, THE CITY'S VIOLATIONS OF THE ACT HARM TCWN'S MEMBERS

47) The City's violations of the Act set forth in Counts One through Five harm TCWN's members.

48) SSOs and CSOs are a substantial threat to human health and the environment.

According to EPA:

Because SSOs contain raw sewage they can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and borroughs (inhaled molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infect[ious] hepatitis, and severe gastroenteritis.

* * *

SSOs also damage property and the environment. When basements flood, the damaged area must be thoroughly cleaned and disinfected to reduce the risk of disease. Cleanup can be expensive for homeowners and municipalities. Rugs, curtains, flooring, wallboard panels, and upholstered furniture must usually be replaced.

A key concern with SSOs that enter oceans, bays, estuaries, rivers, lakes, streams, or brackish waters is their effect on water quality. When bodies of water cannot be used for drinking water, fishing, or recreation, society experiences an economic loss. Tourism and waterfront home values may fall. Fishing and shellfish harvesting may be restricted or halted...

http://cfpub.epa.gov/npdes/faqs.cfm?program_id=4. According to a 2008 TDEC report, "The

Status of Water Quality in Tennessee," required to be written by Section 305(b) of the Act, 33

U.S.C. § 1315(b):

Collection systems convey raw sewage to treatment plants through a series of pipes and pump stations. Unfortunately, these systems occasionally malfunction or become overloaded, which can result in the discharge of high volumes of untreated sewage to a stream or river. A serious concern near urban areas is children being exposed to elevated bacteria levels while playing in streams and rives after heavy rains...Enforcement action must be taken against cities that fail to report and correct sewage system problems.

http://www.state.tn.us/environment/wpc/publications/2008_305b.pdf (p. 61). With respect to CSOs, EPA has stated:

CSOs consist of mixtures of domestic sewage, industrial and commercial wastewaters, and storm water runoff. CSOs often contain high levels of suspended solids, pathogenic microorganisms, toxic pollutants, floatables, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. CSOs can cause exceedances of water quality standards (WQS). Such exceedances may pose risks to human health, and impair the use and enjoyment of the Nation's waterways.

EPA Combined Sewer Overflow (CSO) Policy, 59 Fed. Reg. 18688, 18689 (April 19, 1994).

49) E. coli is one of a number of bacteria measured to indicate possible sewage contamination. According to EPA, "E. coli is a species of fecal coliform that is specific to fecal material from humans and other warm-blooded animals. EPA recommends E. Coli as the best indicator of health risk from water contact in recreational water..." <http://water.epa.gov/type/rsi/monitoring/vms511.cfm>. Although E. coli and other bacteria groups used for water quality monitoring "are generally not harmful themselves, they indicate the possible presence of pathogenic (disease-causing) bacteria, viruses, and protozoans that also live in human and animal digestive systems. Therefore, their presence in streams suggests that pathogenic microorganisms might also be present and that swimming and eating shellfish might be a health risk." Id.

50) TDEC has determined that combined sewer overflows and "collection system failure" have impaired Chattanooga waterways so that they will not meet water quality standards unless more stringent effluent standards are imposed on dischargers. Specifically, in a list of impaired waterbodies compiled by TDEC as required by Section 303(d) of the Act, 33 U.S.C. § 1313(d), CSOs and collection system failure contributed to the following waterbodies being impaired for the presence of E. coli: a 8.4 mile stretch of Chattanooga Creek (CSO), a 1.4 mile

stretch of an unnamed tributary to Chattanooga Creek (CSO), a 6.1 mile stretch of Citico Creek (collection system failure), a 1.2 mile stretch of an unnamed tributary to Citico Creek (collection system failure), a 5.3 mile stretch of Dobbs Branch (collection system failure), and a 5.8 mile stretch of Stringers Branch (collection system failure). Water contact advisories have been issued for Chattanooga Creek, the unnamed tributary to Citico Creek, and Stringers Branch. All of these water bodies are subject to the Total Maximum Daily Load (“TMDL”) for E. coli in the Lower Tennessee River Watershed (HUC 06020001). The TMDL provides that these leaking collection systems are unpermitted point source discharges.

51) TCWN members consider the City’s illegal pollution to be a disgrace. The City has effectively turned the Tennessee River and its tributaries into a sewer, and that has diminished the quality of life in Chattanooga for TCWN members.

52) TCWN members use the Tennessee River and its tributaries and their shores for kayaking, canoeing, walking, fishing and observing nature, among other things. They curtail these activities because of, and their enjoyment of these activities is diminished by, the City’s illegal ongoing sanitary and combined sewer overflows, and other violations of the Act described above. TCWN members regularly see and smell the pollution caused by the City’s violations of the Act. For instance they have seen human feces and toilet paper floating in the water, including at times when competitors were swimming in the Tennessee River as part of a triathlon, and they have smelled strong sewage odors just driving over, and walking near, the Tennessee River and its tributaries. TCWN members are concerned about the threat to human health posed by exposure to the City’s illegal discharges, and are concerned that the illegal discharges is harming aquatic life in the waterbodies receiving the discharges. TCWN members are also concerned that the failure to report the magnitude of overflows is preventing full information on the severity

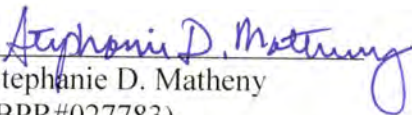
of the overflow problem from being known and impeding the ability of the City to properly prioritize its efforts to prevent future overflows.

RELIEF REQUESTED

WHEREFORE, TCWN respectfully request that the Court grant the following relief:

- a. Declare that the City has violated and continues to violate the Clean Water Act;
- b. Issue an injunction requiring the City to comply fully with its NDPES Permit, and specifically prohibiting: all future overflows from the West Bank Outfall and the East Bank Outfall; SSOs; dry weather CSOs; discharge of effluent from Moccasin Bend in excess of numeric limits on pollutants; and failures to report the estimated volume of overflows;
- c. Order the City to pay civil penalties for each violations of the Act occurring on or after January 1, 2006, in an appropriate amount as provided by 33 U.S.C. §§ 1319(d) and 1365(a), as modified by the Civil Monetary Penalty Adjustment Rule
- d. Order the City to take such steps as are necessary and proper to remedy the harm caused by its violations of the Act;
- e. Award TCWN its costs (including reasonable attorney and expert witness fees) as authorized by Section 505(d) of the Act, 33 U.S.C. § 1365(d);
- f. Award such other relief as the Court deems just and appropriate.

Respectfully submitted on this, the 13th day of October, 2010.


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