

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

UNITED STATES OF AMERICA	)	
	)	
and	)	
	)	
THE STATE OF MISSOURI	)	
	)	No. 4:07-cv-01120-JCH
Plaintiffs,	)	
	)	
and	)	
	)	
MISSOURI COALITION FOR	)	
THE ENVIRONMENT FOUNDATION,	)	
a non-profit corporation	)	
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	
	)	
METROPOLITAN ST. LOUIS	)	
SEWER DISTRICT,	)	
	)	
Defendant.	)	
	)	
_____	)	

**[PROPOSED] COMPLAINT IN INTERVENTION**

**INTRODUCTION**

1. This Complaint in Intervention is brought pursuant to the federal Clean Water Act and is intended to substantially reduce the amount of raw sewage discharged to streams in the St. Louis region. For decades, the Metropolitan St. Louis Sewer District ("MSD") has discharged raw sewage to St. Louis streams from hundreds of "sewer overflows." MSD has failed to take adequate measures to reduce and/or eliminate these overflows and is therefore in violation of the federal Clean Water Act, federal

EXHIBIT A

regulations, and permits issued by the State of Missouri. The Missouri Coalition for the Environment Foundation ("Coalition") pursues this action on its own behalf and on behalf of its many members who use and enjoy streams around the St. Louis region.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the Coalition's claims pursuant to 33 U.S.C. § 1365(a) and 28 U.S.C. § 1331.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) because it is the judicial district where MSD is located and where the alleged violations occurred. The Coalition has its principal place of business within the jurisdictional boundary of the U.S. District Court for the Eastern District of Missouri.

### **PARTIES**

4. Plaintiff-Intervenor Missouri Coalition for the Environment Foundation is a non-profit corporation incorporated under the laws of the State of Missouri with its principal office at 6267 Delmar Boulevard, Suite 2-E, University City, Missouri 63130.

5. The Coalition is a membership organization with the purposes of preserving and enhancing the scenic, scientific, educational, historical, wilderness, wildlife, open space, outdoor recreation and public health values of the physical environment, and coordinating, encouraging, and assisting efforts of others to maintain and enhance environmental quality.

6. The Coalition has hundreds of members in the St. Louis region, many of whom use the region's streams for recreational purposes and for aesthetic and emotional enjoyment. These interests of the Coalition's members are adversely affected by MSD's

continued discharge of raw sewage and other pollutants into streams around the St. Louis region.

7. Defendant MSD is political subdivision of the State of Missouri empowered to operate by the Missouri Constitution. MSD is charged with management of the wastewater and stormwater in all of the City of St. Louis and approximately 80 percent of St. Louis County. MSD is a "person" subject to suit under the Clean Water Act. 33 U.S.C. §§ 1362(5), 1365(a).

## **STATEMENT OF FACTS**

### ***MSD's Sewer System and Sewer Overflows***

8. MSD is responsible for the operation and maintenance of wastewater treatment facilities and the associated separate sanitary sewer system ("separate sewer system"), combined sanitary and stormwater sewer system ("combined sewer system"), and the stormwater sewer system serving residential, commercial and industrial entities throughout the City of St. Louis and most of St. Louis County. MSD's service area covers approximately 525 square miles and it has more than 430,000 residential and commercial accounts combined. MSD's wastewater treatment facilities collectively receive approximately 300 million gallons of domestic sewage and industrial wastewater for treatment each day.

9. Sewer overflows are widespread within MSD's sewer system. The overflows occur in both the separate sewer system and the combined sewer system.

10. In areas with separate sewers, sanitary sewer overflows ("SSOs") occur when the sanitary sewer system discharges domestic sewage and industrial wastewater before it is transported to a treatment facility.

11. In combined sewer areas, combined sewer overflows ("CSOs") occur when the system is filled beyond capacity by the combined inflow of stormwater, sewage, and industrial wastewater.

12. According to MSD's records, its system had 301 SSO locations as of July 6, 2006. The U.S. Environmental Protection Agency ("EPA") has recently estimated that these SSOs discharge approximately 226 million gallons of untreated wastewater into St. Louis area streams each year.

13. According to MSD's National Pollution Discharge Elimination System ("NPDES") permits issued by the State of Missouri, its system has approximately 200 CSO locations. These CSOs are also known to regularly discharge pollutants into streams during rain events. Past estimates indicate that MSD's CSOs discharge 26 billion gallons of untreated wastewater into St. Louis area streams each year.

***The Coalition's Interest and Involvement***

14. The Coalition's members use and enjoy streams around the St. Louis region for a number of purposes, including many streams that receive discharges from MSD's SSOs and/or CSOs. Coalition members enjoy viewing these streams and the wildlife that is found in and near them. Coalition members also come into contact with the water in such streams when recreating, conducting volunteer water quality monitoring, participating in stream clean-ups, and carrying out stream mapping.

15. Because of the interest of the Coalition and its members in the health of St. Louis area streams, the Coalition served a notice of intent to sue on MSD on April 12, 2007. Exh. A hereto. The Coalition's notice letter identified numerous violations of the

Clean Water Act ("CWA") by MSD, including regular SSOs, a failure to report SSOs to regulatory authorities, and a failure to complete planning for the abatement of CSOs.

16. The Coalition's notice letter stated that a lawsuit would be filed against MSD if the violations of the CWA were not rectified. Citizen suits to address violations of the CWA may only be filed 60 days after the service of such a notice. 33 U.S.C. § 1365(b).

17. On June 11, 2007, the United States of America and the State of Missouri brought the above captioned enforcement suit against MSD. The Coalition files this Complaint in Intervention to protect its interests and the interests of its members in St. Louis area streams.

#### **STATUTORY BACKGROUND**

18. The CWA prohibits the discharge of any pollutant except as may be authorized pursuant to certain enumerated sections of the CWA. 33 U.S.C. § 1311(a).

19. The CWA defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source . . . ." 33 U.S.C. § 1362(12).

20. "Navigable waters" is defined as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

21. The term "pollutant" includes, among other things, sewage, sewage sludge, chemical materials, biological materials, and municipal waste. 33 U.S.C. § 1362(6).

22. "Point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

23. The CWA provides that any person who violates the prohibition on unauthorized discharges, or who violates a condition or limitation in a permit issued pursuant to the CWA, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation which takes place prior to January 31, 1997, \$27,500 per day for each violation which takes place after January 30, 1997, and \$32,500 per day for each violation which takes place after March 15, 2004. 40 C.F.R. § 19.4; 33 U.S.C. § 1319(d).

24. At all relevant times, the State of Missouri has been authorized by the United States Environmental Protection Agency to implement the NPDES permit program for discharges into navigable waters within its jurisdiction pursuant to 33 U.S.C. § 1342(b).

25. The CWA authorizes any citizen to commence a civil action against any person who is alleged to be in violation of an "effluent standard or limitation." 33 U.S.C. § 1365(a). The CWA defines "effluent standard or limitation" as including various specified sections of the CWA as well as provisions of NPDES permits. 33 U.S.C. § 1365(f).

26. The CWA authorizes "any citizen" to "intervene as a matter of right" in enforcement cases brought by the federal government or a state. 33 U.S.C. § 1365(b)(1)(B).

### **CLAIM ONE**

#### **(Violation of Clean Water Act)**

27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. It is unlawful for MSD to discharge pollutants from a point source into navigable waters unless the discharge is authorized by a NPDES permit. 33 U.S.C. §§ 1311, 1342.

29. MSD has discharged pollutants into St. Louis area streams from its SSOs on many occasions. These discharges were not authorized by any of the NPDES permits held by MSD.

30. Attached to this Complaint as Exhibit A, and incorporated herein by reference, is a notice of intent to sue letter sent to MSD by the Coalition that identifies specific unauthorized discharges of pollutants from MSD's SSOs. These discharges of pollutants by MSD from its SSOs violated the CWA because the discharges were not authorized by a NPDES permit. 33 U.S.C. § 1311(a).

31. On information and belief, the Coalition alleges that MSD has discharged, and will continue to discharge in the future, pollutants without a NPDES permit from a total of 301 SSO locations, inclusive of those referenced in the preceding paragraph. These 301 SSO locations are identified in Exhibit B hereto. On information and belief, the Coalition alleges that MSD has taken no or insufficient remedial action to prevent future discharges at these SSO locations and these violations are therefore ongoing.

32. As stated in reports prepared by MSD's consultants, the pollutants in its SSO discharges include, but are not limited to, fecal coliform bacteria, suspended solids, aluminum, iron, biological oxygen demand ("BOD"), lead, oil, grease, silver, copper, and hexavalent chromium.

33. Each unauthorized discharge from MSD's SSOs constitutes a separate violation of 33 U.S.C. § 1311(a).

34. Unless enjoined by the Court, MSD will continue to discharge pollutants without a permit in violation of 33 U.S.C. § 1311(a).

## **CLAIM TWO**

### **(Violation of Clean Water Act)**

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. Pursuant to 33 U.S.C. § 1318, 40 C.F.R. § 122.41(1)(6) and (7), and conditions of its NPDES permits,<sup>1</sup> MSD is required to make reports of its unauthorized discharges to regulatory agencies.

37. MSD's NPDES permits contain the following condition:

The permittee shall report any noncompliance, which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

38. MSD has failed to comply with the above reporting requirements for the discharges from its SSOs listed in Exhibit A.

39. MSD's failure to report the discharges from its SSOs listed in Exhibit A constitutes multiple violations of the above condition in its NPDES permits, of 40 C.F.R. § 122.41(1)(6) and (7), and 33 U.S.C. § 1318.

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<sup>1</sup> Standard Conditions for NPDES Permits. Issued by the Missouri Department of Natural Resources Missouri Clean Water Commission, Revised October 1, 1980, Part I, § B(2)(b). These standard conditions are included in the NPDES permits for the following MSD facilities: Lemay, Bissell Point, Baumgartner, Coldwater Creek, Fenton, Grand Glaize, Lower Meramec (existing), Lower Meramec (new), and Missouri River.

40. On information and belief, the Coalition alleges that MSD has taken no or insufficient remedial action to prevent future discharges at the locations identified in Exhibit B and does not currently have an adequate system of reporting discharges from these SSO locations. The reporting violations alleged are therefore ongoing.

41. Unless enjoined by the Court, MSD will continue to violate 33 U.S.C. § 1318, 40 C.F.R. § 122.41(1)(6) and (7), and the condition in its NPDES permits identified above, by failing to make reports to the relevant regulatory agencies of its unauthorized discharges.

### **CLAIM THREE**

#### **(Violation of Clean Water Act)**

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. The NPDES permits issued for MSD's Lemay and Bissell Point facilities required MSD to "submit a revised Long Term Control Plan (LTCP) consistent with the U.S. EPA CSO Control Policy dated April 19, 1994 (59 FR 18688) by August 17, 2006."<sup>2</sup> The LTCP is a planning document designed, in part, to set forth a schedule of activities that will reduce and/or eliminate CSOs.

44. MSD has not submitted a complete LTCP and is therefore violating the CWA and the above provision of the NPDES permits issued for its Bissell Point and Lemay facilities.

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<sup>2</sup> Missouri State Operating Permit for MSD Lemay WWTP, Part D, Schedule of Compliance (Revised July 6, 2007); Missouri State Operating Permit for MSD Bissell Point WWTP, Part D, Schedule of Compliance (Revised January 27, 2006).

45. Each day since August 18, 2006, that MSD fails to submit a complete LTCP in compliance with the NPDES permits for its Bissell Point and Lemay facilities constitutes a separate violation of the CWA.

46. Unless enjoined by the Court, MSD, by failing to submit a complete LTCP, will continue to be in violation of its Bissell Point and Lemay NPDES permits and therefore the CWA.

### **REQUESTED RELIEF**

WHEREFORE, Plaintiff-Intervenor Missouri Coalition for the Environment Foundation prays that this Court:

A. Issue an injunction requiring MSD to take all actions necessary to meet the requirements of the Clean Water Act, including:

1. actions necessary to end the discharge of pollutants from the SSO locations identified in Exhibit B;
2. actions necessary to meet reporting requirements for unauthorized discharges from the SSO locations identified in Exhibit B; and
3. actions necessary to complete and submit a Long Term Control Plan for CSO abatement.

B. Impose civil penalties against MSD for each of its violations of the CWA in the amount authorized by the CWA.

C. Award to the Coalition the costs of litigation, including reasonable attorneys' and expert witness' fees pursuant to 33 U.S.C. § 1365(d); and

D. Grant such other relief as the Court deems just and appropriate.

Respectfully submitted,

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