

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
)
and)
)
THE STATE OF WASHINGTON,)
)
Plaintiffs,)
)
v.)
)
THE CITY OF SEATTLE,)
WASHINGTON,)
)
Defendant.)
)

Civil Action No. 2:13-cv-678

COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Washington, by the authority of the Attorney General of Washington and through its undersigned counsel, acting at the request and on behalf of the Washington Department of Ecology (“Ecology”), jointly file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the City of Seattle (“City”) pursuant to Sections 309(b) and (d) of the federal Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d) and the Washington Water Pollution Control Act, Rev. Code of Wash. (“RCW”) §§ 90.48.037 and 90.48.144, for the City’s unauthorized and illegal discharges of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and RCW §§ 90.48.080 and 90.48.162, including violations of terms and conditions established in the National Pollutant Discharge Elimination System (“NPDES”) permits issued to the City by Ecology, as authorized by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

JURISDICTION, VENUE, NOTICE, AND AUTHORITY

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over state law claims under the Washington Water Pollution Control Act, Chapter 90.48 RCW, because the state claims are related to the federal claims and form part of the same case or controversy.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because it is the judicial district where the City of Seattle is located and where the events or omissions giving rise to the claims occurred. Venue is also proper in this district pursuant to 28 U.S.C. § 1395(a).

5. As a signatory to this Complaint, the State of Washington has actual notice of the commencement of this action, in accordance with Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

6. Authority to bring this action is vested in the Attorney General of the United States under Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

7. The Attorney General of Washington is authorized to bring this suit on behalf of the State of Washington under RCW §§ 90.48.037 and 43.10.030.

8. The State of Washington, acting through the Attorney General, has joined as a party plaintiff pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

DEFENDANT

9. Defendant City of Seattle is a political subdivision of the State of Washington.

10. Defendant City of Seattle is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and RCW § 90.48.020, and a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and a “municipal corporation” under RCW § 90.48.162.

11. Among other responsibilities, Defendant City of Seattle is responsible for the operation and maintenance of a separate sanitary sewer system and combined sanitary and stormwater sewer system (“combined sewer system”) serving residential, commercial, and industrial entities throughout the City of Seattle, Washington and adjacent areas.

STATUTORY BACKGROUND

12. The CWA is a comprehensive statute designed “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve that

goal, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” except as in compliance with an NPDES permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. Similarly, the public policy of the State of Washington is “to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state” RCW § 90.48.010. To that end, RCW 90.48.080 makes it unlawful for any person to cause or tend to cause pollution of the waters of the State of Washington, and RCW § 90.48.162 requires municipal corporations operating sewerage systems to obtain a permit from Ecology to dispose of waste materials into waters of the State of Washington.

14. The CWA defines the phrase “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

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

16. Federal regulations promulgated pursuant to the CWA define the term “waters of the United States” to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation,

or destruction of which would or could affect interstate or foreign commerce; (iv) tributaries of waters of the United States; and (v) wetlands adjacent to these waters. 40 C.F.R. § 122.2.

17. Section 502(6) of the CWA defines “pollutant” to include, inter alia, sewage. 33 U.S.C. § 1362(6).

18. The CWA defines the term “point source” to mean “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).

19. The Washington Water Pollution Control Act defines “pollution” to include discharge of any liquid, solid, or other substance that will or is likely to render any “waters of the state” harmful to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or aquatic life. RCW § 90.48.020.

20. The Washington Water Pollution Control Act defines “waters of the state” to include “lakes, rivers, ponds, streams, inland waters, underground waters, salt water and all other surface waters and watercourses within the jurisdiction of the state of Washington.” RCW § 90.48.020.

21. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), establishes the NPDES permit program, and authorizes the EPA to issue permits for the discharge of pollutants, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such other conditions as the EPA determines are necessary to carry out the provisions of the CWA.

22. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that EPA may authorize a

state to administer the NPDES permit program within its jurisdiction. The State of Washington has been authorized to administer the NPDES permit program since November 14, 1973. RCW § 90.48.260 designates Ecology as the state water pollution control agency for all purposes of the CWA, and authorizes Ecology to take all action necessary to meet the requirements of the CWA, including administering the NPDES permitting program in Washington.

23. The EPA retains concurrent enforcement authority pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i).

24. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates, inter alia, Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

25. The Washington Water Pollution Control Act authorizes Ecology, through the Attorney General of Washington, to bring any appropriate action, including action for injunctive relief, as may be necessary to carry out the provisions of this Act. RCW § 90.48.037.

26. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates, inter alia, Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation that occurred after March 15, 2004 but before January 12, 2009, and \$37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment

Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134); see 40 C.F.R. Part 19.

27. RCW § 90.48.144 provides that any person who violates any provision of the Washington Water Pollution Control Act or any NPDES permit condition shall be liable for a civil penalty of up to \$10,000 per day for each violation.

GENERAL ALLEGATIONS

28. At all relevant times to this Complaint, the City has owned and operated separate sanitary and combined sewer collection and transmission systems (collectively referred to hereafter as “Wastewater Collection System”), which receive and transmit wastewater from residential, commercial, industrial and combined sewage sources within the City of Seattle and adjacent areas. The City of Seattle does not own or operate any wastewater treatment facility; instead, it conveys all wastewater to King County for treatment.

29. The City’s Wastewater Collection System, includes, without limitation, over 1,400 miles of sewer lines, 5.5 miles of force mains, and 67 pump stations. Of the more than 1,400 miles of sewer lines, 968 miles are “combined sewers” (i.e., the pipes carry both wastewater and stormwater in the same pipe) and 448 miles are “separate sewers” (i.e, there are two sets of pipes, one for wastewater and the other for stormwater).

30. The City’s Wastewater Collection System is a “treatment works” as defined by Section 212(2)(A) and (B) of the CWA, 33 U.S.C. § 1292(2)(A) and (B), and a “publicly owned treatment works” as defined by the federal regulations implementing the CWA at 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3(q)). The City’s Wastewater

Collection System includes point sources within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

31. At all relevant times to this Complaint, the City has “discharged pollutants,” including raw sewage, from its Wastewater Collection System within the meaning of Sections 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6) and (12), from “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), into Puget Sound, Lake Washington, the Lake Washington Ship Canal, Elliott Bay, Lake Union, Green Lake, Salmon Bay, and Duwamish River.

32. At all times relevant to this Complaint, the City has “caused pollution” within the meaning of RCW §§ 90.48.020 and 90.48.080, by discharging sewage into Puget Sound, Lake Washington, the Lake Washington Ship Canal, Elliott Bay, Lake Union, Green Lake, Salmon Bay, and Duwamish River.

33. Puget Sound, Lake Washington, the Lake Washington Ship Canal, Elliott Bay, Lake Union, Green Lake, Salmon Bay, and Duwamish River are “navigable waters” within the meaning of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7) and “waters of the United States” within the meaning of 40 C.F.R. § 122.2, as well as “waters of the state” within the meaning of RCW § 90.48.020.

34. At all relevant times to this Complaint, the State of Washington has been authorized by EPA, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer the NPDES permit program for regulating discharges of pollutants into navigable waters within its jurisdiction.

35. The City discharges pollutants from its Wastewater Collection System pursuant to NPDES permit no. WA-003168-2 (“NPDES Permit”). The State of Washington last re-issued the NPDES permit to the City on October 27, 2010 with an effective date of December 1, 2010, and an expiration date of November 30, 2015.

36. At all relevant times to this Complaint, the City’s NPDES Permit has authorized the discharge of pollutants from 90 combined sewer overflows (“CSO”) outfall locations identified in Section S1 of its Permit, subject to certain limitations and conditions.

37. Each CSO outfall is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

38. Section S5.5 of the City’s NPDES Permit prohibit “dry weather overflows” from the CSO outfalls.

39. Section S4 of the City’s NPDES Permit requires the City to “at all times properly operate and maintain all facilities and systems of conveyance and control (and related appurtenances) that are installed to achieve compliance with the terms and conditions of this permit.” This condition is known as the “Proper Operation and Maintenance” condition.

40. At various times relevant to this Complaint, the City has violated, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and RCW §§ 90.48.080 and 90.48.162, by failing to meet the conditions contained in its NPDES Permit issued by the State of Washington, and by discharging pollutants without an NPDES permit.

FIRST CLAIM FOR RELIEF

CSOs - Dry Weather Overflows

41. Paragraphs 1-40 are realleged and incorporated herein by reference.

42. At various times relevant to this Complaint, the City has discharged pollutants into waters of the United States and/or state from some of the CSO outfall locations identified in Section S1 of its NPDES Permit during dry weather, not as a result of precipitation, in violation of its NPDES Permit, Section 301(a) of the CWA, 33 U.S.C. § 1311, and RCW § 90.48.080.

43. Each of the foregoing discharges violates the terms and conditions of the City's NPDES Permit and constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day of each discharge from each location.

44. Each of the foregoing discharges violates the terms and conditions of the City's NPDES Permit and constitutes a separate violation of RCW § 90.48.080 for each day of each discharge from each location.

45. Unless enjoined by an order of the Court, the City will continue to violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and RCW § 90.48.080.

46. The City is liable for civil penalties of \$32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134); see 40 C.F.R. Part 19.

47. The City is liable to the State of Washington for civil penalties of up to \$10,000 per

day for each violation, pursuant to RCW § 90.48.144.

SECOND CLAIM FOR RELIEF

Unauthorized Discharges

48. Paragraphs 1-47 are realleged and incorporated herein by reference.

49. At various times relevant to this Complaint, the City has discharged pollutants into waters of the United States and/or the state from point sources not identified or authorized by any NPDES Permit issued by EPA or the State of Washington, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. A majority of these unauthorized discharges are from the City's combined sewer system, including pump stations, manholes, pipes, and other related appurtenances within its Wastewater Collection System. In addition, the City has had unauthorized discharges from its sanitary sewer system.

50. Each of the foregoing discharges from unauthorized point sources constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day of each discharge from each location.

51. Each of the foregoing discharges constitutes a separate violation of RCW § 90.48.080 for each day of each discharge from each location.

52. Unless enjoined by an order of the Court, the City will continue to violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and RCW § 90.48.080.

53. The City is liable for civil penalties of \$32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment

Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134); see 40 C.F.R. Part 19.

54. The City is liable to the State of Washington for civil penalties of up to \$10,000 per day for each violation, pursuant to RCW § 90.48.144.

THIRD CLAIM FOR RELIEF

Failure to Comply with the Proper Operation and Maintenance

55. Paragraphs 1-54 are realleged and incorporated herein by reference.

56. At various times relevant to this Complaint, the City has failed to comply with the Proper Operation and Maintenance condition at Section S4 of its NPDES Permit and such noncompliance, in whole or in part, has caused releases of raw sewage from sewer pipes, manholes, pump stations and other “facilities” in the City’s Wastewater Collection System onto public and private property, including, but not limited to residential homes and basements. Reports prepared by the City have identified as among the causes of sewage releases from its Wastewater Collection System, breaks in sewer pipes, blockages in sewer pipes caused by grease, debris, and/or roots, and power failures at its pump stations.

57. Many of the illegal discharges alleged in Paragraphs 35, 40, and 45 above, resulted, in whole or in part, from the City’s failure to comply with the Proper Operation and Maintenance condition at Section S4 of its NPDES Permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

58. Each failure of the City to comply with the Proper Operation and Maintenance condition at Section S4 of its NPDES Permits constitutes a separate violation of Section 301(a)

of the CWA, 33 U.S.C. § 1311(a), for each day of each violation.

59. Each of the foregoing failures constitutes a separate violation of RCW § 90.48.080 for each day of each failure.

60. Unless enjoined by an order of the Court, the City will continue to violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and RCW § 90.48.080.

61. The City is liable for civil penalties of \$32,500 per day for each violation occurring between March 15, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134); see 40 C.F.R. Part 19.

62. The City is liable to the State of Washington for civil penalties of up to \$10,000 per day for each violation, pursuant to RCW § 90.48.144.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Washington, respectfully request that this Court provide the following relief:

1. A permanent injunction enjoining the City from any and all ongoing and future violations of the CWA, the Washington Water Pollution Control Act, and its NPDES Permit;
2. A permanent injunction directing the City to expeditiously take all steps necessary to come into permanent and consistent compliance with the CWA, the Washington Water Pollution Control Act, and its NPDES Permit;
3. A judgment assessing civil penalties against the City and in favor of the United States,

not to exceed \$32,500 per day for each violation of the CWA which occurred after March 15, 2004 through January 12, 2009, and not to exceed \$37,500 per day for each violation of the CWA which occurred after January 12, 2009;

4. A judgment assessing civil penalties against the City and in favor of the State of Washington, not to exceed \$10,000 per day for each violation of the Washington Water Pollution Control Act; and

5. Grant such other relief as this Court deems appropriate.

Dated: April 16, 2013

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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