

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA and STATE OF ILLINOIS,)	
)	
)	
Plaintiffs,)	
)	
NATURAL RESOURCES DEFENSE COUNCIL, INC., SIERRA CLUB, INC., and PRAIRIE RIVERS NETWORK,)	
)	
)	
Plaintiffs-Intervenors,)	
)	
v.)	
)	
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO,)	
)	
)	
Defendant.)	
)	

Case No. 11-cv-08859

Hon. George M. Marovich

COMPLAINT-IN-INTERVENTION

I. INTRODUCTION

1. Plaintiffs-Intervenors, Natural Resources Defense Council, Inc., Sierra Club, Inc. and Prairie Rivers Network (“Intervenors”), hereby adopt and incorporate by reference the claims alleged by plaintiffs in this action. Intervenors make the following additional allegations: Metropolitan Water Reclamation District of Greater Chicago (“District”) allows combined sewer outflow (“CSO”) discharges that are injuring the health of Illinois’ waterways by causing oxygen levels to drop dangerously low. The discharges of untreated sewage combined with stormwater released from the District overflow points cause violations of the numeric dissolved oxygen (“DO”) standards, which specify the lowest allowable level of oxygen in the water.

2. The Clean Water Act (“CWA”) § 505, 33 U.S.C. § 1365, allows any person to bring suit against one who is alleged to be in violation of a CWA effluent standard or limitation,

or in violation of a CWA permit issued by a state with respect to such standard or limitation. Defendant is in violation of provisions in its state-issued CWA permits prohibiting discharges that cause or contribute to violations of water quality standards (“WQS”). Intervenors seek a permanent injunction prohibiting these violations of the CWA, and requiring expeditious implementation of all actions necessary to prevent such violations, as well as appropriate penalties and fees. Intervenors also seek to protect their interests in ensuring that any Consent Decree resolving the violations is fair, adequate, reasonable and in the public interest.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 33 U.S.C. § 1365, and 28 U.S.C. §§ 1331, 1355, 2201, and 2202.

4. The relief requested by the Intervenors is authorized in 28 U.S.C. §§ 2201, 2202, and 2461; and 33 U.S.C. § 1365.

5. Venue is proper pursuant to 33 U.S.C. § 1365 and 28 U.S.C. § 1391, because the sources of the discharges at issue are located in the Northern District of Illinois, and the events or omissions giving rise to the claims herein occurred in the Northern District of Illinois.

6. On March 1, 2011, Intervenors served a Notice of Intent to Sue (“Notice”) upon the District, the United States Environmental Protection Agency (“USEPA”), the Illinois Environmental Protection Agency (“IEPA”), and the Illinois Attorney General, as required under 33 U.S.C. § 1365(b)(1). The Notice meets the requirements of 40 C.F.R. §§ 135.1 *et seq.*, and provided the District with notice of the CWA violations alleged in this Complaint-In-Intervention.

7. On May 3, 2011, Intervenors filed the lawsuit captioned *Natural Resources Defense Council, et al. v. Metropolitan Water Reclamation District of Greater Chicago* (Case

No. 11 CV 02937) (“CWA Citizen Suit”), that is currently pending before Judge John J. Tharp, Jr. The CWA Citizen Suit seeks injunctive relief and enforcement of civil penalties against the District for violation of the CWA. (*See* CWA Citizen Suit Compl., attached as Ex. 1.) In particular, Intervenors allege that the District’s CSO discharges cause or contribute to violations of the CWA and the Illinois regulations implementing the CWA, including not meeting the numeric standard for dissolved oxygen. (*See id.*, ¶¶ 26, 28-33.) The CWA Citizens Suit Complaint in Count II alleges additional violations from District waste water treatment plants that are not part of this Complaint-In-Intervention.

8. On December 14, 2011, the United States and Illinois initiated this lawsuit, *United States, et al. v. Metropolitan Water Reclamation District of Greater Chicago*, Civil Action No. 1:11-cv-08859, in which Intervenors are seeking to intervene. (*See* Complaint, attached as Ex. 2.) The United States also lodged a Consent Decree establishing a program of compliance purporting to resolve the District’s violations of the CWA as alleged in the Complaint and this Complaint-In-Intervention. (*See* Consent Decree, attached as Ex. 3.) Intervenors intend to lodge comments to the Consent Decree and file this Complaint-In-Intervention to protect their and their members’ interests in ensuring that any Consent Decree is fair, adequate, reasonable and in the public interest.

III. PARTIES

9. Natural Resources Defense Council, Inc. (“NRDC”), a not-for-profit corporation organized and existing under the laws of the State of New York, is a national environmental organization with more than 400,800 members. More than 16,840 of these members live in the State of Illinois; more than 6,320 of those members live within Cook County, the primary county served by the District; and more than 7,650 of those members live in the counties through which

flow the waters most heavily impacted by the District's unlawful discharges (the Chicago Area Waterway System, the Lower Des Plaines River, and the Illinois River, collectively the "Affected Waters"). NRDC is dedicated to the preservation, protection, and defense of the environment, its wildlife and natural resources, and actively supports effective enforcement of the CWA on behalf of its members.

10. Sierra Club, Inc. ("Sierra Club") a not-for-profit corporation organized and existing under the laws of the State of California, is a national environmental organization with more than 625,000 members, with offices and programs authorized and doing business in the State of Illinois. More than 21,000 of these members live in the State of Illinois; more than 9,500 of those members live within Cook County; and more than 11,000 of those members live in the counties through which the Affected Waters flow. The Sierra Club's purpose is to protect the natural environment and promote the responsible use of the earth's ecosystems and resources; and Sierra Club devotes substantial resources to CWA enforcement.

11. Prairie Rivers Network ("PRN"), a not-for-profit corporation organized and existing under the laws of the State of Illinois, is a statewide environmental organization with more than 650 members. More than 100 of these members live within Cook County; and 150 of those members live in the counties through which the Affected Waters flow. PRN is dedicated to river protection, conservation, and restoration in Illinois.

12. Members of NRDC, Sierra Club, and PRN reside near the Affected Waters, and engage in recreation on or adjacent to them. Members canoe, kayak and boat on the Affected Waters. Members hike and walk along or near the Affected Waters. The District's unlawful discharges diminish these members' recreational and aesthetic use and enjoyment of the Affected Waters. Some members would use and enjoy the Affected Waters in more ways and/or more

frequently but for the pollution alleged in this Complaint-In-Intervention. Some members are also particularly concerned about the affects of the pollution on biology and ecosystems in and around the Affected Waters.

13. NRDC, Sierra Club, and PRN and their members are “citizens” for purposes of 33 U.S.C. § 1365(g), as they have an interest in this matter which is or may be adversely affected by the District’s CWA violations.

14. Defendant Metropolitan Water Reclamation District of Great Chicago is an entity organized and operating pursuant to the Metropolitan Water Reclamation District Act, 70 ILCS 2605. The District is vested with the power to sue and be sued, and is a “person” and a “governmental instrumentality or agency” under 33 U.S.C. § 1365(a)(1). The District is responsible, *inter alia*, for the operation and management of the wastewater collection, treatment, discharge, and disposal facilities in a service area of more than 800 square miles. Sewage entering the District’s system comes from community and municipal sewer systems.

15. The District owns and operates a system of interceptors and other wastewater conveyance and treatment equipment and infrastructure. It owns and operates, *inter alia*, the following WRPs: the Calumet WRP located at 400 East 130th Street, Chicago, Illinois, which discharges into the Calumet-Sag Channel; the North Side WRP located at 3500 West Howard Street, Skokie, Illinois, which discharges into the North Shore Channel; and the Stickney WRP located at 6001 West Pershing Road in Cicero, Illinois, which discharges into the Chicago Sanitary and Ship Canal. In addition, the District owns and operates combined sewers, which convey both sanitary sewage and storm water. On numerous occasions, the District discharges combined sewage and stormwater into Receiving Waters (as defined in ¶ 20) through CSO outfalls.

IV. STATUTORY BACKGROUND

16. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the “discharge of pollutants” into navigable waters by any person except, *inter alia*, in compliance with an NPDES permit issued by USEPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17. At all times relevant to this complaint, IEPA has been and continues to be authorized by the Administrator to implement the NPDES permit program for discharges into navigable waters within its jurisdiction pursuant to CWA § 402, 33 U.S.C. § 1342.

18. Section 402(a) of the CWA, 33 U.S.C. § 1342(a) provides that the permit issuing authority may issue an NPDES permit that authorizes the discharge of any pollutant directly into navigable waters of the United States, but only in compliance with the applicable requirements of CWA § 301, 33 U.S.C. § 1311, and such other conditions as the authority determines are necessary to carry out the provisions of the CWA.

19. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty. Pursuant to the Federal Civil Penalties Inflation Adjustment Act as amended by the Debt Collection Improvement Act, the maximum civil penalty for violations occurring between March 15, 2004 and January 12, 2009 is \$32,500 per violation per day, and the maximum civil penalty for violations occurring on or after January 12, 2009 is \$37,500 per violation per day. 28 U.S.C. § 2461, 31 U.S.C. § 301 note; 40 C.F.R. §§ 19.1-19.4.

V. GENERAL ALLEGATIONS

20. At all times relevant to this complaint, the District has discharged and continues to discharge “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), into “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). These waters include the North Shore Channel, the Calumet-Sag Channel, and the Chicago Sanitary and Ship Canal (collectively “Receiving Waters”).

21. Pollutants discharged by the District into the Receiving Waters flow downstream into other navigable waters, including but not limited to the Chicago River, the Des Plaines River below the I-55 Bridge (“Lower Des Plaines River”), the Illinois River, and the Gulf of Mexico.

22. On or about January 22, 2002, IEPA issued NPDES Permit No. IL002808 for the North Side WRP, NPDES Permit No. IL0028061 for the Calumet WRP, and NPDES Permit No. IL0028053 for the Stickney WRP under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and 415 ILCS 5/39 (collectively “Permits”). The Permits became effective March 1, 2002 and expired under their own terms on February 28, 2007. However, pursuant to 35 ILL. ADMIN. CODE § 309.104, the terms and conditions in the Permits continue in force until, and then pursuant to, a final administrative disposition of the District’s pending application for renewal of the Permits.

23. The Permits authorize discharge of pollutants from the WRPs and specified CSO outfalls to the Receiving Waters, subject to specified conditions and limitations. These conditions and limitations include, but are not limited to (i) Condition 5 of the Permits, which provides that the “effluent, alone or in combination with other sources, shall not cause a violation of any applicable water quality standard outlined in 35 ILL. ADMIN. CODE § 302”; and (ii) Condition 10 of the Permits, which provides that “[a]ll CSO discharges authorized by this Permit

shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203 and to prevent depression of oxygen levels below the applicable water quality standard.”

24. The Chicago River, the Calumet-Sag Canal, the North Shore Channel, and the Sanitary and Ship Canal have all been designated as Secondary Contact and Indigenous Aquatic Life (“Secondary Contact”) waters in regulations promulgated by IPCB pursuant to the CWA and the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.*, (“the Act”). 35 ILL. ADMIN. CODE § 303.441(g)-(h). As such, their ambient waters must meet the WQS for Secondary Contact waters, including numeric limits for DO.

25. The Lower Des Plaines River, the Illinois River, and other navigable waters into which flow pollutants discharged by the District have been designated as General Use waters in regulations promulgated by IPCB pursuant to the CWA and the Act. As such, they must meet the WQS for General Use waters, including numeric limits for DO set forth in 35 ILL. ADMIN. CODE § 302.206.

26. The Secondary Contact WQS specify that “Dissolved Oxygen . . . shall not be less than 4.0 mg/L at any time except that the Calumet-Sag Channel shall not be less than 3.0mg/L at any time.” 35 ILL. ADMIN. CODE § 302.405. The General Use WQS specify DO levels that vary seasonally, at 35 ILL. ADMIN. CODE § 302.206.

27. The District’s CSO discharges are causing or contributing to violations of the Secondary Contact WQS by causing or contributing to DO levels below the numeric standard set forth in 35 ILL. ADMIN. CODE § 302.405. The District’s Monitoring and Research Department Reports from 2006-2009 report overall non-compliance with the DO WQS in the Receiving Waters as much as 72 percent of the time, and 100 percent of the time at some locations and time

periods. The District has admitted in testimony before the Illinois Pollution Control Board that its discharges at times drive DO levels to zero mg/L.

VI. CLAIM FOR RELIEF

CSO Discharges in Violation of WQS and Permits

28. Paragraphs 1 through 27 of this Complaint-In-Intervention and Paragraphs 11 through 69 of the Complaint in this case are realleged and incorporated herein by reference.

29. On various dates from May, 2006 through the present, the District discharged pollutants from some or all of the CSO locations specified in the Permits.

30. These discharges violated the terms and conditions of the Permits, including but not limited to the Special Condition 5 requirement that effluent, alone or in combination with other sources, shall not cause a violation of any applicable WQS; and/or the Special Condition 10 requirement that all CSO discharges authorized by the Permits be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203 and to prevent depression of oxygen levels below the applicable WQS.

31. These discharges violated Section 301 of the CWA, 33 U.S.C. § 1311.

32. Unless enjoined by the Court, the District will continue to discharge in violation of the Permits and Section 301 of the CWA, 33 U.S.C. § 1311.

33. Pursuant to Sections 309 and 505 of the CWA, 33 U.S.C. §§ 1319 and 1365, the District is liable for injunctive relief and civil penalties of up to \$32,500 for each violation occurring between May, 2006 and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009.

VII PRAYER FOR RELIEF

WHEREFORE, Plaintiffs-Intervenors pray that the Court:

1. Issue a permanent injunction preventing the District from committing any further violations of the CWA, 33 U.S.C. § 1251 *et seq.*, and the Permits;
2. Order the District to expeditiously complete all actions necessary to ensure that the District complies with the Permits and all applicable requirements of the CWA;
3. Except to the extent excluded by the CWA and consistent with the Government's enforcement power pursuant to Section 309(g)(6), 33 U.S.C. § 1319(g)(6), order the District to pay a civil penalty to the United States and the state of Illinois of up to \$32,500 for each violation occurring between May, 2006 and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009;
4. Award plaintiffs their costs and attorneys' fees;
5. Consider Intervenors' comments to the Consent Decree and reject the Consent Decree because it is not fair, adequate, reasonable and/or in the public interest; and
6. Grant the plaintiffs such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Douglas B. Sanders

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