

US EPA ARCHIVE DOCUMENT

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE CITY OF KANSAS CITY,)
MISSOURI,)
)
Defendant.)
)
THE STATE OF MISSOURI,)
)
Non-Aligned Party)
Joined Pursuant to)
33 U.S.C. § 1319(e).)
)

Civil No. 4:10-cv-

COMPLAINT

Plaintiff, 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”) files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the City of Kansas City, Missouri (“KCMO”) pursuant to Sections 309(b) and (d) of the federal Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d), for KCMO’s numerous illegal discharges of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), including discharges of raw sewage, and for violations of conditions established in the National Pollutant Discharge Elimination System (“NPDES”) permits issued to KCMO by the Missouri Department of Natural

Resources (“MDNR”), as authorized by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b). This action is also brought under Section 504(a) of the CWA, 33 U.S.C. § 1364(a), to require KCMO to take such actions as may be necessary to abate the imminent and substantial endangerment to the health of persons presented by KCMO’s sewer system, resulting in discharges of raw sewage to homes, yards, parks, playgrounds, and streets.

2. The State of Missouri is a party to this action in accordance with the requirements of Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e).

JURISDICTION, VENUE, NOTICE, AND AUTHORITY

3. 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.

4. Venue is proper in the Western District of Missouri 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 KCMO is located and where the alleged violations occurred.

5. Notice of the commencement of this action has been given to the State of Missouri, 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.

DEFENDANT

7. Defendant KCMO is a municipality organized and existing under the laws and constitution of the State of Missouri with the power to sue and be sued.

8. KCMO is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

9. KCMO owns, and is responsible for the operation and maintenance of seven wastewater treatment facilities and the associated separate sanitary sewer system (“separated 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 Kansas City, Missouri, and several surrounding counties and municipalities. KCMO serves a population of approximately 653,140 residents, and its service area covers approximately 308 square miles.

STATUTORY BACKGROUND

10. 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.

11. 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).

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

13. Federal regulations promulgated pursuant to the CWA define the phrase “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) tributaries of these waters of the United States; and (iv) wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2.

14. “Pollutant” within the meaning of the CWA includes “. . . solid waste . . . sewage, garbage, sewage sludge . . . biological materials . . . and . . . industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

15. 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).

16. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), establishes the NPDES permit system, 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.

17. At all relevant times, the State of Missouri has been and continues to be authorized by the Administrator of the EPA to implement the NPDES permit program for discharges into navigable waters within its jurisdiction pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

18. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), states:

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter . . . (3) any requirement established under this section; or (4) carrying out section . . . 1342 [NPDES program] . . . of this title

(A) the Administrator shall require the owner or operator of any point source to: (I) establish and maintain such records, (ii) make such reports . . . and (v) provide such other information as he may reasonably require.

19. 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, Sections 301 or 308 of the CWA, 33 U.S.C. §§ 1311 or 1318, or violates any permit condition or limitation implementing such sections in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

20. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates, inter alia, Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318, or violates any permit condition or limitation implementing such sections 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 \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004; \$32,500 per day for each violation occurring between March 16, 2004 , and 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, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. § 2461 note (as amended). See also 40 C.F.R. § 19.4.

21. Section 504(a) of the CWA, 33 U.S.C. § 1364(a), provides that “[n]otwithstanding any other provision of this chapter, the Administrator [of EPA] upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons . . . may bring suit on behalf of the United States . . . to immediately restrain any person causing or contributing to the alleged pollution to stop the

discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.”

GENERAL ALLEGATIONS

22. At all relevant times, KCMO has owned and operated wastewater treatment plants (“WWTPs”) and their associated separate sanitary and combined sewer and stormwater collection and transmission systems (collectively referred to hereafter as “publicly owned treatment works” or “POTW”), which receive and treat wastewater and stormwater runoff from residential, commercial, industrial and combined sewage sources within the City of Kansas City and several surrounding counties and municipalities in Missouri and Kansas.

23. KCMO’s extensive POTW, includes, without limitation, seven WWTPs, 38 pump stations, approximately 2,527 miles of sewers, and approximately 60,300 manholes/maintenance holes. Total average daily flow of sewage treated in KCMO’s WWTPs is approximately 106.87 million gallons.

24. KCMO’s POTW 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)). KCMO’s POTW includes point sources within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

25. At all relevant times, KCMO has “discharged pollutants,” including raw sewage, from its POTW 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), to waters of the United States, including, inter alia, the Missouri River, Kansas River, Fishing River, Wilkerson Creek, Rocky Branch Creek, Todd Creek, Blue River, Brush Creek, Penn Valley Lake, Line Creek, Round Grove Creek, Indian Creek, Hickman Mills Creek, Buckeye Creek, Rock Creek, Upper Shoal Creek, Walnut Creek, as well as various unnamed tributaries, within the meanings of Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7) and the federal regulations implementing the CWA at 40 C.F.R. § 122.2. Fishing River, Wilkerson Creek, Rocky Branch Creek, Todd Creek, Blue River, Brush Creek, Penn Valley Lake, Line Creek, Round Grove Creek, Indian Creek, Hickman Mills Creek, Buckeye Creek, Rock Creek, Upper Shoal Creek, Walnut Creek and the various unnamed tributaries thereto into which KCMO has discharged pollutants are themselves, or flow into, perennial tributaries of the Missouri River.

26. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342 and the Missouri Clean Water Law, Chapter 644 of the Missouri Revised Statutes, and the implementing regulations at 10 CSR 20-1.010 et seq., MDNR issued KCMO NPDES permits for the following seven wastewater treatment systems (collectively referred to hereafter as “KCMO’s NPDES Permits”):

a. Blue River WWTP was issued Permit Number MO-0024911, effective November 1, 1991, and modified on December 9, 1994. Although originally set to expire on October 31, 1996, the permit was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E). The current permit became effective December 30, 2005, and expires on December 29, 2010.

b. Westside WWTP was issued Permit Number MO-0024929, effective September 30, 1992. Although originally set to expire on September 29, 1997, the permit

was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E). The current permit became effective on May 28, 2004, and was revised on November 26, 2008. Although set to expire on May 27, 2009, the permit was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E).

c. Birmingham WWTP was issued Permit Number MO-0049531, effective January 25, 2002. The permit was revised on February 22, 2002, and although originally set to expire on January 24, 2007, was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E). The current permit became effective January 26, 2007, was revised on June 29, 2007, and expires on January 29, 2012.

d. Fishing River WWTP was issued Permit Number MO-0048313, effective July 14, 2000. Although originally set to expire on July 13, 2005, the permit was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E). The current permit became effective on December 16, 2005, was revised on April 21, 2006, and again on January 27, 2006, and expires on December 15, 2010.

e. Northland Mobile Home Park WWTP was issued Permit Number MO-0025011, effective June 30, 2000. Although originally set to expire on June 29, 2005, the permit was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E). The current permit became effective July 1, 2005, and expires on June 30, 2010.

f. Rocky Branch WWTP was issued Permit Number MO-0048305, effective October 5, 2001. The permit was revised on November 10, 2005, and although originally set

to expire on October 4, 2006, was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E). The current permit became effective October 13, 2006, and expires on October 12, 2011.

g. Odd Creek WWTP was issued Permit Number MO-0024961, effective September 8, 2000, and although originally set to expire on September 7, 2005, was administratively extended in accordance with federal and state regulations, 40 C.F.R. § 122.6, 10 CSR 20-6.010(10)(E). The current permit became effective December 23, 2005, was revised on April 21, 2006, and expires on December 22, 2010.

27. At all relevant times, KCMO's Permits for each WWTP have authorized KCMO to discharge pollutants only from specified point sources (identified in each permit as one or more numbered "outfalls") to specified waters of the United States, subject to limitations and conditions set forth in the NPDES permits.

28. At all relevant times, two of the NPDES permits issued to KCMO, Permit Number MO-0024911 for the Blue River WWTP and Permit Number MO-0024929 for the Westside WWTP, authorize the discharge of pollutants from a total of 100 point sources other than a WWTP post-treatment outfall, those point sources being the combined sewer overflows outfalls identified in Attachment A to those permits, subject to certain limitations and conditions set forth in the NPDES permits.

29. At all relevant times, KCMO has violated, and continues to violate, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by failing to meet the conditions contained in the NPDES permits issued by MDNR, and by discharging pollutants without an NPDES permit.

30. KCMO's unpermitted discharges of raw sewage from its POTW have resulted from multiple causes including, inter alia, inadequate flow capacity in the collection system and at the wastewater treatment plants; inability to use wastewater pumps at capacity due to aged and corroded pipes and force mains; illegal and improper cross-connections between sanitary and stormwater sewers; poor maintenance of collection system including breaks and blockages in sewer pipes, force mains and manholes; and excessive infiltration and inflow to the sanitary sewers.

FIRST CLAIM FOR RELIEF

Unpermitted Discharges from Separated Sewer System

31. Paragraphs 1-30 are realleged and incorporated herein by reference.

32. At all relevant times, KCMO has discharged and upon information and belief will continue to discharge pollutants containing raw sewage from its separate sanitary sewer collection and transmission system. None of these discharges are permitted or otherwise authorized by the CWA.

33. On over 391 different occasions between at least August 1, 2002, and December 31, 2007, and continuing to the present, KCMO has discharged pollutants containing raw sewage into, inter alia, the Missouri River, Rocky Branch Creek, Fishing River, Todd Creek, Blue River, Brush Creek, Line Creek, Round Grove Creek, Indian Creek, Hickman Mills Creek, Buckeye Creek, Rock Creek, Upper Shoal Creek, Walnut Creek, Wilkerson Creek and various unnamed tributaries thereto, from point sources within its separate sanitary sewer collection and transmission system, including without limitation manholes, pump stations and sewer lines, that were not identified in its NPDES permits as authorized outfalls (hereinafter referred to as

“sanitary sewer overflows” or “SSOs”). These SSOs are not permitted or otherwise authorized by the CWA.

34. Each day of each discharge referred to in Paragraphs 32 and 33 constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

35. KCMO is liable for civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d); and the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. § 2461 note (as amended). See also, 40 C.F.R. § 19.4.

36. Unless enjoined by an order of the Court, KCMO will continue to discharge pollutants without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

SECOND CLAIM FOR RELIEF

Unpermitted Discharges from Combined Sewer System

37. Paragraphs 1-30 are realleged and incorporated herein by reference.

38. On over 138 different occasions between at least August 2002 and December 31, 2007, and continuing to the present, KCMO has discharged into the Missouri River, Kansas River, Blue River, Brush Creek, Penn Valley Lake and various unnamed tributaries thereto more than 4.6 million gallons of raw sewage. These discharges occurred either from various point sources within KCMO’s combined sewer collection and transmission system, i.e., point sources that are not specified in Attachment A of the NPDES permits for the Blue River WWTP (Permit Number

MO-000024911) and the Westside WWTP (Permit Number MO-0024929) or during dry weather. Both types of discharges, i.e., those from unpermitted locations or those occurring during dry weather violate the CWA.

39. Each day of each discharge referred to in Paragraph 38 constitutes a separate violation of Section 301(a) and/or a violation of a condition of a permit issued under Section 402 of the CWA, 33 U.S.C. § 1311(a) and 1342.

40. KCMO is liable for civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d); and the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. § 2461 note (as amended). See also, 40 C.F.R. § 19.4.

41. Unless enjoined by an order of the Court, KCMO will continue to discharge pollutants from unpermitted discharge points within its combined sewer collection and transmission system in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

THIRD CLAIM FOR RELIEF

Emergency Powers of Section 504 of CWA

42. Paragraphs 1-30 are realleged and incorporated herein by reference.

43. On at least 766 occasions between at least June 2, 2004 and June 30, 2005, and upon information and belief continuing to the present, KCMO has discharged pollutants containing raw sewage from its POTW onto public and private property, including without limitation,

streets, yards, public parks, and playground areas, and into buildings, including homes, located in the City of Kansas City and other areas within its service area, where persons have or may have come into contact with such sewage.

44. KCMO's POTW as described in Paragraphs 22 and 23 above is a "pollution source or combination of sources" as that phrase is used in Section 504(a) of the CWA, 33 U.S.C. § 1364(a).

45. KCMO's discharges of raw sewage contain pathogens, including without limitation, bacteria, viruses, parasitic organisms, intestinal worms, and borroughs (inhaled molds and fungi). These pathogens may cause diseases ranging in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. Groups facing greater risks are children, the elderly, immuno-compromised groups, and pregnant women. The endangerment from raw sewage remains imminent until the area impacted by the sewage is adequately cleaned and disinfected. KCMO's discharges of raw sewage, therefore, are "presenting an imminent and substantial endangerment to the health of persons" who may come into contact with them, within the meaning of Section 504(a) of the CWA, 33 U.S.C. § 1364(a).

46. KCMO, as the owner and operator of the POTW is a "person causing or contributing to the alleged pollution" from the unpermitted discharges of raw sewage within the meaning of Section 504(a) of the CWA, 33 U.S.C. § 1364(a).

47. Upon information and belief, KCMO's discharges of raw sewage will continue unless enjoined by this Court.

48. Pursuant to Section 504(a), the United States seeks an order requiring KCMO: 1) to take measures (such as increasing sewer pumping and treatment capacity, improving operation and maintenance, and installing backflow devices) to prevent or minimize to the greatest extent possible the discharge of sewage into streets, yards, parks, playgrounds, buildings and other areas where persons may come into contact with it when the discharge was caused by conditions in its POTW; 2) to develop a comprehensive response plan to follow when discharges occur caused by conditions in its POTW to clean up and disinfect the affected property by qualified personnel as promptly as possible so as to remove any endangerment to public health; 3) to improve public outreach and communications to notify the public of the occurrence and causes of backups and warn the public about the risks associated with contacting sewage; and 4) to take such other action as may be necessary.

FOURTH CLAIM FOR RELIEF

Violation of the Proper Operation and Maintenance Condition (Standard Condition I.B.3&4) in KCMOs NPDES Permits

49. Paragraphs 1-30 are realleged and incorporated herein by reference.

50. Pursuant to 40 C.F.R. § 122.41(e), each of KCMO's NPDES Permits contains the following Standard Condition at Part I.B.3: "Permittees shall operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions. Operators or supervisors of operations at publicly owned or publicly regulated wastewater treatment facilities shall be certified in accordance with 10 CSR 209.020(2) and any other applicable law or regulation." Part I.B.4 of each of KCMO's Permits require that "[t]he permittee shall take all necessary steps to minimize any adverse impact to waters of the state resulting from

noncompliance with any effluent limitations specified in this permit or set forth in the Missouri Clean Water Law and Regulations . . .” (hereafter Part I.B.3&4 collectively referred to as “Proper Operation and Maintenance Condition”).

51. Many of the illegal discharges alleged in Paragraphs 32, 33, 38, and 43 above, resulted, in whole or in part, from KCMO’s failure to comply with the Proper Operation and Maintenance Condition of its NPDES Permits (Part I.B.3&4), in violation of Section 402 of the CWA, 33 U.S.C. § 1342.

52. Each day KCMO failed to comply with the Proper Operation and Maintenance Condition of its NPDES Permits (Part I.B.3&4) constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

53. KCMO is liable for civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d); and the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. § 2461 note (as amended). See also, 40 C.F.R. § 19.4.

54. Unless enjoined by an order of the Court, KCMO will continue to violate Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by failing to comply with the Proper Operation and Maintenance Condition of its NPDES Permits (Part I.B.3&4).

FIFTH CLAIM FOR RELIEF

Violation of the Noncompliance Reporting Condition (Standard Condition I.B.2.b) in KCMO's NPDES Permits

55. Paragraphs 1-30 are realleged and incorporated herein by reference.

56. Pursuant to 40 C.F.R. § 122.41(l)(6), each of KCMO's NPDES Permits contains the following Standard Condition at Part I.B.2.b:

Noncompliance Notification

- b. Twenty-four hour reporting. 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 5 days of the time the permittee becomes aware of the circumstances . . . (hereafter referred to as "Noncompliance Reporting Condition").

57. Upon information and belief, KCMO has failed to comply with the Noncompliance Reporting Condition of KCMO's NPDES Permits (Part I.B.2.b) in violation of Section 402 of the CWA, 33 U.S.C. § 1342, by failing to provide any notice or report unpermitted discharges of raw sewage, as described in Paragraph 43 above, that may endanger health or the environment.

58. KCMO is liable for civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d); and the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. § 2461 note (as amended). See also, 40 C.F.R. § 19.4.

59. Unless enjoined by an order of the Court, upon information and belief, KCMO will continue to violate Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by failing to comply with the Noncompliance Reporting Condition in its NPDES Permits (Part I.B.2.b).

SIXTH CLAIM FOR RELIEF

Violation of the General Criteria Special Condition in KCMO's NPDES Permits

60. Paragraphs 1-30 are realleged and incorporated herein by reference.

61. Each of KCMO's past and current NPDES Permits contains the following General Criteria Special Condition:

- (b) General Criteria. The following general water quality criteria shall be applicable to all waters of the state at all times including mixing zones.^{1/} No water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting the following conditions:
 - (1) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses;
 - (2) Waters shall be free from oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses;
 - (3) Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses;
 - (4) Waters shall be free from substances or conditions in sufficient amounts to result in toxicity to human, animal or aquatic life; and
 - (5) There shall be no significant human health hazard from incidental contact with the water.

^{1/} The NPDES Permit issued to the Northland Mobile Home Park WWTP omits the word "general" from the statement that "The following general water quality criteria"

* * *

62. Many of the unpermitted discharges described above in Paragraphs 32, 33, and 38 created conditions whereby the receiving waters contained one or more of the following: putrescent, unsightly or harmful bottom deposits; oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses; and substances resulting in unsightly color, turbidity, and offensive odor. In addition, these discharges of raw sewage contain organic matter, bacteria and potential pathogens in amounts that may result in toxicity to animal and aquatic life. Pathogens in raw sewage can also cause a number of diseases in humans such as gastroenteritis, dysentery, and cholera. These diseases are communicable, and may result in toxicity to humans and/or create a significant human health hazard from incidental contact with these waters.

63. On several of the occasions described in Paragraph 62 above, and upon information and belief continuing to the present, KCMO failed to comply with the General Criteria Special Conditions of its NPDES Permits in violation of Section 402 of the CWA, 33 U.S.C. §1342.

64. Each day KCMO failed to comply with the General Criteria Special Condition of its NPDES Permits constitutes a separate violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

65. KCMO is liable for civil penalties of up to \$27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004; up to \$32,500 per day for each violation occurring between March 16, 2004 and January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d); and the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. § 2461 note (as amended). See also,

40 C.F.R. § 19.4.

66. Unless enjoined by an order of the Court, KCMO will continue to violate Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by failing to comply with the General Criteria Special Condition in its NPDES Permits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court provide the following relief:


1. A permanent injunction enjoining Defendant KCMO from any and all ongoing and future violations of the CWA by ordering compliance with the Act;
2. A permanent injunction directing Defendant KCMO to take all steps necessary to come into permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 301(a) of the CWA;
3. A permanent injunction directing KCMO to take all steps as are necessary to prevent or minimize the imminent and substantial risk to human health posed by pollutants (raw sewage) originating in its POTW, in accordance with Section 504(a) of the CWA, 33 U.S.C. § 1364(a);
4. A permanent injunction directing Defendant KCMO to take all steps necessary to achieve permanent and consistent compliance with the CWA and the regulations promulgated thereunder, and all terms and conditions of its NPDES permits;
5. A judgment assessing civil penalties against Defendant KCMO and in favor of the United States, not to exceed \$27,500 per day for each violation of the CWA occurring between January 30, 1997 and March 14, 2004, \$32,500 per day for each violation of the CWA occurring between March 15, 2004 and January 12, 2009; and \$37,500 per day for each violation of the CWA occurring thereafter.

6. Order Defendant KCMO to mitigate the effects of each of its violations;
7. Award the United States its costs and disbursements in this action; and
8. Grant such other and further relief as this Court deems appropriate.

Dated: _____, 2010

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:



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