

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE BOARD OF COUNTY)
 COMMISSIONERS, HAMILTON)
 COUNTY, OHIO,)
)
 and) Civil Action No.
)
 THE CITY OF CINCINNATI, OHIO,)
)
 Defendants,)
 and)
)
 THE STATE OF OHIO,)
)
 Statutory Defendant.)
)
 _____)

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, and on behalf of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”), alleges the following:

NATURE OF ACTION

1. This is a civil action pursuant to Section 309(b) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b), for injunctive relief only against the Board of County Commissioners, Hamilton County, Ohio, and the City of Cincinnati, Ohio (collectively, “Defendants”), for the discharge

of pollutants from their sanitary sewer system which discharges were not authorized under Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The State of Ohio has been joined as a party to this action pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

JURISDICTION AND VENUE

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 and 1345.

3. Venue is proper in the Southern District of Ohio pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (e), because the Defendants are located in this District and the causes of action alleged in this complaint arose in this District.

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

NOTICE TO STATE

5. The United States has provided notice of this action to the State of Ohio pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

THE PARTIES

6. Plaintiff, United States of America, is acting at the request and on behalf of the Administrator of the Environmental Protection Agency (“Administrator”).

7. The State of Ohio is a “person” as defined in Section 502(5) of the

CWA, 33 U.S.C.

§ 1362(5).

8. Defendant Board of Commissioners of Hamilton County (“the Board”) is located in Hamilton County and is the duly authorized governing body of Hamilton County, Ohio, pursuant to the laws of the State of Ohio. The Board is a political subdivision created under Chapter 3 of the Ohio Revised Code with the power to sue and be sued. Pursuant to the laws of the State of Ohio, authority and control over the sewer system within Hamilton County (including, but not limited to, the sanitary sewer system, the combined sewer system, and the wastewater treatment plants) is vested in the Board.

9. The Board has established the Metropolitan Sewer District of Greater Cincinnati (“MSD”), a county sewer district established pursuant to Chapter 6117 of the Ohio Revised Code, and acts as the principal of MSD, the duties of which include, among other things, maintaining of funding authority for MSD. Prior court decisions in Ohio hold that MSD cannot be sued in its own name, and thus, MSD is not made a Party to this action.

10. Defendant City of Cincinnati (“the City”) is a chartered municipal corporation, organized and existing under the laws of the State of Ohio, and located in Hamilton County, Ohio. Pursuant to an agreement with the Board, and subject to the pertinent provisions of Ohio law, the City serves as the agent for the Board in the management and operation of

MSD, which includes the operations and maintenance of the sanitary sewer system, the combined sewer system, and the wastewater treatment plants under the jurisdiction of MSD.

11. The Board and the City (hereinafter “Defendants”) are “municipalities” and “persons” within the meaning of Section 502(4) and (5) of the CWA, 33 U.S.C. § 1362(4) and (5).

STATUTORY BACKGROUND

12. 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 a National Pollution Discharge Elimination System (NPDES) permit issued by U.S. EPA or an authorized state pursuant to Section 402 of the CWA 33 U.S.C. § 1342.

13. At all times relevant to this complaint, Ohio 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 Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

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

FIRST CLAIM FOR RELIEF

UNPERMITTED DISCHARGES FROM SANITARY SEWER
OVERFLOWS

15. Paragraphs 1 through 14 are realleged and incorporated herein by reference.

16. At all times relevant to this complaint, the Defendants have “discharged” and continue to “discharge” “pollutants,” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), including, *inter alia*, sewage, from the Defendants’ sanitary sewer system through “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14) into the Ohio River, Mill Creek and other tributaries of the Ohio River. Such point sources have included, among others, numbered outfalls such as SSOs 700, 628, 634 and others.

17. The Ohio River, Mill Creek, and other tributaries of the Ohio River into which the Defendants discharge pollutants are all “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. The discharge of these pollutants through these point sources, in the form of sanitary sewer overflows, is not authorized by any NPDES Permit issued by U.S. EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. By these unauthorized discharges, the Defendants have violated

Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

20. Defendants will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311, unless enjoined by the Court.

21. Pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), the Defendants are liable for injunctive relief for these violations.

SECOND CLAIM FOR RELIEF
LIABILITY OF THE STATE OF OHIO UNDER SECTION 309 (e)

22. Paragraphs 1 through 14 are realleged and incorporated herein by reference.

23. To the extent any law of Ohio prevents the Defendants from raising revenues needed to comply with any judgment entered against the Defendants in this action, pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e), Ohio is liable for payment of any judgment, or any expenses incurred by the Defendants as a result of complying with any judgment.

WHEREFORE, the Plaintiff, the United States of America, prays that the Court:

1. Permanently enjoin the Defendants from any further discharges from point sources not authorized by any NPDES permit in violation of the Clean Water Act;

2. Order the Defendants to expeditiously complete all actions necessary to ensure that the Defendants cease further discharges from point sources not authorized by any NPDES permit in violation of the

Clean Water Act;

3. Award the Plaintiff its costs of this action;
4. Order the State of Ohio to pay any judgment in this action, including the cost of all injunctive actions and compliance expenses resulting therefrom, to the extent Ohio law prevents the Defendants from raising revenues needed to comply with the judgment; and,
5. Grant the Plaintiff such further relief as the Court deems just and proper.

Respectfully submitted,

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