

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	Civil Action No. PJM 04-3679
v.	)	
	)	Judge Messitte
WASHINGTON SUBURBAN SANITARY	)	
COMMISSION,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States, and acting on behalf of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”) file this Complaint, and allege as follows:

**NATURE OF ACTION**

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), for injunctive relief and for the assessment of civil penalties against Defendant Washington Suburban Sanitary Commission (“WSSC”), for numerous unpermitted and illegal discharges of pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a) This complaint also alleges that Defendant violated several terms and conditions of National Pollutant Discharge Elimination System (“NPDES”) permits that have been issued to it, also in violation of Section 301(a) of the CWA. This action is also brought pursuant to Section 504 of the CWA, 33 U.S.C. § 1364, to require WSSC to take such action as may be

necessary to abate the imminent and substantial endangerment to the health of persons presented by WSSC's collection and conveyance system.

### **JURISDICTION, VENUE, AUTHORITY AND NOTICE**

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. Venue is proper in the District of Maryland 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 Defendant is located and where the alleged violations occurred.

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

5. Authority to bring this civil action on behalf of the United States 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.

### **DEFENDANT**

6. Defendant WSSC was created in 1918 by act of the Maryland Legislature to provide drinking water and sanitary sewage treatment for residents of Prince George's and Montgomery Counties. Defendant's service area currently covers approximately 1,000 square miles, with a residential population of over 1.6 million. Defendant 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).

### **JOINDER OF NECESSARY PARTY**

7. Section 309(e) of the CWA requires that a State be joined as a party to the litigation when the United States sues a municipality of the State. The State of Maryland intends to intervene in this action as a co-plaintiff, and the United States supports such intervention.

### **FEDERAL STATUTES AND REGULATIONS**

8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the discharge of any pollutants by any person except as authorized by and in compliance with certain other sections of the Act, including Section 402, 33 U.S.C. § 1342. Section 502(12) defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Section 502(7) of the CWA defines navigable waters “to be the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

9. EPA 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, or 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) certain wetlands (or wetlands adjacent to these waters). 40 C.F.R. § 122.2.

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

11. The term "point source" is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14) as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged."

12. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits to "persons" that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA.

13. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program, and after receiving EPA's authorization of its program, may issue NPDES permits. The State of Maryland established its own NPDES permit program and received EPA authorization of its program in 1974.

14. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, among other things, Section 301 of the CWA, 33 U.S.C. § 1311, or violates any of the terms or conditions of any permit implementing, among other things, Section 301, 308 or 402 of the CWA, 33 U.S.C. §§ 1311, 1318 or 1342.

15. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates, among other things, Section 301 of the CWA, 33 U.S.C. § 1311, or who violates any condition or limitation of 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 \$25,000 per

day of violation, with each day in which a violation occurs constituting a separate violation.

16. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-40, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134, enacted April 26, 1996; 110 Stat. 1321), EPA may seek civil penalties of up to \$27,500 per day for each violation occurring on or after January 31, 1997. All violations at issue in this Complaint occurred after January 31, 1997.

17. Further, pursuant to EPA's latest Civil Monetary Penalty Inflation Adjustment Rule, finalized on February 13, 2004, and effective March 15, 2004, the maximum civil penalty for violations of CWA Section 301 is \$32,500 per day. 69 Fed. Reg. 7121 (Feb. 13, 2004). Hence, any violations occurring on or after March 15, 2004 would be subject to the \$32,500 daily maximum.

18. Finally, Section 504 of the CWA, 33 U.S.C. § 1364 states that upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons the United States may bring suit to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants or to take such other action as may be necessary.

#### **GENERAL ALLEGATIONS**

19. Defendant WSSC owns and operates a "treatment works" as that term is defined in CWA Section 212(2), 33 U.S.C. § 1292, and a "publicly owned treatment works" ("POTW") as that term is defined in U.S. EPA regulations implementing the CWA, 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3).

Defendant's POTW collects, conveys, treats and disposes of sanitary sewage from Montgomery County and Prince Georges County, Maryland, an area covering approximately 1,000 square miles, with a population of approximately 1.6 million.

20. In addition to providing sewage service, Defendant provides drinking water to residents of Montgomery County and Prince Georges County, Maryland.

21. Defendant's POTW consists of over 5,000 miles of pipe with over 131,000 manholes, and over 40 wastewater pump stations ("WWPSs") which convey approximately 180 million gallons of sewage a day to seven wastewater treatment plants ("WWTPs"), six of which are owned and operated by Defendant, and one of which is owned by the District of Columbia.

22. Defendant's six WWTPs are the Damascus WWTP, the Hyattstown WWTP, the Parkway WWTP, the Piscataway WWTP, the Seneca WWTP, and the Western Branch WWTP. These WWTPs, combined, have the capacity to treat over 73 million gallons of sewage per day.

23. The WWTP in the District of Columbia which receives flow from Defendant's system is known as the Blue Plains WWTP. Pursuant to the Blue Plains Intermunicipal Agreement of 1985 entered into by the District of Columbia, Fairfax County, Virginia, Montgomery County, Maryland, Prince Georges County, Maryland and WSSC, 170 million gallons a day of the Blue Plains WWTP's treatment capacity has been allocated to WSSC for the treatment of waste water from Montgomery County and Prince Georges County.

24. The sewers in Defendant's system are all separate sanitary sewers, which means that they were designed to carry waste water, rather than a combination of waste

water and rain water. WSSC does not own or operate “combined sewers” (i.e. sewers that were designed to carry both waste water and rain water together).

25. The waste water that is controlled, conveyed and stored by Defendant in its system, as well as the waste water that is treated and disposed of by Defendant at its six WWTPs constitute “pollutants” as that term is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6) and § 9-101(g) of the Environment Article.

26. On or about February 1, 1995, the State of Maryland issued NPDES Permit No. MD0020982 and State Discharge Permit No. 00-DP-0162 to Defendant for the Damascus WWTP (“the Damascus WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Maryland Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Damascus WWTP Permit was reissued on December 1, 2000, and is currently scheduled to expire on November 30, 2005.

27. On or about January 1, 1997, the State of Maryland issued NPDES Permit No. MD0067768 and State Discharge Permit No. 96-DP-3200 to Defendant for the Hyattstown WWTP (“the Hyattstown WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Maryland Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Hyattstown WWTP Permit, although originally set to expire on December 31, 2001, was continued by operation of law when Defendant timely applied for a renewal of the permit in April 2001. See Maryland State Gov’t. Code Ann. Section 10-226(b). The Hyattstown Permit was reissued on September 1, 2004, and is currently set to expire August 31, 2009.

28. On or about June 1, 1995 and again on or about December 1, 2000, the State of Maryland issued NPDES Permit No. MD0021725 and State Discharge Permit No. 00-DP-0631 to Defendant for the Parkway WWTP (“the Parkway WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The June 1, 1995 Parkway WWTP Permit was extended by operation of law from the date Defendant timely applied for a reissued permit, March 27, 2000, until the date the permit was reissued, December 1, 2000. The Parkway WWTP Permit is currently scheduled to expire on November 30, 2005.

29. On or about October 1, 1997, the State of Maryland issued NPDES Permit No. MD0021539 and State Discharge Permit No. 02-DP-0667 to Defendant for the Piscataway WWTP (“the Piscataway WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. On or about March 8, 2002, the Piscataway WWTP Permit was extended by operation of law when Defendant timely filed an application for reissuance of the permit. On August 12, 2003, the Piscataway WWTP Permit was reissued, and is currently scheduled to expire on July 31, 2008.

30. On or about March 1, 1993, and again on or about September 1, 1999, the State of Maryland issued NPDES Permit No. MD0021491 and State Discharge Permit No. 00-DP-0156 to Defendant for the Seneca WWTP (“the Seneca WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations



codified at COMAR 26.08.01 et seq. The September 1, 1999 Seneca WWTP was scheduled to expire on August 31, 2004. However, on or about February 2, 2004, the September 1, 1999 Seneca WWTP Permit was extended by operation of law when Defendant timely filed an application for reissuance of the permit.

31. On or about January 1, 1995, the State of Maryland issued NPDES Permit No. MD0021741 and State Discharge Permit No. 00-DP-0632 to Defendant for the Western Branch WWTP (“the Western Branch WWTP Permit”) under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, and Title 9 of the Environment Article, Annotated Code of Maryland, and implementing regulations codified at COMAR 26.08.01 et seq. The Western Branch WWTP Permit was reissued effective January 1, 2001, and is currently scheduled to expire on December 31, 2005.

32. While the six NPDES permits that Defendant holds for its six WWTPs authorize it to discharge treated effluent that meets effluent limitations for specified pollutants from designated outfalls at its WWTPs, none of the six NPDES permits authorize Defendant to discharge untreated sewage from its control, collection and conveyance system.

33. The NPDES permits issued to Defendant for its six WWTPs contain conditions which require Defendant to operate its facilities efficiently to minimize upsets and discharges of excessive pollutants, and to provide adequate operating staff to carry out functions required to ensure compliance with the permits.

34. The NPDES permits issued to Defendant for its six WWTPs contain conditions which require Defendant to maintain compliance with effluent limitations and

the terms and conditions of the permit in the event of a loss or failure of the primary source of power to facilities.

35. The currently effective NPDES permits issued to Defendant for the Damascus, Parkway, Piscataway, and Western Branch WWTPs contain conditions which require Defendant orally to report discharges from the control, collection and conveyance systems tributary to each of those WWTPs within 24 hours, and in writing within 5 days, providing certain information concerning the discharge.

#### **Unpermitted Discharges**

36. From March 13, 1997 to the present (hereinafter “times relevant to this Complaint”) there have been over a thousand discharges of untreated waste water containing raw sewage from parts of Defendant’s POTW, including but not limited to manholes, pump stations, and sewer pipes, to waters of the United States and/or to waters of the State of Maryland, including but not limited to the Anacostia River (and its tributaries), the Patuxent River (and its tributaries), the Potomac River (and its tributaries), and Rock Creek (and its tributaries). These discharges shall be referred to in this Complaint as “Sanitary Sewer Overflows” or “SSOs.” These SSOs are unpermitted discharges, not authorized by any of Defendant’s NPDES permits.

37. The Anacostia River (and its tributaries), the Patuxent River (and its tributaries), the Potomac River (and its tributaries), and Rock Creek (and its tributaries), among other water bodies that have received SSOs from Defendant’s system, are “navigable waters” of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as well as “waters of the state” as defined in Section 9-101(l) of the Environment Article, Annotated Code of Maryland. The Anacostia River, the

Patuxent River, the Potomac River and Rock Creek are each tributary to the Chesapeake Bay, which is the nation's largest estuary, "a national treasure and a resource of worldwide significance," and for that reason accorded special recognition under Section 117 of the CWA, 33 U.S.C. § 1267.

38. SSOs from Defendant's POTW have resulted from multiple causes including, among other things, breaks in sewer pipes, inadequate maintenance procedures resulting in blockages in sewer pipes caused by grease and/or roots, inadequate inspection of, and enforcement of regulations applicable to, food establishments that contribute grease to the system, and power failures, resulting from inadequate back up power at pump stations.

39. Untreated sewage contains organic matter, bacteria and other potential pathogens, which are harmful to the environment, including but not limited to aquatic life. Additionally, the pathogens in raw sewage can cause a number of diseases in humans, including but not limited to enteric diseases such as gastroenteritis, dysentery and cholera. These diseases are communicable. Hence, untreated sewage poses a risk to human health.

#### **FIRST CLAIM FOR RELIEF**

##### **(Unpermitted Discharges of Pollutants in Violation of CWA Section 301(a))**

40. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

41. On various dates from March 13, 1997, and continuing to the present, Defendant WSSC has spilled or discharged pollutants from point sources not specified in any NPDES Permit issued by U.S. EPA or the State of Maryland pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 to navigable waters of the United States.

42. Each day of each unpermitted discharge of pollutants to navigable waters of the United States is a separate violation of Section 301(a) of the CWA, 33 U.S.C.

§ 1311(a).

43. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*.

44. Unless enjoined by an order of the Court, Defendant WSSC will continue to discharge pollutants to navigable waters of the United States without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **SECOND CLAIM FOR RELIEF**

##### **(Violation of the “Proper Operation and Maintenance” Condition (General Condition III.B.3) in Certain of Defendant’s NPDES Permits)**

45. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

46. 40 C.F.R. § 122.41 sets forth a list of general conditions that all NPDES permits issued under State NPDES permitting programs must contain to meet Federal minimum standards. Subpart (e) of 40 C.F.R. § 122.41 sets forth the General Condition for “Proper Operation and Maintenance” of facilities and systems. Section 122.41(e) states that a “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”

47. The term “facility” is defined in the regulations as “any NPDES ‘point source’ or any other facility . . . (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” 40 C.F.R. §122.2.

48. The term “point source” is defined in the regulations as “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged . . . .” Id.

49. Seven of the Defendant’s NPDES permits contain the following “General Condition” in Section III.B.3 of the permit. This condition is the Maryland equivalent of 40 C.F.R. §122.41(e), and is known as the “Proper Operation and Maintenance Condition”:

**Facility Operation and Quality Control**

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

- a. Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants.
- b. The permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit. . . .

The NPDES permits that contain the above language in Section III.B.3 are the 6/1/95 Parkway WWTP Permit; the 12/1/00 Parkway WWTP Permit; the 8/1/03 Piscataway WWTP Permit; the 3/1/93 Seneca WWTP Permit; the 1/1/95 Western Branch WWTP Permit; and the 1/1/01 Western Branch WWTP Permit.

50. Further, the “Proper Operation and Maintenance Condition” in Defendant’s 10/1/97 Piscataway WWTP Permit is identical to the language set forth in paragraph 60 above, except that the term “collection” is deleted from the list of facilities appearing in the first line.

51. On hundreds of days between March 13, 1997 and the present, hundreds of unauthorized discharges of raw sewage have occurred from sewer pipes, manholes, pump stations and other "facilities" upstream of (or tributary to) the Parkway WWTP, the Piscataway WWTP, the Seneca WWTP and the Western Branch WWTP. Raw sewage contains excessive levels of pollutants, including but not limited to fecal coliform and suspended solids. These unauthorized discharges of raw sewage evidence a failure to properly operate and maintain "facilities" upstream of (or tributary to) these WWTPs so as to minimize upsets and discharges of excessive pollutants, and a failure to maintain adequate operating staff to carry out operation, maintenance and testing functions necessary to minimize unauthorized discharges, and hence maintain compliance with its NPDES permits.

52. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*. Each day of Defendant's failure to comply with a "General Condition" in an NPDES permit, such as the "Proper Operation and Maintenance Condition," is a violation of CWA Sections 301 and 402.

53. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the "Proper Operation and Maintenance Condition" in the NPDES Permits mentioned in paragraphs 49 and 50, *supra*.

### THIRD CLAIM FOR RELIEF

#### **(Emergency Powers Provision in Section 504(a) of the CWA)**

54. Paragraphs 1-39 are re-alleged and incorporated herein by reference.
55. Section 504(a) of the CWA, 33 U.S.C. § 1364(a) states in pertinent part:

#### **Emergency Powers**

Notwithstanding any other provision of this chapter, the Administrator 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 in the appropriate district court 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.

56. The Administrator is in receipt of evidence that on numerous occasions over the past seven years untreated sewage from Defendant's sewer system has been released onto public and private property, including but not limited to streets and playground areas, and into buildings, including homes and office buildings, located in Montgomery County and Prince Georges County where persons have or may have come into contact with such sewage. Untreated sewage is "pollution" as that term is defined in Section 501(10) of the CWA, 33 U.S.C. § 1362(19). As such, Defendant and its sewer system are a "pollution source" within the meaning of Section 504(a). Many of these releases have ultimately resulted in a "discharge" to "waters of the United States" when such releases were cleaned up.

57. Untreated sewage can carry bacteria, viruses, parasitic organisms, intestinal worms, and borroughs (inhaled molds and fungi). The diseases these may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe

gastroenteritis. Untreated sewage, therefore, presents an “imminent and substantial endangerment to the health of persons” who may come into contact with it. Groups facing greater risks are children, the elderly, immunocompromised groups, and pregnant women. The endangerment from untreated sewage remains imminent until the area impacted by the sewage is adequately cleaned and disinfected.

58. Pursuant to Section 504(a), the United States seeks an order requiring Defendant: 1) to take measures to minimize to the greatest extent possible the release of sewage into streets, yards, parks, buildings and other areas where persons may come into contact with it when the release was caused by conditions in its Collection System; 2) when releases do occur which are caused by conditions in its Collection System, to clean up and disinfect the affected property as promptly as possible so as to remove endangerment to public health; and 3) to take such other action as may be necessary.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Violation of the SSO Reporting Condition (General Condition III.C. and III.B. 1) in Certain of Defendant’s NPDES Permits)**

59. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

60. General Condition C in Section III of the Defendant’s currently effective NPDES Permits for the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTP states that discharges from the sewer collection system are not authorized by the permits, and that if such discharges do occur, they shall be reported in accordance with General Condition B.1 in Section III.

61. General Condition B.1 in Section III of Defendant’s Parkway WWTP and Western Branch WWTP Permits states that if the permittee does not comply with any permit condition, within 24 hours of learning of a non-complying discharge the permittee



shall notify MDE by telephone of the discharge, providing, among other things the location, cause, estimated volume and duration of the discharge, and shall within 5 days following the telephone notification, submit a written report on the discharge event providing, among other things, the information set forth above.

62. On numerous occasions since the SSO Reporting Conditions set forth above became effective, the Defendant has failed properly to report SSOs that have occurred in the collection systems tributary to the Parkway WWTP, the Piscataway WWTP and the Western Branch WWTPs in accordance with those Reporting Conditions. These failures include providing no notice whatsoever of an SSO, failing to provide oral notice within 24 hours of learning of the event, failing to provide written notice within 5 days of providing oral notice, and providing insufficient notice that lacked one or more of the elements set forth in the permits' SSO Reporting Condition.

63. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*.

64. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the SSO Reporting Condition in the NPDES Permits mentioned in Paragraph 60, *supra*.

#### **FIFTH CLAIM FOR RELIEF**

#### **(Violation of the "Back up Power" Condition (General Condition B.8) in Defendant's NPDES Permit for the Piscataway WWTP)**

65. Paragraphs 1-39 are re-alleged and incorporated herein by reference.

66. General Condition B.8 in Section III of Defendant's NPDES Permit for the Piscataway WWTP provides in pertinent part:

**Power Failure**

The permittee shall maintain compliance with the effluent limitations and all other terms and conditions of this permit in the event of a reduction, loss or failure of the primary source of power to the wastewater collection and treatment facilities.

67. On several occasions starting in 1998, several facilities located in the Piscataway WWTP and the Seneca Creek WWTP collection system areas, including but not limited to the Fort Washington Estate Pump Station, the Fort Washington Forest Pump Station and the Seneca Pump Station have experienced SSOs as a result of a failure of their primary power source.

68. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty. The statutory maximum civil penalty amounts that may be awarded per day for each violation are set forth in paragraphs 16-18, *supra*.

69. Unless enjoined by an order of the Court, Defendant WSSC will continue to violate the "Back up Power" Condition in certain of its NPDES permits.

**PRAYER FOR RELIEF**

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

1. A permanent injunction directing Defendant WSSC 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 Clean Water Act;

2. A permanent injunction directing Defendant WSSC to take such steps as are necessary to minimize the imminent and substantial risk to human health posed by pollutants (raw sewage) originating in its Collection System, in accordance with Section 504(a) of the CWA;

3. A permanent injunction directing Defendant WSSC to take all steps necessary to comply with all terms and conditions of its NPDES permits that relate to its Collection System, including but not limited to the General Conditions requiring "Proper Operation and Maintenance" and maintenance of back-up power for facilities;

4. A permanent injunction directing Defendant WSSC to comply with the SSO reporting requirements set forth in the General Conditions of its NPDES Permits;

5. A judgment assessing civil penalties against Defendant WSSC and in favor of the United States, not to exceed \$27,500 per day for each violation of the CWA which occurred between January 30, 1997 and March 14, 2004, and not to exceed \$32,500 per day for each violation of the CWA which occurred on or after March 15, 2004.


6. Award the United States of America its costs and disbursements in this action; and

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

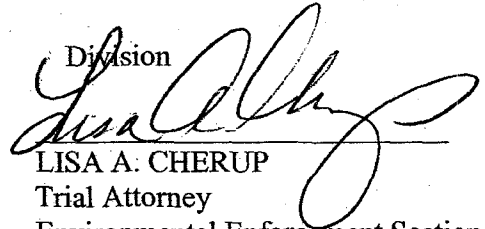
Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

Dated: 11.9.04

  
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