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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
and
THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL
AUTHORITY (DELCORA),

Defendant.

15 4552
Civ. No. _____

JOINT COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Commonwealth of Pennsylvania, Department of Environmental Protection ("PADEP"), file this Complaint, and allege as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the Delaware County Regional Water Quality Control Authority ("DELCORA" or "Defendant") pursuant to Sections 309(b) and (d) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1319(b) and (d), for permanent injunctive relief and assessment of civil penalties regarding the operation of a sewage treatment plant and collection system, including supplemental state claims brought pursuant to the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*,

A TRUE COPY CERTIFIED FROM THE RECORD
DATED: AUG 17 2015
ATTEST: *[Signature]*
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”); Section 1917-A of the Administrative Code of 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”), and the rules and regulations promulgated thereunder (“Supplemental State Claims”). The United States alleges that Defendant discharged, and continues to discharge, pollutants, including sewage, into waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the conditions and limitations of National Pollutant Discharge Elimination System (“NPDES”) permits issued to DELCORA by PADEP, pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

2. The Commonwealth of Pennsylvania, through PADEP, is a party to this action in accordance with Section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e). PADEP alleges that DELCORA discharged and/or continues to discharge pollutants, including sewage, into waters of the Commonwealth in violation of Sections 201, 202, and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202, and 691.401, the terms and conditions of DELCORA’s NPDES permits, and the rules and regulations promulgated thereunder.

3. PADEP is the agency within the Commonwealth that is charged with the duty and the authority to administer and enforce, *inter alia*, the Clean Streams Law, Section 1917-A of the Administrative Code, and the rules and regulations promulgated thereunder, and which has been delegated authority to administer the NPDES permit program under Section 402 of the Clean Water Act, 33 U.S.C. § 1342. PADEP is a “state water pollution control agency” and “person” as defined in Section 502(1) and (5) of the Act, 33 U.S.C. § 1362(1) and (5). PADEP has authority to join in this Complaint pursuant to Sections 601 and 605 of the Clean Streams Law, 35 P.S. §§ 691.601 and 691.605.

JURISDICTION AND VENUE

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

5. This Court has supplemental jurisdiction over the Supplemental State Claims alleged herein pursuant to 28 U.S.C. § 1367(a) because the Commonwealth claims are so related to the federal claims as to form part of the same case or controversy.

6. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because it is the judicial district where Defendant is located, where a substantial part of the events or omissions giving rise to the claims occurred, and where the alleged violations occurred.

NOTICE AND AUTHORITY

7. Authority to bring this action is vested in the Attorney General of the United States under Section 506 of the Act, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519. As a signatory to this Complaint, PADEP has notice of the commencement of this action, as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

DEFENDANT

8. Defendant is a municipal authority created under the Pennsylvania Municipal Authorities Act, 53 Pa. C.S. §§ 5601-23.

9. Defendant is located in Delaware County, Pennsylvania.

10. Defendant has the power to sue and be sued. 53 Pa. C.S. § 5607(d)(2).

11. Defendant is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and a “municipality”

within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4) and Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

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

FEDERAL STATUTORY BACKGROUND

13. The purpose of the Act is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The Act establishes a national goal to eliminate the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a)(1).

14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, as authorized by an NPDES permit issued by EPA or an authorized State pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

15. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

16. Section 502(6) of the Act, 33 U.S.C. § 1362(6), includes “sewage” in the definition of the term “pollutant.”

17. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines “navigable waters” to be the “waters of the United States, including the territorial seas.”

18. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines “point source” as “any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

19. Section 402(q) of the Act, 33 U.S.C. § 1342(q), provides that each permit, order, or decree issued after December 21, 2000, for discharges from a municipal combined sewer system shall conform to EPA's Combined Sewer Overflow Control Policy ("CSO Policy"), 59 Fed. Reg. 18688 (April 19, 1994).

20. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue NPDES permits to authorize the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits.

21. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a state may establish its own permit program, and after receiving EPA's authorization of that program, may issue NPDES permits within its jurisdiction.

22. On or about July 1, 1978, the Administrator of EPA authorized the Commonwealth to issue NPDES permits in Pennsylvania under the Clean Water Act, and the Commonwealth, through PADEP, does so in accordance with its Clean Streams Law, 35 P.S. § 691.1 *et seq.* The Commonwealth's authority to issue such permits has been in effect at all times relevant to this Complaint.

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

24. 40 C.F.R. §§ 122-125 codify the regulatory requirements for the NPDES program.

25. 40 C.F.R. § 122.41 sets forth specific conditions applicable to all NPDES permits.

26. NPDES permits require the permittee to properly operate and maintain all facilities and systems of treatment and control. 40 C.F.R. § 122.41(e).

27. Combined sewer systems ("CSS") are wastewater collection systems owned by a

State or municipality designed to carry sanitary sewage (domestic, commercial and industrial wastewaters) and storm water (surface drainage from rainfall or snowmelt) through a single pipe to a POTW. CSO Policy, 59 Fed. Reg. at 18689 (April 19, 1994). In periods of rainfall or snowmelt, total wastewater flows can exceed the capacity of the CSS and overflow directly to surface water bodies, such as lakes and creeks. These overflows are called combined sewer overflows (“CSOs”). CSO Policy, 59 Fed. Reg. at 8691-94 (April 19, 1994).

28. The CSO Policy defines a CSO as the discharge from a combined sewer system at a point prior to the sewage treatment plant that consists of mixtures of domestic sewage, industrial and commercial wastewaters, and storm water runoff. 59 Fed. Reg. 18691-94 (April 19, 1994).

29. The CSO Policy requires the submission of a “Long Term Control Plan” (“LTCP”) to describe how the POTW will minimize or prevent CSOs and achieve compliance with the Act. *Id.*

30. Section II.C.4 of the CSO Policy requires, among other things, that the LTCP evaluate controls that would be necessary to achieve a range of overflow events per year, including zero overflow events per year or up to 100% capture, by making a reasonable assessment of cost and performance, sufficient to meet Act requirements. *Id.*

31. Section II.C.4 of the CSO Policy also requires, among other things, that the LTCP consider expansion of POTW secondary and primary capacity in the CSO abatement alternative analysis. *Id.*

32. Section II.C.5 of the CSO Policy requires that Defendant’s LTCP include cost/performance curves to demonstrate the relationships among the range of alternatives required under Section II.C.4 to determine where the increment of pollution reduction achieved

diminishes compared to the increased cost (a.k.a. “knee of the curve analysis”). *Id.*

33. The CSO Policy requires permittees with CSOs to implement the Nine Minimum Controls (“NMCs”), which are technology-based actions designed to reduce CSOs and their effects on receiving water quality. *Id.*

34. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator of EPA to commence a civil action to obtain appropriate relief, including a permanent or temporary injunction, when any person discharges without a permit in violation of Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

35. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), the Court may impose civil penalties up to \$25,000 per day for each violation occurring prior to January 31, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement 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 \$32,500 per day per violation on or after March 15, 2004, and \$37,500 per day per violation occurring on or after January 12, 2009 (See 73 Fed. Reg. 75340, 75345) (Dec. 11, 2008) (78 Fed. Reg. 66647) (Nov. 6, 2013)), pursuant to 40 C.F.R. Part 19.

PENNSYLVANIA STATUTORY BACKGROUND

36. Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202, prohibit the discharge of sewage by any person or municipality into any waters of the Commonwealth except in compliance with a permit issued under Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

37. Section 92a.2 of the regulations adopted by the Pennsylvania Environmental Quality Board, 25 Pa. Code § 92a.2, defines “discharge” as “an addition of any pollutant to surface waters of this Commonwealth from a point source.”

38. Section 92a.2 of the regulations adopted by the Pennsylvania Environmental Quality Board, 25 Pa. Code § 92a.2, defines “pollutant” as “a contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water that causes or has the potential to cause pollution as defined in section 1 of the State Act (35 P. S. § 691.1).”

39. Section 1 of the Clean Streams Law, 35 P.S. § 691.1, states that “sewage” “shall be construed to include any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.”

40. Section 1 of the Clean Streams Law, 35 P.S. § 691.1, states that “[w]aters of the Commonwealth” “shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.”

41. Section 92a.9 of the regulations adopted by the Pennsylvania Environmental Quality Board,, 25 Pa. Code § 92a.9, provides that an NPDES permit satisfies the permit requirement of Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

42. Section 601 of the Clean Streams Law, 35 P.S. § 691.601, provides in pertinent part:

- (a) Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

43. Section 611 of the Pennsylvania Clean Streams Law, 35 P.S. § 691.611, provides in pertinent part:

It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with any order or permit or licenses of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or licenses of the department, to cause air or water pollution, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder or to violate the provisions of 18 Pa. C.S. Section 4903 (relating to false swearing) or 4904 (relating to unsworn falsifications to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of Sections 601, 602, and 605.

44. Section 605 of the Clean Streams Law, 35 P.S. § 691.605, provides in pertinent part:

In addition to proceeding under any other remedy available at law or equity for a violation of provision of this act, rule, regulations, order of the department, or condition of any permit issued pursuant to this act, the department, after hearing, may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000) per day for each violation.

45. Section 1917-A of the Administrative Code, 71 P.S. § 510-17, provides, in pertinent part, that PADEP shall have the power and its duty shall be:

- (1) To protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition which is declared to be a nuisance by any law administered by the department;
- (2) To cause examination to be made of nuisances, or questions affecting the security of life and health, in any locality, and, for that purpose, without fee or hinderance, to enter, examine and survey all grounds, vehicles, apartments, buildings, and places, within the Commonwealth, and all persons, authorized by the department to enter, examine and survey such grounds, vehicles, apartments, buildings and places, shall have the powers and authority conferred by law upon constables;
[and]
- (3) To order such nuisances including those detrimental to the public health to be abated and removed.

GENERAL ALLEGATIONS

46. Defendant provides sewer service to portions of Delaware County, PA, and a small portion of Chester County, PA.

47. At all relevant times, Defendant has owned and operated the Western Regional Treatment Plant ("WRTP"), a "treatment works" as that term is defined in Section 212(2) of the Act, 33 U.S.C. § 1292, and 25 Pa. Code § 92a.2, and together with its associated collection system, a "publicly owned treatment works" ("POTW") as that term is defined in EPA regulations implementing the Act, 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3(q)) and 25 Pa. Code § 92a.2.

48. The WRTP is located at 3201 W. Front Street, Chester, PA. It was built in 1974, originally designed to treat 44 million gallons per day ("MGD"), and has been conditionally rerated by PADEP to receive 50 MGD upon the construction of a 455-foot outfall into the Delaware River.

49. The WRTP is a conventional activated sludge facility with primary and secondary wastewater treatment and disinfection by chlorine. The maximum daily design flow of the WRTP is approximately 105 MGD. In 2012, the average flow was 29 MGD. The maximum daily flow in 2012 was 62 MGD, recorded on December 21, 2012.

50. At all relevant times, Defendant has owned and operated a collection system ("Collection System") that collects stormwater and wastewater from residential, commercial, and industrial sources, including but not limited to approximately 300,000 feet of combined sewers and 210,000 feet of separate sanitary sewers within the City of Chester.

51. Pursuant to contractual arrangements, DELCORA also treats wastewater at the WRTP that is collected and conveyed to the WRTP by means that DELCORA does not own.

52. DELCORA is authorized to discharge pollutants from the W RTP and Collection System in accordance with DELCORA's NPDES Permits into Ridley Creek, Chester Creek, and the Delaware River.

53. Ridley Creek, Chester Creek, and the Delaware River are each a "water of the United States" for purposes of Section 502(7) of the Act, 33 U.S.C. § 1362(7), a "water of the Commonwealth" within the meaning of Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and are each located within the jurisdiction of the U.S. District Court for the Eastern District of Pennsylvania.

54. At all times relevant herein, Defendant has "discharged," and continues to discharge, "pollutants" from its treatment works within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), and Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202, from "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), into the waters of the United States.

55. Sewage, commercial and industrial waste, and their constituents are "pollutants" within the meaning of Section 506(6) of the Act, 33 U.S.C. § 1362(6), and within the meaning of "pollution" under Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

56. The outfalls from which DELCORA discharges are "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

57. During certain rainfall events, the volume of wastewater entering the Combined Sewer System exceeds the hydraulic capacity of the sewers and/or the treatment facility. In those circumstances, the Collection System will discharge untreated combined sewage from certain designated outfalls, known as combined sewer outfalls.

58. When combined sewage discharges from a combined sewer outfall into a receiving water body, the event is known as a combined sewer overflow (“CSO”).

59. The combined sewer outfalls from which DELCORA discharges are “point sources” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

60. Pursuant to the CSO Policy, 59 Fed. Reg. 18689 (April 19, 1994), CSOs are point sources subject to NPDES permit requirements, including both technology-based and water quality-based requirements of the Act.

61. Discharges from a sewage treatment plant are discharges from a point source that require an NPDES permit pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342. Discharges from a CSO discharge point are discharges from a point source that require an NPDES permit pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

62. At all relevant times, Defendant’s NPDES Permits have authorized Defendant to discharge pollutants only from specified point sources (identified in the permits as one or more numbered “outfalls”) to specified waters of the United States and/or the Commonwealth, subject to limitations and conditions set forth in the NPDES Permits.

63. The combined sewage that Defendant discharges from its combined sewer outfalls contains raw sewage, commercial and industrial waste from industrial users of the system, and storm water runoff.

64. Raw sewage and combined sewage contain viruses, bacteria and protozoa as well as other pathogens.

65. Infection with organisms contained in raw sewage can cause a number of adverse health effects ranging from minor illnesses such as sore throats and mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious

hepatitis, and severe gastroenteritis.

66. Children, the elderly, people with weakened immune systems, and pregnant women are at more risk for adverse consequences from such infections than the general population.

67. When raw sewage and combined sewage are discharged into waterways, bacteria consume organic matter in the sewage and consume oxygen dissolved in the water. When large amounts of sewage are discharged, dissolved oxygen levels can become severely depleted, resulting in the suffocation of oxygen-dependent aquatic life forms including fish, mollusks, and crustaceans.

68. Raw sewage and combined sewage contains high levels of nutrients such as nitrogen and phosphorous. When such nutrients enter water ways in large amounts, they can fuel algal blooms that block the penetration of light through the water and thereby threaten aquatic plants that rely on photosynthesis for energy. When algae decays, it can consume dissolved oxygen in the same manner as the decomposition of sewage.

69. PADEP issued Defendant NPDES Permit Number PA0027103, on or about March 30, 2007 ("2007 Permit"), with an expiration date of March 31, 2012. Without altering the expiration date, PADEP amended the 2007 Permit on March 9, 2009 ("March 2009 Amended Permit"), December 4, 2009 ("December 2009 Amended Permit"), and again on September 28, 2011 ("2011 Amended Permit"). Part C, Section 15, Subsection C of the March 2009 Amended Permit required Defendant to update its LTCP in accordance with the EPA "Guidance For Long-Term Control Plan (EPA 832-B-95-002)," dated September 1995 ("LTCP Guidance"), which implements the CSO Policy, and to submit the updated LTCP to EPA within 90 days of the March 9, 2009 issuance of the March 2009 Amended Permit.

70. Defendant did not submit the updated LTCP to EPA within 90 days of the March 9, 2009 issuance of the March 2009 Amended Permit.

71. On or about September 24, 2009, EPA issued an Administrative Order (“2009 Order”) to Defendant pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), alleging that Defendant failed to submit an updated LTCP as required by the March 2009 Amended Permit.

72. The 2009 Order required Defendant to submit an updated LTCP conforming to the LTCP Guidance by February 1, 2010.

73. Defendant did not submit an updated LTCP by February 1, 2010 as required by the 2009 Order.

74. On or about August 2, 2010, EPA issued a Notice of Noncompliance and Request to Show Cause to Defendant (“Show Cause Letter”). The Show Cause Letter invited Defendant to show cause why EPA should not commence an administrative civil enforcement action to compel permit compliance and assess a penalty.

75. On or about February 1, 2011, Defendant submitted a revised LTCP (“2011 LTCP”).

76. By letter dated September 14, 2011, EPA notified Defendant that the 2011 LTCP did not meet the requirements of the 2009 Order or the CSO Control Policy.

77. Paragraph C.V.C.1. of the 2011 Amended Permit states: “DELCORA submitted the updated Long Term Control Plan to EPA on February 1, 2011. DELCORA shall continue implementation of the April 1999 LTCP and July 2008 addendum to the LTCP until the updated plan is approved. Implementation of the updated plan shall result in compliance with water quality standards. The updated LTCP must be in accordance with the 1994 National CSO Policy.”

78. On or about April 18, 2012, Defendant submitted a revised LTCP (“2012 LTCP”).

79. By letter dated April 18, 2013, EPA informed Defendant that the 2012 LTCP did not conform to the requirements of the CSO Policy.

80. Following Defendant’s February 2012 application for renewal of its NPDES Permit, PADEP issued Defendant NPDES Permit Number PA0027103 effective May 1, 2013 and amended on or about December 17, 2013 (effective January 1, 2014), expiring April 30, 2018 (“2013 Permit”).

81. Paragraph C.V.C.1 of the 2013 Permit states: “DELCORA submitted the updated Long Term Control Plan to EPA on February 1, 2011. DELCORA shall continue implementation of the April 1999 LTCP and July 2008 addendum to the LTCP until the updated plan is approved. Implementation of the updated plan shall result in compliance with water quality standards. The updated LTCP must be in accordance with the 1994 National CSO Policy.”

82. Each of DELCORA’s NPDES Permits requires DELCORA to meet certain effluent limitations for discharges from Outfall 001 at the WRTP, and prohibits discharges from the CSOs during dry weather.

FEDERAL CLAIMS FOR RELIEF

FIRST FEDERAL CLAIM

(Failure to Develop and Implement an Adequate Long Term Control Plan)

83. The preceding paragraphs are re-alleged and incorporated herein by reference.

84. From at least July 1, 2009, and continuing to the present, Defendant has failed to submit a Long Term Control Plan and schedule for implementation consistent with the EPA’s CSO Policy as required by the CSO Policy, the March 2009 Amended Permit and the 2013 Permit.

85. Defendant's failure to develop and implement an adequate Long Term Control Plan constitutes a violation of its NPDES Permits and Section 301 of the Act, 33 U.S.C. § 1311.

86. Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the Act, including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty. Each day that DELCORA fails to develop and implement an adequate Long Term Control Plan in violation of its NPDES Permits constitutes a separate violation of its NPDES Permits and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

87. Unless enjoined by an order of the Court, Defendant will continue to violate its NPDES Permits, and therefore Section 301(a) of the Act, 33 U.S.C. § 1311(a), by failing to develop and implement a Long Term Control Plan consistent with the requirements of its NPDES Permits and Section 402(q) of the Act.

88. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, pursuant to 40 C.F.R. Part 19.

SECOND FEDERAL CLAIM (Effluent Limitation Violations)

89. The preceding paragraphs are re-alleged and incorporated herein by reference.

90. Defendant's NPDES Permits authorize it to discharge pollutants from a single Treatment Plant point identified as Outfall 001. Discharges from Outfall 001 are subject to effluent limitations that prohibit discharges of specified pollutants in excess of numeric monthly and weekly average mass unit limits, as well as numeric monthly and weekly average concentration limits.

91. On numerous occasions since 2009, Defendant discharged wastewater containing pollutants from Outfall 001 in violation of the effluent limitations contained in its NPDES Permits.

92. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by an NPDES permit issued by EPA or an authorized State pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

93. The receiving waters for Defendant's discharges in excess of effluent limitations contained in its applicable NPDES Permits constitute waters of the United States that are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

94. Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the Act, including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty. Each day that DELCORA discharges wastewater containing pollutants from Outfall 001 in violation of the effluent limits contained in its NPDES Permits constitutes a separate violation of a permit condition or limitation and each discharge is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

95. Unless enjoined by an order of the Court, Defendant will continue to discharge pollutants in excess of its effluent limitations for Outfall 001 in violation of Section 301 of the Act, 33 U.S.C. § 1311.

96. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, pursuant to 40 C.F.R. Part 19.

THIRD FEDERAL CLAIM
(Unpermitted CSO Discharges)

97. The preceding paragraphs are re-alleged and incorporated herein by reference.

98. Defendant's NPDES Permits authorize Defendant to discharge combined sewage from its combined sewer outfalls only when necessitated by stormwater entering the sewer system and exceeding the hydraulic capacity of the sewers and /or the treatment plant.

99. Defendant's NPDES Permits state that dry weather overflows are prohibited.

100. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued by the EPA or an authorized State pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

101. Since 2009, Defendant has repeatedly discharged combined sewage from combined sewer outfalls during dry weather.

102. Since 2009, Defendant has repeatedly discharged combined sewage from combined sewer outfalls during storm events where the hydraulic capacity of the sewers and /or the treatment plant has not been exceeded due to precipitation.

103. Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d), provide that any person who violates any condition or limitation which implements Section 301 of the Act, including permit conditions and limitations, shall be subject to injunctive relief and a civil penalty.

104. Unless enjoined by an order of the Court, Defendant will continue to discharge pollutants from its combined sewer outfalls in violation of its NPDES permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

105. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, Defendant is liable for civil penalties of up to \$37,500 per day per violation occurring on or after January 12, 2009, pursuant to 40 C.F.R. Part 19.

SUPPLEMENTAL STATE CLAIMS

FIRST SUPPLEMENTAL STATE CLAIM (Failure to Develop and Implement an Adequate Long Term Control Plan)

106. The preceding paragraphs are re-alleged and incorporated herein by reference.

107. Defendant's failure to develop and implement an approved LTCP constitutes a violation of its NPDES Permits and Section 202 of the Clean Streams Law, 35 P.S. § 691.202.

108. Defendant will continue to violate its NPDES Permit, and will therefore continue to violate Section 202 of the Clean Streams Law, 35 P.S. § 691.202, in this manner, unless enjoined by the Court.

109. The violations described in the preceding paragraphs constitute unlawful conduct pursuant to Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subject Defendant to a claim for civil penalties of up to \$10,000 per day for such violations under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

SECOND SUPPLEMENTAL STATE CLAIM (Effluent Limitation Violations)

110. The preceding paragraphs are re-alleged and incorporated herein by reference.

111. On numerous occasions since 2009, Defendant discharged wastewater containing pollutants from Outfall 001 in violation of the effluent limitations contained in its NPDES Permits.

112. The discharge of sewage into waters of the Commonwealth, as described herein, was not authorized by permit or regulation and constitutes a violation of Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202.

113. The discharge of sewage into waters of the Commonwealth, as described herein, resulted in pollution and thereby constitutes a violation of Section 401 of the Clean Streams Law, 35 P.S. § 691.401.

114. Unless enjoined by the Court, Defendant will continue to violate its NPDES Permit and Sections 201, 202 and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202 and 691.401.

115. The violations described in the preceding paragraphs constitute unlawful conduct pursuant to Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subject Defendant to a claim for civil penalties of up to \$10,000 per day for such violations under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

**THIRD SUPPLEMENTAL STATE CLAIM
(Unpermitted CSO Discharges)**

116. The preceding paragraphs are re-alleged and incorporated herein by reference.

117. Since 2009, Defendant has repeatedly discharged combined sewage from combined sewer outfalls during dry weather.

118. The discharge of sewage into waters of the Commonwealth, as described herein, was not authorized by permit or regulation and constitutes a violation of Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202.

119. The discharge of sewage into waters of the Commonwealth, as described herein, resulted in pollution and thereby constitutes a violation of Section 401 of the Clean Streams Law, 35 P.S. § 691.401.

120. Unless enjoined by the Court, Defendant will continue to violate its NPDES Permit and Sections 201, 202 and 401 of the Clean Streams Law, 35 P.S. §§ 691.201, 691.202 and 691.401.

121. The violations described in the preceding paragraphs constitute unlawful conduct pursuant to Section 611 of the Clean Streams Law, 35 P.S. § 691.611, and subject Defendant to a claim for civil penalties of up to \$10,000 per day for such violations under Section 605 of the Clean Streams Law, 35 P.S. § 691.605.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment on their behalf against Defendant as follows:

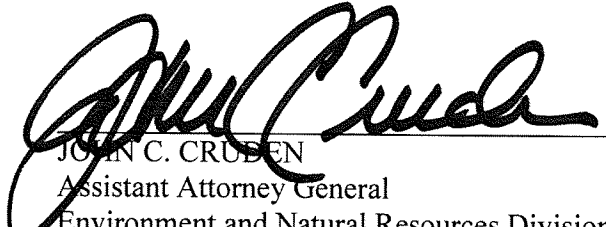
a) A permanent injunction directing Defendant to take all steps necessary to achieve permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.3, 691.601, 691.611;

b) A permanent injunction directing Defendant to take all steps necessary to achieve permanent and consistent compliance with the Act and the regulations promulgated thereunder, and all terms and conditions of its NPDES Permits;

c) A judgment assessing civil penalties against Defendant for up to \$37,500 per day for each violation of the Act occurring on or after January 12, 2009, and up to \$10,000 per day for each violation, pursuant to Section 605 of the Clean Streams Law, 35 P.S. § 691.605;

- d) Award the Plaintiffs their costs in this action; and
- e) Grant the Plaintiffs such other relief as the Court deems appropriate.


Respectfully Submitted,



JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice


Dated: _____

July 21, 2015



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Dated: JULY 21, 2015



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