

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, )  
 )  
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 )  
 Plaintiff, )  
 ) Civil Action No.  
 v. )  
 )  
 )  
 THE CITY OF AKRON, OHIO, )  
 )  
 )  
 Defendant. )  
 )

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”), alleges as follows:

**Nature of Action**

1. This is a civil action brought by the United States against the City of Akron, Ohio (the “City” or “Akron”), pursuant to Sections 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), for civil penalties and injunctive relief for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the terms and conditions of Akron’s National Pollutant Discharge Elimination System (“NPDES”) permit (the “Permit”).

**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, 1345, and 1355.

3. Venue is proper in the Northern District of Ohio pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b), because the City is located in this judicial district and the causes of action alleged in this Complaint arose in this district.

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

5. 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.

#### **The Parties**

6. Plaintiff, United States of America, is acting at the request and on behalf of the Administrator of U.S. EPA (“Administrator”).

7. The State of Ohio is a “State” and a “person” within the meaning of Sections 502(3) and (5) of the CWA, 33 U.S.C. §§ 1362(3) and (5).

8. Defendant City of Akron is a political subdivision of the State of Ohio located in Summit County, Ohio. Akron is a “municipality” and a “person” within the meaning of Sections 502(4) and (5) of the CWA, 33 U.S.C. §§ 1362(4) and (5).

9. Among other responsibilities, Akron is responsible for the operation and management of the wastewater collection, treatment, discharge, and disposal facilities that serve over 300,000 customers in the Akron area. Sewage entering Akron’s system comes from community or municipal sewer systems, including, but not limited to: Cuyahoga Falls, Stow, Springfield, Mogadore, Lakemore, Tallmadge, Fairlawn, Bath, Montrose and some unincorporated areas in Summit County.

10. Akron owns and operates a waste water treatment plant (“WWTP”), a system of

interceptors and other wastewater conveyance and treatment equipment and infrastructure (collectively, the “sewer system”). Akron’s sewer system includes combined sewers, which convey both sanitary sewage and storm water, and separate sewers which convey only sanitary sewage.

### **Statutory Background**

11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant” by any person into navigable waters of the United States except in compliance with that Section, and, where applicable, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

12. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that U.S. EPA may authorize a state to administer the NPDES program within its jurisdiction. The State of Ohio has been authorized to administer the NPDES program since April 11, 1974.

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

14. Section 309(b) of the Act, 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 is in violation of, *inter alia*, 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.

15. 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, or violates any condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation. This statutory maximum applies to violations occurring before January 30, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, U.S. EPA may seek 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 after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation occurring after January 12, 2009. *See* 73 Fed. Reg. 75,340 (Dec. 11, 2008).

#### **General Allegations**

16. At various times relevant to this Complaint, the City has owned and/or operated a wastewater treatment plant, combined sewer overflow (“CSO”) control facilities and their associated collection systems which receive and treat wastewater and storm water runoff from residential, commercial, industrial and combined sewage sources, and discharge wastewaters directly or indirectly through their tributaries into the Cuyahoga River, the Little Cuyahoga River, and the Ohio Canal.

17. At various times relevant to this Complaint, the City has “discharged” and continues to discharge “pollutants” within the meaning of Sections 502(6) and (16) of the Act, 33 U.S.C. §§ 1362(6) and (16), from the City’ WWTP and sewer system through “point sources” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), directly or indirectly

through their tributaries into the Cuyahoga River, the Little Cuyahoga River, and the Ohio Canal.

18. The Cuyahoga River, the Little Cuyahoga River, the Ohio Canal, and their tributaries are all “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. At all times relevant to this Complaint, the State has been authorized by U.S. EPA, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, to administer an NPDES permit program for regulating discharges of pollutants into navigable waters within its jurisdiction.

20. On or about September 30, 1994, the Ohio Environmental Protection Agency (“Ohio EPA”), under the authority of Section 402 of the CWA, 33 U.S.C. § 1342, issued NPDES Permit No. 3PF00000\*GD (the “Permit”) to the City. The Permit became effective on November 1, 1994, and was set to expire on April 1, 1998. However, pursuant to Ohio Rev. Code Section 119.06 and Ohio Admin. Code 3745-33-04(D), the terms and conditions of the Permit will continue in force until, and then pursuant to, a final administrative disposition of Akron’s application for permit renewal, provided said application was filed in a timely manner.

21. At all times relevant to this Complaint, the Permit has authorized the City to discharge pollutants from 38 CSO locations identified in Part II.E of the Permit, subject to certain limitations and conditions. These limitations and conditions include, but are not limited to, the “General Effluent Limitations” set forth in Part III.2 of the Permit, which provides that:

The Effluent shall, at all times, be free of substances:

- A. In amounts that will settle and form putrescent, or otherwise objectionable, sludge deposits; or that will adversely affect aquatic life or water fowl;
- B. Of an oily, greasy, or surface-active nature, and of other floating debris, in

amounts that will form noticeable accumulations of scum, foam or sheen;

- C. In amounts that will alter the natural color or odor of the receiving water to such degree as to create a nuisance;
- D. In amounts that either singly or in combination with other substances are toxic to human, animal, or aquatic life;
- E. In amounts that are conducive to the growth of aquatic weeds or algae to the extent that such growths become inimical to more desirable forms of aquatic life, or create conditions that are unsightly, or constitute a nuisance in any other fashion;
- F. In amounts that will impair designated instream or downstream water uses.

22. At all times relevant to this Complaint, Part II.E of the Permit authorized Akron to discharge from the CSO locations identified in the Permit, subject to certain limitations and conditions, “only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system.”

23. At all times relevant to this Complaint, Part II.F of the Permit has required Akron to monitor, among other things, the volume and duration of its CSO discharges and to report the results to Ohio EPA in monthly operating reports.

24. At all times relevant to this Complaint, Part I.A.4 of the Permit has prohibited Akron from bypassing wastewater around secondary treatment at the WWTP unless the “plant influent flows exceed 110 MGD [million gallons per day] and the flow equalization pumping capacity is being maximized due to storm related events and activities.”

25. At all times relevant to this Complaint, Part I.A of the Permit has required Akron

to monitor and analyze its secondary bypass effluent in accordance with the requirements therein, and report the results to Ohio EPA in monthly operating reports.

26. At all times relevant to this Complaint, Part 1.B.2 of the Permit has required Akron to monitor the toxicity of the receiving stream upstream of the point of discharge, at Station Number 3PF00000801, in accordance with the requirements therein, and report the results to Ohio EPA in monthly operating reports.

27. At all times relevant to this Complaint, Part 1.B.3 of the Permit has required Akron to monitor the toxicity of the receiving stream downstream of the point of discharge, at Station Number 3PF00000904, in accordance with the requirements therein, and report the results to Ohio EPA in monthly operating reports.

28. At all times relevant to this Complaint, Part 1.B.4 of the Permit has required Akron to monitor the receiving stream upstream of the point of discharge, at Station Number 3PF00000801, and downstream of the point of discharge, at Station Number 3PF00000001, in accordance with the requirements therein, and report the results to Ohio EPA in monthly operating reports.

29. At all times relevant to this Complaint, Part 1.B.7 of the Permit has required Akron, when CSOs are occurring, to monitor the receiving stream at Station Numbers 3PF00000802(1), 3PF00000803, 3PF00000804(1), 3PF00000805 and 3PF00000806, in accordance with the requirements therein, and report the results to Ohio EPA in monthly operating reports.

30. The City has violated Section 301 of the Act, 33 U.S.C. § 1311, and its Permit by failing to meet the limitations, requirements and conditions contained in the Permit, and by

discharging pollutants from unpermitted point sources.

### **First Claim for Relief**

#### **CSOs – Violation of General Effluent Limitations**

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

32. At various times relevant to this Complaint, the City has discharged pollutants from CSO locations identified in Part II.E. of the Permit, in amounts and quality that violated the terms and conditions of the Permit.

33. Each of the foregoing CSO discharges violates the terms and conditions of the City's Permit and constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a), for each day of each discharge from each location.

34. The City violated and, unless enjoined by the Court, will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311.

35. Pursuant to Section 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, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the City is liable for injunctive relief and civil penalties payable to the United States 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 after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009.

### **Second Claim for Relief**

#### **CSOs - Dry Weather Overflows**

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. At various times relevant to this Complaint, the City has discharged pollutants from some or all of the “combined sewer overflow” locations identified in Part II.E of the Permit during times that were not “wet weather periods,” in violation of the Permit and Section 301 of the CWA, 33 U.S.C. §1311.

38. Each of the foregoing discharges violates the terms and conditions of the City’s Permit and constitutes a separate violation of Section 301(a) of the CWA, 33 U.S.C. 1311(a), for each day of each discharge from each location.

39. The City violated and, unless enjoined by the Court, will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311.

40. 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, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the City is liable for injunctive relief and civil penalties payable to the United States 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 after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009.

**Third Claim for Relief**

**Unpermitted Discharges**

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. At various times relevant to this Complaint, the City has discharged pollutants from point sources not identified in or authorized by any NPDES Permit issued by U.S. EPA or the State pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. A majority of these

unauthorized discharges are from Akron's combined sewer system, including from manholes, pump stations, pipes, and other related appurtenances within the collection system. In addition, Akron has had unauthorized discharges from its sanitary sewer system.

43. Each of the foregoing discharges from unauthorized point sources constitutes a violation of Section 301 of the CWA, 33 U.S.C. § 1311, for each day of each discharge from each location.

44. Akron violated and, unless enjoined by the Court, will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311.

45. 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, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the City is liable for injunctive relief and civil penalties payable to the United States 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 after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009.

#### **Fourth Claim for Relief**

##### **Bypass Violations**

46. Paragraphs 1 through 45 are realleged and incorporated herein by reference.

47. At various times relevant to this Complaint, Akron diverted wastewater from secondary treatment at the WWTP when the plant peak influent flow did not exceed 110 MGD and/or the flow equalization pumping station capacity was not being maximized.

48. Each of the foregoing diversions violated the bypass prohibition in the Permit and

was in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for each day of each bypass.

49. The City violated and, unless enjoined by the Court, will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311.

50. 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, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the City is liable for injunctive relief and civil penalties payable to the United States 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 after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009.

#### **Fifth Claim for Relief**

##### **Failure to Monitor and/or Report**

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. At various times relevant to this Complaint, Akron violated Parts I.A, I.B.2, I.B.3, I.B.4 and I.B.7 of the Permit by failing to monitor and/or report the results of its monitoring.

53. Each failure of the City to monitor and/or report constituted a separate violation of the City's Permit and Section 301 of the CWA, 33 U.S.C. § 1311, for each day of each violation.

54. The City violated and, unless enjoined by the Court, will continue to violate Section 301 of the CWA, 33 U.S.C. § 1311.

55. 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, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the City is

liable for injunctive relief and civil penalties payable to the United States 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 after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009.

### **Sixth Claim for Relief**

#### **Emergency Powers (Section 504)**

56. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

57. Section 504(a) of the Act, 33 U.S.C. § 1364(a), provides as follows, in pertinent

part:

##### **(a) 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 or to the welfare of persons where such endangerment is to the livelihood of such 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.

58. U.S. EPA is in receipt of evidence that, on numerous occasions in the past, untreated sewage from Akron's sewer system has been released onto property and into buildings, including homes, owned by residents of Summit County, in locations where persons have or may have come into contact with such sewage. Untreated sewage is "pollution," as that term is defined in Section 501(19) of the Act, 33 U.S.C. § 1362(19). As such, Akron and its sewer system are a "pollution source" within the meaning of Section 504(a) of the Act.

59. Untreated sewage can carry bacteria, viruses, parasitic organisms, intestinal

worms, and burroughs (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, infections, 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, and the endangerment from untreated sewage remains imminent until the area impacted by the sewage is adequately cleaned and disinfected.

60. Pursuant to Section 504(a), the United States seeks an order requiring Akron to take actions, including, but not limited to 1) increasing sewer capacity, improving operation and maintenance, and installing backflow prevention devices to prevent or minimize to the greatest extent possible the release of sewage into buildings, yards, and other areas where persons may come into contact with it; 2) when releases do occur, cleaning up and disinfecting the affected property so as to remove any endangerment to health; and 3) any other action as may be necessary.

**Prayer for Relief**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

- A. Permanently enjoin the City from any further violations of the Clean Water Act and the Permit;
- B. Order the City to expeditiously complete all actions necessary to ensure that it complies with the Clean Water Act and the Permit;
- C. Order the City to pay a civil penalty to the United States 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 after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009;

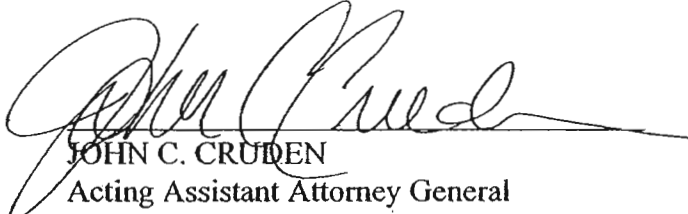
D. Pursuant to Section 504(a) of the Act, order the City to take actions, including, but not limited to 1) increasing sewer capacity, improving operation and maintenance, and installing backflow prevention devices to prevent or minimize to the greatest extent possible the release of sewage into buildings, yards, and other areas where persons may come into contact with it; 2) when releases do occur, cleaning up and disinfecting the affected property so as to remove any endangerment to health; and 3) any other action as may be necessary; and

E. Grant the Plaintiff such further relief as the Court deems just and proper.

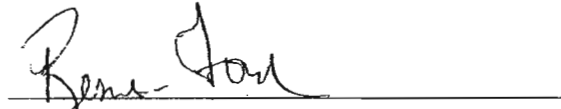
Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

DATE: 2/3/09

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

DATE: 2/3/09

  
RENITA Y. FORD  
BONNIE COSGROVE  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
Telephone: (202) 305-0232  
Facsimile: (202) 514-8395  
E-mail: [renita.ford@usdoj.gov](mailto:renita.ford@usdoj.gov)

WILLIAM J. EDWARDS  
Acting United States Attorney for the  
Northern District of Ohio  
JAMES L. BICKETT  
Assistant United States Attorney  
2 South Main Street, Room 208  
Akron, Ohio 44308  
(330) 761-0523  
James.Bickett@usdoj.gov

OF COUNSEL:

SUSAN PERDOMO  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region V

ALAN MORRISSEY  
Senior Attorney  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency, Headquarters