

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

UNITED STATES OF AMERICA and)	
the STATE OF OHIO)	
)	Civil Action No.
Plaintiffs,)	
)	Judge
v.)	
)	
NORTHEAST OHIO)	
REGIONAL SEWER DISTRICT,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Ohio, on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”), allege the following:

NATURE OF ACTION

1. This is a civil action pursuant to Sections 309(b) and (d) and 505(a) and (b)(2) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d) and 1365(a) and (b)(2) and Ohio Revised Code (“ORC”) §§ 6111.07 and 6111.09, for injunctive relief and assessment of civil penalties

against Defendant Northeast Ohio Regional Sewer District (“NEORS”), for discharging pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the terms and conditions of its National Pollutant Discharge Elimination System (“NPDES”) permits issued to NEORS in accordance with the provisions of Section 402(a) of the CWA, 33 U.S.C. § 1342, and ORC Chapter 6111 and the regulations adopted thereunder.

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b) and 505(a) of the CWA, 33 U.S.C. §§ 1319(b) and 1365(a), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue is proper in the Northern District of Ohio pursuant to Sections 309(b) and 505(a) of the CWA, 33 U.S.C. §§ 1319(b) and 1365(a), and 28 U.S.C. §§ 1391(b) and (e), because the Defendant is located in this judicial district and the causes of action alleged in this complaint arose in this district.

3. 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).

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

THE PARTIES

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

6. Plaintiff, the State of Ohio, is acting at the request and on behalf of the Director of Ohio EPA as well as in the capacity of a citizen within the citizen suit provisions of the CWA and Ohio law related to water pollution.

7. The State of Ohio is a “State” and “person” within the meaning of Section 502(4)

and (5) of the CWA, 33 U.S.C. § 1362(4) and (5).

8. Defendant NEORSD is a regional sewer district created by order of Cuyahoga County Common Pleas Court Judge George J. McMonagle on June 15, 1972, and presently organized and operating as a political subdivision under ORC Chapter 6119. NEORSD is vested with the power to sue and be sued. Among other responsibilities, NEORSD is responsible for the operation and management of the wastewater collection, treatment, discharge, and disposal facilities that serve more than one million customers in the Cleveland Metropolitan Area in northeast Ohio. Sewage entering the NEORSD system comes from community or municipal sewer systems, including, but not limited to: Beachwood, Bedford, Bedford Heights, Berea, Boston Heights, Bratenahl, Brecksville, Broadview Heights, Brook Park, Brooklyn, Brooklyn Heights, Cleveland, Cleveland Heights, Cuyahoga Heights, East Cleveland, Garfield Heights, Gates Mills, Highland Heights, Highland Hills, Hudson, Independence, Lakewood, Linndale, Lyndhurst, Macedonia, Maple Heights, Mayfield, Mayfield Heights, Mayfield Village, Middleburg Heights, Newburgh, Newburgh Heights, North Randall, North Royalton, Northfield, Northfield Center Township, Oakwood, Olmsted Falls, Olmsted Township, Orange, Parma, Parma Heights, Pepper Pike, Richfield, Richmond Heights, Sagamore Hills Township, Seven Hills, Shaker Heights, Solon, South Euclid, Strongsville, Twinsburg Township, University Heights, Valley View, Walton Hills, and Warrensville Heights.

9. NEORSD owns and operates three wastewater treatment plants: the Easterly wastewater treatment plant (“Easterly WWTP”), which discharges into Lake Erie; the Southerly wastewater treatment plant (“Southerly WWTP”), which discharges into the Cuyahoga River; and the Westerly wastewater treatment plant (“Westerly WWTP”), which discharges into Lake Erie.

10. NEORSD also owns and operates a system of interceptors and other wastewater conveyance and treatment equipment and infrastructure (“sewer system”). NEORSD’s sewer system includes combined sewers, which convey both sanitary sewage and storm water. On numerous occasions, NEORSD discharges combined sewage into receiving waters (described in Paragraph 17, below) through combined sewer overflow (“CSO”) outfalls.

11. NEORSD is a “municipality” and a “person” within the meaning of Section 502(4) and (5) of the CWA, 33 U.S.C. § 1362(4) and (5), ORC § 6111.01 and Ohio Administrative Code (“OAC”) 3745-33-01.

STATUTORY BACKGROUND

12. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” into navigable waters by any person except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit issuing authority may issue an NPDES permit that 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 CWA, 33 U.S.C. § 1311, and such other conditions as the authority determines are necessary to carry out the provisions of the CWA.

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

15. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to

commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates, *inter alia*, Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

16. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 of the CWA or violates any permit 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 of up to \$25,000 per day for each violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act as amended by the Debt Collection Improvement Act, the maximum civil penalty for violations occurring between January 31, 1997 and March 15, 2004 is \$27,500 per violation per day, and the maximum civil penalty for violations occurring after March 15, 2004 is \$32,500 per violation per day. 28 U.S.C. § 2461, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004).

GENERAL ALLEGATIONS

17. At all times relevant to this complaint, NEORS D has discharged and continues to discharge “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), and OAC 3745-33-01, from NEORS D’s wastewater treatment plants and sewer system through “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and OAC 3745-33-01, into “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “waters of the state” as defined in ORC § 6111.01. These waters include, but are not limited to, Lake Erie, the Cuyahoga River, the Rocky River, Euclid Creek, Mill Creek, Doan Brook, West Creek, Ohio Canal, Spring Creek, Treadway Creek, Big Creek, Burke Brook, Morgana Run, Kingsbury Run, and other tributaries of the named waters.

18. On or about February 24, 1997, Ohio EPA issued Ohio EPA Permit No.

3PA00002*FD (the “CSO permit”) to NEORSD under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and ORC § 6111.03. The CSO Permit became effective on April 1, 1997, and expired under its own terms on March 28, 2002. However, pursuant to ORC § 119.06 and OAC 3745-33-04(D), the terms and conditions in the CSO Permit continue in force until, and then pursuant to, a final administrative disposition of NEORSD’s application for permit renewal, provided said application was filed in a timely manner.

19. The CSO Permit authorizes NEORSD to discharge pollutants from 126 “combined sewer overflows” (“CSOs”) at locations specified in Part II.A of the CSO Permit only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system, subject to certain limitations and conditions. These limitations and conditions include, but are not limited to, the "General Effluent Limitations" set forth at Part III.2 of the CSO Permit, which provides in pertinent part that “the Effluent shall, at all times, be free of substances... [i]n amounts that will impair designated instream or downstream water uses.”

20. The Easterly Wastewater Treatment Plant (the “Easterly WWTP”) is located at 14021 Lakeshore Boulevard, Cleveland, Cuyahoga County, Ohio. On or about June 26, 2000, Ohio EPA, under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and ORC § 6111.03, issued Ohio EPA Permit No. 3PF00001*JD (the “2000 Easterly Permit”) to NEORSD. Ohio EPA amended the 2000 Easterly Permit on March 14, 2001 as Ohio EPA Permit No. 3PF00001*KD (the “2001 Easterly Permit”). The 2000 Easterly Permit became effective on August 1, 2000 and the 2001 Easterly Permit became effective on May 1, 2001. The 2001 Easterly Permit expired under its own terms on March 31, 2005. However, pursuant to ORC § 119.06 and OAC 3745-33-04(D), the terms and conditions in the 2001 Easterly Permit continue in force until, and then pursuant to, a

final administrative disposition of NEORSD's application for permit renewal, provided said application was filed in a timely manner. The 2001 Easterly Permit authorizes NEORSD to discharge pollutants into Lake Erie from the Easterly WWTP through Outfall 3PF00001001 in accordance with effluent limitations, sampling requirements and other terms and conditions of the permit.

21. The Southerly Wastewater Treatment Plant (the "Southerly WWTP") is located at 6000 Canal Road, Cleveland, Cuyahoga County, Ohio. On or about June 28 2000, Ohio EPA, under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and ORC § 6111.03, issued Ohio EPA Permit No. 3PF00002*KD (the "2000 Southerly Permit") to NEORSD. Ohio EPA amended the 2000 Southerly Permit on September 26, 2002, which was issued as Ohio EPA Permit No. 3PF00002*LD (the "2002 Southerly Permit"). The 2000 Southerly Permit became effective on August 1, 2000 and the 2002 Southerly Permit became effective on December 1, 2002. The 2002 Southerly Permit expired under its own terms on July 31, 2005. However, pursuant to ORC § 119.06 and OAC 3745-33-04(D), the terms and conditions in the 2002 Southerly Permit continue in force until, and then pursuant to, a final administrative disposition of NEORSD's application for permit renewal, provided said application was filed in a timely manner. The 2000 and 2002 Southerly WWTP Permits authorize NEORSD to discharge pollutants into the Cuyahoga River from the Southerly WWTP through Outfall 3PF00002001 in accordance with effluent limitations, sampling requirements and other terms and conditions of the permit.

22. At all times relevant to this Complaint, the 2001 Easterly Permit and the 2000 and 2002 Southerly Permits prohibit bypasses, which are intentional diversions of a waste stream from any portion of a treatment facility, unless, *inter alia*, the bypass was unavoidable to prevent loss of life,

personal injury or severe property damage, there were no feasible alternatives to the bypass, and NEORSD notified Ohio EPA and provided certain information regarding the bypass.

FIRST CLAIM FOR RELIEF
CSO DISCHARGES IN VIOLATION OF CSO PERMIT

23. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

24. On various dates from January 1, 2002, until the present, NEORSD discharged pollutants from some or all of the “combined sewer overflow” locations specified in Part II.D of the CSO Permit. These discharges violated the terms and conditions of the CSO Permit, including the requirements in the General Effluent Limitations portion set forth in Part III.2 of the CSO Permit, such as the requirement that, at all times, the effluent be free of substances in amounts that will impair designated instream or downstream water uses.

25. NEORSD’s CSO discharges violated the conditions of its CSO Permit, Section 301 of the CWA, 33 U.S.C. § 1311, and ORC §§ 6111.04 and 6111.07(A).

26. Unless enjoined by the Court, NEORSD will continue to discharge in violation of its CSO Permit, Section 301 of the CWA, 33 U.S.C. § 1311 and ORC §§ 6111.04 and 6111.07(A).

27. Pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), NEORSD is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of its NDPEs Permits that occurred between January 30, 1997 and March 15, 2004, up to \$32,500 for each violation occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009. Pursuant to ORC §§ 6111.07 and 6111.09, NEORSD is liable for injunctive relief and civil penalties payable to the State of Ohio of up to \$10,000 per day for each violation.

SECOND CLAIM FOR RELIEF
BYPASSES IN VIOLATION OF EASTERLY AND SOUTHERLY PERMITS

28. Paragraphs 1 through 21 are realleged and incorporated herein by reference.

29. On various dates from January 1, 2002, NEORS D bypassed wastewater from outfalls at the Easterly and Southerly WWTPs in a manner that violated the bypass provisions set forth in the 2001 Easterly or 2000 or 2002 Southerly Permits as applicable for each such bypass.

30. NEORS D's bypasses violated the conditions of its 2001 Easterly and 2000 and 2002 Southerly Permits, Section 301 of the CWA, 33 U.S.C. § 1311, and ORC § 6111.07(A).

31. Unless enjoined by the Court, NEORS D will continue to bypass in violation of its 2001 Easterly and 2000 and 2002 Southerly Permits, Section 301 of the CWA, 33 U.S.C. § 1311, and ORC § 6111.07(A).

32. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319 (b) and (d), NEORS D is liable for injunctive relief and civil penalties of up to \$27,500 per day for each violation of its NDPES Permits that occurred between January 30, 1997 and March 15, 2004, up to \$32,500 for each violation occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009. Pursuant to ORC §§ 6111.07 and 6111.09, NEORS D is liable for injunctive relief and civil penalties payable to the State of Ohio of up to \$10,000 per day for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Ohio prays that the Court:

1. Issue a permanent injunction preventing NEORSD from committing any further violations of the CWA, 33 U.S.C. § 1251 et seq., ORC Chapter 6111, NEORSD's CSO Permit, its 2001 Easterly Permit, and its 2002 Southerly Permit;

3. Order NEORSD to expeditiously complete all actions necessary to ensure that NEORSD complies with its CSO Permit, its 2001 Easterly Permit, its 2002 Southerly Permit, and all other applicable requirements of the Clean Water Act and ORC Chapter 6111;

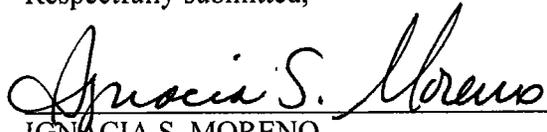
4. Order NEORSD to pay a civil penalty to the United States of up to \$27,500 per day for each violation of the Clean Water Act occurring between January 30, 1997 and March 15, 2004, up to \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009, and up to \$37,500 for each violation on or after January 12, 2009;

5. Order NEORSD to pay a civil penalty to the State of Ohio pursuant to ORC § 6111.09 of up to \$10,000 per day for each violation, including violations subsequent to the filing of this Complaint;

5. Award the Plaintiffs their costs of this action; and

6. Grant the Plaintiffs such further relief as the Court deems just and proper.

Respectfully submitted,



IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

s/Steven D. Ellis
STEVEN D. ELLIS
KRISTIN M. FURRIE
Trial Attorneys
Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-3163
Facsimile: (202) 616-6584
steven.ellis@usdoj.gov
kristin.furrie@usdoj.gov

STEVEN M. DETTELBACH
United States Attorney for the Northern District of Ohio

By: s/Steven J. Paffilas
STEVEN J. PAFFILAS
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
Telephone: 216-622-3698
Facsimile: 216-522-4982
steven.paffilas@usdoj.gov
Ohio Bar Reg. No: 0037376

OF COUNSEL:

NICOLE CANTELLO
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5

ANDREW CHERRY
Attorney-Advisor
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



SUMMER J. KOLADIN PLANTZ (0072072)

Assistant Attorney General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215-3400

Telephone: (614) 466-2766

Facsimile: (614) 644-1926

Summer.Plantz@OhioAttorneyGeneral.gov