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King County : 'RP Wastewater Treatment Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	Docket No.	CWA-10-2009-0083
KING COUNTY, WASHINGTON)		FOR INFORMATION AND ICE ORDER BY CONSENT
Respondent.)) –		

STATUTORY AUTHORITY

1. The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 308 and 309(a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1318 and 1319(a). This authority has been delegated to the Regional Administrator for EPA Region 10 and has been redelegated to the Director of the Office of Compliance and Enforcement.

FINDINGS

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person except in accordance with other

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U.S. Environmental Protection Agency 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101 (206) 553-1037

specified sections of the Act, including Section 402, 33 U.S.C. § 1342.

- 3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System ("NPDES") program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.
- 4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), a State may administer its own NPDES permit program for discharges into navigable waters within its jurisdiction upon approval by the Administrator of EPA. EPA has approved the State of Washington's NPDES permit program. Therefore, within the State of Washington, the Washington Department of Ecology ("WADOE") issues NPDES permits to point sources pursuant to the Act.
- 5. Although WADOE issues NPDES permits in the State of Washington, EPA retains the authority to take an enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319. See 33 U.S.C. § 1342(i).
- 6. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides that the Administrator may issue a compliance order when the Administrator finds that a person is in violation of any permit condition that implements various sections of the Act.
- 7. The King County, Washington ("Respondent") operates a domestic wastewater treatment facility and collection system ("Facility"). For the purpose of the Permit and this Order, the term "Facility" refers to the West Point Treatment Plant, the collection system, combined sewer overflow ("CSO") outfalls, and CSO Treatment Plants. The King County Wastewater Treatment Division is the division of the Respondent responsible for operation and maintenance of the Facility. Respondent is a municipal corporation organized under the laws of the State of Washington and, thus, is a "person" within the meaning of Section 502(5) of the Act,

33 U.S.C. §1362(5).

- 8. NPDES Permit No. WA-002918-1 ("Permit") was issued to Respondent and became effective on January 1, 2004. The Permit expired on December 31, 2008. The Permit specified the conditions under which Respondent was authorized to discharge effluent from the Facility. WDOE received a NPDES permit application from Respondent on June 30, 2008, in compliance with Section G7, of the Permit. As a result, the Permit has been administratively extended and will remain in effect until a new Permit is issued for the Facility.
- 9. The Facility is authorized to discharge treated effluent from Outfall 001 (West Point Treatment Plant) into the Puget Sound. In addition, the Facility is authorized to discharge primary treated and disinfected effluent from the following CSO Outfalls: Outfall 046 at the Carkeek CSO Treatment Plant, Outfall 051 at the Alki CSO Treatment Plant, Outfall 027b at the Elliott West CSO Treatment Facility, and Outfall 044 at the Henderson/MLK CSO Treatment Facility. These four CSO outfalls discharge into the following receiving waters: Puget Sound, Elliott Bay, and the Duwamish Waterway are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are "waters of the United States" within the meaning of 40 C.F.R. § 122.2. Outfalls 001, 046, 051, 027b, and 044 are "point sources" within the meaning of 40 C.F.R. § 122.2.
- 10. Section S12 of the Permit states that "The following is a list of combined sewer overflows (CSOs), which are occasional point sources of pollutants as a result of precipitation events. Discharges from the sites are prohibited except as a result of precipitation events." The outfalls listed in Section S12 are: 046, 051, 003, 004, 006, 008, 009, 013, 014, 015, 027b, 027a, 028, 029, 030, 031, 032, 036, 037, 039, 040, 041, 042, 044, 045, 048, 007, 011, 012, 018, 033, 034, 035, 038, 043, 049, 053, 054, 055, 056, and 057. Therefore, unless caused by a precipitation event, any King County system discharges from these outfalls are unauthorized

discharges in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). In addition, any discharges from other point sources in the collection system, such as manholes, are unauthorized discharges in violation of Section S12 of the Permit.

- sewer overflows from Outfall 027b (Elliott West CSO Treatment Facility) subject to the limitations set forth in Section S1.D. One of the effluent limitations that Respondent is required to meet at Outfall 027b is 50% Total Suspend Solids ("TSS") Removal Efficiency on a yearly average. Pursuant to note c in the tables in Section S.1.D of the Permit the TSS Percent Removal Efficiency is calculated on a mass balance basis as the percent of solids captured at Outfall 027b and then permanently removed at the West Point Treatment Plant.
- 12. Respondent discharged inadequately treated combined sewer overflows from Outfall 027b (Elliott West CSO Treatment Facility) in violation of Section S1.D on the following dates: November 6, 2006, November 16, 2007, December 2, 2007, December 3, 2007, and December 4, 2007. The discharges on November 6, and December 2, 3, and 4 had received incomplete disinfection on a portion of the discharged flow, and the discharge on November 16 occurred without disinfection.
- 13. From June 2005 to May 2006, the Elliott West CSO Treatment Facility achieved 30.8% TSS removal efficiency. This TSS removal efficiency is less than the 50% TSS removal efficiency required in Section S1.D of the Permit. Therefore, Respondent violated Section S1.D of the Permit.
- 14. From June 2006 to May 2007, the Elliott West CSO Treatment Facility achieved 29.5% TSS removal efficiency. This TSS removal efficiency is less than the 50% TSS removal efficiency required by Section S1.D of the Permit. Therefore, Respondent violated Section S1.D of the Permit.

15. Section S5.F of the Permit prohibits Respondent from bypassing (i.e., intentionally diverting) effluent around any portion of the treatment system at outfall 001. Section S5.F further sets forth specific types of bypasses for which the WDOE will not take an enforcement action. Specifically, if Respondent meets the conditions set forth in Section S5.F, the WDOE will not take an enforcement action.

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- 16. Respondent neither admits nor denies the findings of fact and/or conclusions of law set forth in Paragraphs 10 through 15. Respondent, however, consents to the issuance of this Order and agrees to perform the actions set forth in the paragraphs below.
- observe and document CSO discharges at 5 outfalls annually for the presence of solids or floatable material in the discharge annually. The plan shall include a means to begin the observation within 4 hours of rainfall termination. The plan will include the process by which the presence or absence of solids or floatable material shall be observed and documented. Respondent shall repeat this process with 5 different outfalls each year until 15 outfalls have been observed and documented. Respondent shall submit a report annually on the findings by April 30th of each year.
- 18. By August 31, 2009, Respondent shall submit to EPA a plan to improve the reliability of the disinfection system for the Elliott West CSO Treatment Plant. The plan must include recommendations and select an alternative(s) for changes that will improve the reliability, operation and maintenance of the facility's disinfection system.
- 19. By December 31, 2009, Respondent shall submit a plan to EPA and WADOE that analyzes how the Elliott West CSO Treatment Facility will meet the 50% TSS removal efficiency requirement set forth in the Permit. The plan should include what modifications to the

existing treatment plant need to be done in order to achieve the 50% TSS removal efficiency in the Permit. The plan should also include timelines for implementing and beginning operation of the modified treatment plant.

- 20. If EPA does not provide written comments within sixty (60) days of submittal of any of the plans submitted by Respondent, Respondent shall implement the plan as submitted.
- 21. If EPA does provide written comments on any of the plans submitted by Respondent, Respondent shall incorporate such comments into the submitted plan and shall implement the revised plan as set forth in this Order.
- 22. In the event Respondent is unable to comply with the requirements of this ORDER, Respondent shall, within 10 days of becoming aware of such inability, provide the following:
 - a. A summary of the specific reasons why Respondent is unable to comply with the requirement;
 - A summary of all actions taken by Respondent or others that Respondent alleges demonstrate "good faith efforts" to comply with the requirement;
 and
 - The expected date and required activities by which Respondent will comply with the requirement.
 - 23. Submittals required by this ORDER shall be submitted to:

U.S. Environmental Protection Agency 309 Bradley Boulevard, Suite 115 Richland, Washington 99352 Attn: Robert Grandinetti

Washington Department of Ecology Northwest Regional Office 3190 160th Avenue SE Bellevue, Washington 98008

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Attn: Mark Henley

TERMINATION

24. EPA shall terminate this Order upon completion of all work required. EPA shall send a letter to the Respondent terminating the Order.

SANCTIONS

- 25. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing ORDER may subject Respondent to (1) civil penalties of up to \$37,500 per day of violation pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); (2) administrative penalties of up to \$16,000 per day for each violation, pursuant to Section 309(g) of the Act, 33 U.S.C.§ 1319(g); or (3) civil action in federal court for injunctive relief pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).
- 26. Nothing in this ORDER shall be construed to relieve Respondent of the requirements to fully comply with other applicable federal, state, or local laws and requirements. EPA reserves the right to take enforcement action as authorized by law for any violation of this ORDER, and for any future or past violations of the Permit or any other applicable legal requirements.

SO ORDERED this day of fuly, 2009

Edward J. Kowalski, Director

Office of Compliance and Enforcement

AGREED AND CONSENTED TO BY:

King County Wastewater Treatment Division

Theresa Jennings

Director, Department of Natural Resources and Parks

Date: 6.23.09

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I, THERESA JENNINGS, hereby certify that I am the Director of the Department of Natural Resources and Parks, and that I have the authority to enter into agreements on behalf of King County, and to otherwise legally bind King County. I hereby acknowledge that I have freely and voluntarily consented to and signed this Order on behalf of the King County after obtaining advice of counsel.