

JUL 29 2009

King County . . . RP  
Wastewater Treatment Division

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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	Docket No. CWA-10-2009-0083
	)	
	)	
KING COUNTY, WASHINGTON	)	<b>REQUEST FOR INFORMATION AND</b>
	)	<b>COMPLIANCE ORDER BY CONSENT</b>
	)	
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

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

2 3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of  
3 EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”)  
4 program for the discharge of any pollutant into the waters of the United States upon such specific  
5 terms and conditions as the Administrator may prescribe.

6 4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), a State may  
7 administer its own NPDES permit program for discharges into navigable waters within its  
8 jurisdiction upon approval by the Administrator of EPA. EPA has approved the State of  
9 Washington’s NPDES permit program. Therefore, within the State of Washington, the  
10 Washington Department of Ecology (“WADOE”) issues NPDES permits to point sources  
11 pursuant to the Act.

12 5. Although WADOE issues NPDES permits in the State of Washington, EPA  
13 retains the authority to take an enforcement action pursuant to Section 309 of the Act, 33 U.S.C.  
14 § 1319. *See* 33 U.S.C. § 1342(i).

15 6. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides that the Administrator  
16 may issue a compliance order when the Administrator finds that a person is in violation of any  
17 permit condition that implements various sections of the Act.

18 7. The King County, Washington (“Respondent”) operates a domestic wastewater  
19 treatment facility and collection system (“Facility”). For the purpose of the Permit and this  
20 Order, the term “Facility” refers to the West Point Treatment Plant, the collection system,  
21 combined sewer overflow (“CSO”) outfalls, and CSO Treatment Plants. The King County  
22 Wastewater Treatment Division is the division of the Respondent responsible for operation and  
23 maintenance of the Facility. Respondent is a municipal corporation organized under the laws of  
24 the State of Washington and, thus, is a “person” within the meaning of Section 502(5) of the Act,  
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1 33 U.S.C. §1362(5).

2 8. NPDES Permit No. WA-002918-1 ("Permit") was issued to Respondent and  
3 became effective on January 1, 2004. The Permit expired on December 31, 2008. The Permit  
4 specified the conditions under which Respondent was authorized to discharge effluent from the  
5 Facility. WDOE received a NPDES permit application from Respondent on June 30, 2008, in  
6 compliance with Section G7, of the Permit. As a result, the Permit has been administratively  
7 extended and will remain in effect until a new Permit is issued for the Facility.

8 9. The Facility is authorized to discharge treated effluent from Outfall 001 (West  
9 Point Treatment Plant) into the Puget Sound. In addition, the Facility is authorized to discharge  
10 primary treated and disinfected effluent from the following CSO Outfalls: Outfall 046 at the  
11 Carkeek CSO Treatment Plant, Outfall 051 at the Alki CSO Treatment Plant, Outfall 027b at the  
12 Elliott West CSO Treatment Facility, and Outfall 044 at the Henderson/MLK CSO Treatment  
13 Facility. These four CSO outfalls discharge into the following receiving waters: Puget Sound,  
14 Elliott Bay, and the Duwamish Waterway. Puget Sound, Elliott Bay, and the Duwamish  
15 Waterway are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. §  
16 1362(7), and are "waters of the United States" within the meaning of 40 C.F.R. § 122.2. Outfalls  
17 001, 046, 051, 027b, and 044 are "point sources" within the meaning of 40 C.F.R. § 122.2.

18 10. Section S12 of the Permit states that "The following is a list of combined sewer  
19 overflows (CSOs), which are occasional point sources of pollutants as a result of precipitation  
20 events. Discharges from the sites are prohibited except as a result of precipitation events." The  
21 outfalls listed in Section S12 are: 046, 051, 003, 004, 006, 008, 009, 013, 014, 015, 027b, 027a,  
22 028, 029, 030, 031, 032, 036, 037, 039, 040, 041, 042, 044, 045, 048, 007, 011, 012, 018, 033,  
23 034, 035, 038, 043, 049, 053, 054, 055, 056, and 057. Therefore, unless caused by a  
24 precipitation event, any King County system discharges from these outfalls are unauthorized  
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1 discharges in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). In addition, any  
2 discharges from other point sources in the collection system, such as manholes, are unauthorized  
3 discharges in violation of Section S12 of the Permit.

4 11. Section S1.D of the Permit authorizes Respondent to discharge treated combined  
5 sewer overflows from Outfall 027b (Elliott West CSO Treatment Facility) subject to the  
6 limitations set forth in Section S1.D. One of the effluent limitations that Respondent is required  
7 to meet at Outfall 027b is 50% Total Suspend Solids ("TSS") Removal Efficiency on a yearly  
8 average. Pursuant to note c in the tables in Section S.1.D of the Permit the TSS Percent Removal  
9 Efficiency is calculated on a mass balance basis as the percent of solids captured at Outfall 027b  
10 and then permanently removed at the West Point Treatment Plant.

11 12. Respondent discharged inadequately treated combined sewer overflows from  
12 Outfall 027b (Elliott West CSO Treatment Facility) in violation of Section S1.D on the following  
13 dates: November 6, 2006, November 16, 2007, December 2, 2007, December 3, 2007, and  
14 December 4, 2007. The discharges on November 6, and December 2, 3, and 4 had received  
15 incomplete disinfection on a portion of the discharged flow, and the discharge on November 16  
16 occurred without disinfection.

17 13. From June 2005 to May 2006, the Elliott West CSO Treatment Facility achieved  
18 30.8% TSS removal efficiency. This TSS removal efficiency is less than the 50% TSS removal  
19 efficiency required in Section S1.D of the Permit. Therefore, Respondent violated Section S1.D  
20 of the Permit.

21 14. From June 2006 to May 2007, the Elliott West CSO Treatment Facility achieved  
22 29.5% TSS removal efficiency. This TSS removal efficiency is less than the 50% TSS removal  
23 efficiency required by Section S1.D of the Permit. Therefore, Respondent violated Section S1.D  
24 of the Permit.



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

4 20. If EPA does not provide written comments within sixty (60) days of submittal of  
5 any of the plans submitted by Respondent, Respondent shall implement the plan as submitted.

6 21. If EPA does provide written comments on any of the plans submitted by  
7 Respondent, Respondent shall incorporate such comments into the submitted plan and shall  
8 implement the revised plan as set forth in this Order.

9 22. In the event Respondent is unable to comply with the requirements of this  
10 ORDER, Respondent shall, within 10 days of becoming aware of such inability, provide the  
11 following:

- 12 a. A summary of the specific reasons why Respondent is unable to comply  
13 with the requirement;
- 14 b. A summary of all actions taken by Respondent or others that Respondent  
15 alleges demonstrate "good faith efforts" to comply with the requirement;  
16 and
- 17 c. The expected date and required activities by which Respondent will  
18 comply with the requirement.

19 23. Submittals required by this ORDER shall be submitted to:

20 U.S. Environmental Protection Agency  
21 309 Bradley Boulevard, Suite 115  
22 Richland, Washington 99352  
23 Attn: Robert Grandinetti

24 Washington Department of Ecology  
25 Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, Washington 98008



1 AGREED AND CONSENTED TO BY:

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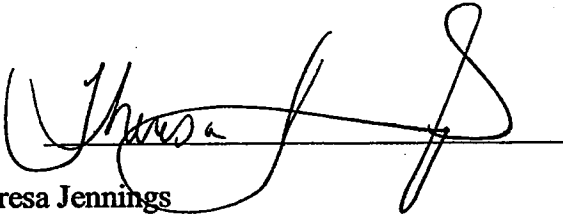
3 King County Wastewater Treatment Division

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7 By:



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Theresa Jennings

9 Director, Department of Natural Resources and Parks

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12 Date:

6.23.09

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15 I, THERESA JENNINGS, hereby certify that I am the Director of the Department of Natural

16 Resources and Parks, and that I have the authority to enter into agreements on behalf of King

17 County, and to otherwise legally bind King County. I hereby acknowledge that I have freely and

18 voluntarily consented to and signed this Order on behalf of the King County after obtaining

19 advice of counsel.

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