

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

and

ANACOSTIA WATERSHED SOCIETY

The George Washington House

4302 Baltimore Avenue

Bladensburg, Maryland 20710

(Prince George's County)

AUDUBON NATURALIST SOCIETY OF
THE CENTRAL ATLANTIC STATES, INC.

8940 Jones Mill Road

Chevy Chase, Maryland 20815

(Montgomery County)

FRIENDS OF SLIGO CREEK

100 Hodges Lane

Takoma Park, Maryland 20912

(Montgomery County)

NATURAL RESOURCES DEFENSE COUNCIL

1200 New York Avenue NW, Suite 400

Washington, D.C. 20005

Plaintiff-Intervenors,

v.

WASHINGTON SUBURBAN SANITARY
COMMISSION

14501 Sweitzer Lane

Laurel, Maryland 20707

(Prince George's County)

Defendant.

Case No. 8:04-cv-03679-PJM

Judge Peter J. Messitte

**COMPLAINT IN
INTERVENTION**

1. This Action was initially brought by the United States of America. The parties named herein seek to intervene pursuant to Section 505(b)(1)(B) of the Federal Water Pollution Control Act (commonly known as the Clean Water Act, and hereinafter referred to as “the Act”), 33 U.S.C. § 1365(b)(1)(B). Defendant Washington Suburban Sanitary Commission has discharged and continues to discharge pollutants into the Anacostia River, its tributaries and other waterways located in the Anacostia Watershed in violation of 33 U.S.C. §§ 1311(a) and 1342. Defendant’s inadequate operation and maintenance of its sewage collection system has resulted and continues to result in sewer backups in the basements of homes located within Defendant’s service area, has caused and continues to cause personal injury to individuals exposed to the toxic materials contained in Defendant’s discharges, and has harmed and continues to harm the aesthetic and recreational interests of Plaintiff-Intervenors and Plaintiff-Intervenors’ members.

2. Plaintiff-Intervenors seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including reasonable attorney and witness fees, for Defendant’s sanitary sewer overflows (“SSOs”) in violation of the discharge prohibition in 33 U.S.C. § 1311 and Defendant’s violations of the terms and conditions of its National Pollutant Discharge Elimination System (“NPDES”) permits, in violation of the “effluent standard or limitation” set forth in 33 U.S.C. § 1365(a)(1)(A).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 33 U.S.C. § 1365(a) and 28 U.S.C. § 1331. The relief requested is authorized pursuant to 33 U.S.C. §§ 1319 and 1365(a) and 28 U.S.C. §§ 2201 and 2002.

4. On or about September 22, 2004, Plaintiff-Intervenors gave notice of the violations specified in this Complaint and of its intent to file suit to the Defendant, to the Attorney General of the United States, to the Administrator of the Environmental Protection Agency (“EPA”), to the Regional Administrator of the EPA, and to the Secretary of the Maryland Department of the Environment (“MDE”), as required by 33 U.S.C. § 1365(b)(1)(A).

5. More than sixty days have passed since the notice letter was served, and the violations complained of in the notice are continuing at this time or are reasonably likely to continue.

6. Intervention is permitted pursuant to 33 U.S.C. § 1365(b)(1)(B).

7. Defendant remains in violation of both the NPDES permits set forth below and the Act.

8. The source of all violations complained of is located and operating in the District of Maryland. Venue in the District of Maryland is therefore proper pursuant to 33 U.S.C. § 1365(c)(1).

PARTIES

9. Plaintiff-Intervenor Anacostia Watershed Society (“AWS”) sues on behalf of itself and its members, and is a nonprofit corporation incorporated in the State of Maryland, with its principal place of business in Bladensburg, Maryland. AWS is dedicated to preserving and restoring the Anacostia River.

10. Plaintiff-Intervenor Audubon Naturalist Society of the Central Atlantic States, Inc. (“ANS”) sues on behalf of itself and its members, and is a nonprofit corporation incorporated in the State of Maryland, with its principal place of business in Chevy Chase, Maryland. ANS fosters stewardship of the region’s environment by educating citizens about the natural world, promoting conservation of biodiversity, and protecting wildlife habitat.

11. Plaintiff-Intervenor Friends of Sligo Creek (“FSC”) sues on behalf of itself and its members, and is a nonprofit corporation incorporated in the State of Maryland, with its principal place of business in Takoma Park, Maryland. FSC is committed to protecting the water quality, natural habitat, and ecological well-being of the Sligo Creek watershed.

12. Plaintiff-Intervenor Natural Resources Defense Council (“NRDC”) sues on behalf of itself and its members, and is a nonprofit organization incorporated in the State of New York, with offices in New York City, New York, Washington, D.C., and San Francisco and Santa Monica, California. NRDC is a national organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. NRDC’s Clean Water Project works to safeguard and enforce the Clean Water Act’s requirements. One of the Clean Water Project’s regional areas of focus is preventing pollution and restoring the integrity of the Anacostia River.

13. Defendant Washington Suburban Sanitary Commission (“WSSC”) is a public utility with its principal place of business in Laurel, Maryland. The WSSC owns and operates a sewage collection system throughout Montgomery and Prince George’s Counties, Maryland.

STATUTORY BACKGROUND

14. The Clean Water Act, 33 U.S.C. § 1311(a), provides that “the discharge of any pollutant ... shall be unlawful,” unless the discharge is made pursuant to and is authorized by certain other sections of the Act, including the permit provisions set forth in 33 U.S.C. § 1342. The Act defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

15. The Act further defines the term “navigable waters” to include “the waters of the United States.” 33 U.S.C. § 1362(7).

16. E.P.A. regulations promulgated pursuant to the Clean Water Act define the term “waters of the United States” to include: (1) “[a]ll waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;” (2) all interstate waters, including interstate wetlands; (3) other waters whose “use, degradation, or destruction ... would affect or could affect interstate or foreign commerce;” and (4) tributaries of and wetlands adjacent to the waters described above. 40 C.F.R. § 122.2.

17. The Act defines “pollutant” to include sewage. 33 U.S.C. § 1362(6).

18. The Clean Water Act authorizes the EPA to issue NPDES permits authorizing the discharge of pollutants, but only if the terms and conditions of the permit carry out specified provisions of the Act. 33 U.S.C. §§ 1311, 1342.

19. Section 402(b) of the Act provides that a State may establish its own permit program, and after receiving EPA’s authorization of its program may issue NPDES permits. 33 U.S.C. § 1342(b). The State of Maryland established its own NPDES permit program and received EPA authorization to administer its program in 1974.

20. The Clean Water Act provides that any person or entity who violates the Clean Water Act by discharging pollutants in violation of 33 U.S.C. § 1311(a), or by failing to abide by the terms of permits issued pursuant to 33 U.S.C. § 1342, “shall be subject to a civil penalty not to exceed \$25,000 per day for each violation.” 33 U.S.C. § 1319(d).

21. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-40, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvements Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 5 104-1324, enacted April 26,

1996; 110 Stat. 1321), civil penalties of up to \$27,500 per day may be assessed for each violation occurring on or after January 31, 1997.

22. Pursuant to the EPA's latest Civil Monetary Penalty Inflation Adjustment Rule, effective March 15, 2004, the maximum civil penalty for Clean Water Act violations is \$32,500 per day per violation. 69 Fed. Reg. 7121 (Feb. 13, 2004). Thus, any violations occurring on or after March 15, 2004 are subject to the \$32,500 maximum.

FACTS

23. The Anacostia Watershed is a 176-square-mile area located primarily in eastern Montgomery County and northern Prince George's County, which drains into the Anacostia River. The Anacostia River, its tributaries, and other waterways located within the Anacostia Watershed constitute waters of the United States under the Act. 33 U.S.C. § 1362(7).

24. Members of AWS, ANS, FSC and NRDC use the resources of the Anacostia River, its tributaries, and other waterways located in the Anacostia Watershed for a variety of purposes, including recreation, sustenance and aesthetics.

25. Defendant owns and operates a "treatment works" as defined in § 212(2) of the Clean Water Act. 33 U.S.C. § 1292(2). Defendant's treatment works collects, conveys, treats, and disposes of sanitary sewage from Montgomery County and Prince George's County, Maryland, an area covering approximately 1,000 square miles with a population of approximately 1.6 million people.

26. Defendant's sewage collection system consists of over 5,000 miles of pipe which convey approximately 180 million gallons of sewage a day to seven wastewater treatment plants, six of which are owned and operated by Defendant, and one of which is owned by the District of Columbia.

27. Many of Defendant's sewer pipes, which are part of the collection system, run parallel to, or cross, streams and rivers throughout the Anacostia Watershed. Many of these sewer pipes are more than 50 years old, and many are broken, decaying or exposed.

28. Over at least three years, sewer pipes in Defendant's sewage collection system have repeatedly ruptured, leaked or otherwise become clogged, releasing over four million gallons of pollutants into the Anacostia Watershed.

29. The discharged pollution flows into Maryland's rivers, including the Anacostia River, its tributaries, and other waterways located in the Anacostia Watershed. These receiving waters are "navigable waters" of the United States as defined in section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).

30. The sewage and other pollutants discharged from Defendant's sewer pipes into these waters constitute "pollutants" as defined in section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6).

31. The SSOs have caused and are likely to continue to cause injury to people and wildlife. When rivers and streams are contaminated with human waste from sewer overflows, area residents who swim, fish, and boat in those waters are at risk for contracting waterborne illnesses, such as gastroenteritis, which includes vomiting and diarrhea, and hepatitis.

32. Maryland law requires Defendant to report these incidents to the MDE. Md. Code Ann., Environment § 9-331.1 (2003 supp.). In 2003, Defendant reported at least 156 SSOs, which contaminated Maryland waterways, including the Anacostia River, its tributaries and other waterways located in the Anacostia Watershed. On information and belief, Defendant illegally discharged more than 130 million gallons of untreated sewage in 2003 and 2004, contaminating Maryland waterways.

33. These discharges, commonly known SSOs, constitute a direct violation of the Act, a threat to public health and safety, and have caused injury-in-fact to the property, recreational and aesthetic interests of the Plaintiff-Intervenors and their respective members.

34. Defendant's inadequate maintenance of its sewage collection system has caused backups in the basements of homeowners within Defendant's service area when it rains, including the basements of homes belonging to members of Plaintiff-Intervenors.

35. In addition, the aforementioned overflows into the Anacostia Watershed from Defendant's sewage collection system have degraded the water quality within the Anacostia Watershed, and have resulted in an increase in foul odor emanating from streams, rivers and tributaries located within the Anacostia Watershed. Consequently, certain members of Plaintiff-Intervenors are afraid to use the streams, rivers, and tributaries located within the Anacostia Watershed, or have experienced diminished aesthetic and recreational enjoyment of these waters and the areas in proximity to these waterways.

36. Defendant operates its waste collection system pursuant to six (6) National Pollutant Discharge Elimination System permits: Nos. MD006778 (Hyattstown Wastewater Treatment Plant), MD0021539 (Piscataway Wastewater Treatment Plant), MD0021741 (Western Branch Wastewater Treatment Plant), MD0021725 (Parkway Wastewater Treatment Plant), MD0021491 (Seneca Wastewater Treatment Plant), and MD 00210982 (Damascus Wastewater Treatment Plant) (collectively the "NPDES Permits").

37. None of Defendant's aforementioned NPDES Permits authorizes the above-described discharge of pollutants from its collection system. The terms of Defendant's NPDES Permits explicitly state that discharges from the sewer collection system are not authorized.

38. Conditions in Defendant's NPDES Permits also require Defendant to operate its collection system to minimize upsets and discharges of excessive pollutants and to provide adequate operating staff to carry out functions required to ensure compliance with its permits.

39. The NPDES Permits for the Damascus, Parkway, Piscataway, and Western Branch wastewater treatment plants contain conditions that require Defendant to orally report discharges from the control, collection and conveyance systems tributary to each of those wastewater treatment plants within 24 hours, and in writing within 5 days.

40. On information and belief, Defendant's SSOs are ongoing, continue to occur, and are reasonably likely to occur in the future.

COUNT I
UNPERMITTED DISCHARGES

41. Plaintiff-Intervenors incorporate by reference paragraphs 1 through 40 as if fully set forth herein.

42. On various occasions over at least the last three years and continuing to the present, Defendant has discharged pollutants into the navigable waters of the United States.

43. Each day of each unpermitted discharge of pollutants to navigable waters of the United States is a separate violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

44. Defendant's violations of the Act are ongoing and have caused injury-in-fact to Plaintiff-Intervenors and their respective members.

45. Unless enjoined by an order of the Court, Defendant will continue to discharge pollutants to navigable waters of the United States in violation of section 301(a) of the Clean Water Act.

COUNT II
NPDES PERMIT VIOLATIONS

46. Plaintiff-Intervenors incorporate by reference paragraphs 1 through 45 as if fully set forth herein.

47. 40 C.F.R. § 122.41 sets forth a list of general conditions that all NPDES permits issued under State NPDES permitting programs must contain to meet Federal minimum standards. Subpart (e) of 40 C.F.R. § 122.41 sets forth the General Condition for “proper Operation and Maintenance” of facilities and systems. Section 122.41(e) states that a “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”

48. The term “facility” is defined in the regulations as “any NPDES ‘point source’ or any other facility ... (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” 40 C.F.R. § 122.2.

49. The term “point source” is defined in the regulations as “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container ... from which pollutants are or may be discharged.” *Id.*

50. Defendant’s NPDES Permits contain the following general condition in Section III.B.3 of the permit, which is the Maryland equivalent of 40 C.F.R. § 122.41(e):

Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

- a. Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants.

- b. The permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit ...

The following NPDES permits contain the above language in Section III.B.3: 1/1/2001 Western Branch; 9/1/1999 Seneca; 8/1/2003 Piscataway; 12/1/2000 Damascus; 12/1/2000 Parkway; 1/1/1997 Hyattstown.

Defendant's 10/1/1997 Piscataway NPDES permit contains a proper operation and maintenance condition that differs from the conditions in its other NPDES permits by not including the term "collection" from the list of facilities in the first line.

51. On hundreds of days over at least the last three years, hundreds of unauthorized discharges of raw sewage have occurred from sewer pipes and other conveyances of Defendant's collection system. These discharges, which are not authorized by Defendant's NPDES Permits, demonstrate Defendant's failure to properly operate and maintain their collection facilities to minimize upsets and discharges of excessive pollutants and a failure to maintain adequate supporting staff to carry out operation, maintenance and testing functions necessary to minimize unauthorized discharges in violation of the terms of its NPDES Permits.

52. Each day of Defendant's failure to comply with the proper operation and maintenance condition in Section III.B.3 of its NPDES Permits is a violation of sections 301 and 402 of the Clean Water Act subject to a civil penalty.

53. Unless enjoined by an order of the Court, Defendant will continue to violate the proper operation and maintenance condition in its NPDES Permits.

54. General Condition B.1 in Section III of Defendant's Parkway, Western Branch, Piscataway, and Damascus permits states that if the permittee does not comply with any permit condition, within 24 of hours of learning of a non-complying discharge the permittee shall notify MDE

by telephone of the discharge and report the location, cause, estimated volume and duration of the discharge, and within 5 days following the telephone notification submit a written report on the discharge event. General Condition C in Section III of these permits states that discharges from the sewer collection system are not authorized.

55. On numerous occasions, the Defendant has failed to properly report SSOs that have occurred in the collection systems tributary to the Parkway, Piscataway, and Western Branch wastewater treatment plants in accordance with the reporting conditions in its NPDES permits.

56. Each occasion that Defendant failed to comply with the reporting conditions in its NPDES permits is a violation of sections 301 and 402 of the Clean Water Act subject to a civil penalty.

57. Unless enjoined by an order of the Court, Defendant will continue to violate the reporting condition in its NPDES permits.

COUNT III
DECLARATORY JUDGMENT

58. Plaintiff-Intervenors incorporate by reference paragraphs 1 through 57 as if fully set forth herein.

59. Because Defendant's violations are ongoing, an actual controversy exists with respect to the propriety of Defendant's continued operation and maintenance of its waste collection system.

60. A declaratory judgment that Defendant has violated and continues to violate the Clean Water Act is necessary to prevent future harm to Plaintiff-Intervenors and their respective members arising from Defendant's continued operation of its waste collection system.

COUNT IV
NUISANCE (MARYLAND LAW)

61. Plaintiff-Intervenors incorporate by reference paragraphs 1 through 60 as if fully set forth herein.

62. Defendant's inadequate operation of its waste collection system has resulted in the discharge of pollutants into the streams, rivers, and tributaries located within the Anacostia Watershed.

63. The discharges from Defendant's waste collection system have interfered with the use and enjoyment of property owned and/or used by Plaintiff-Intervenors and their respective members, and constitutes a public nuisance under Maryland common law.

64. Defendant's activity has caused actual physical discomfort to persons of ordinary sensibilities, tastes and habits.

WHEREFORE, Plaintiff-Intervenors respectfully request this Court grant the following relief:

- A. Issue a declaratory judgment that Defendant has violated and continues to violate the Act;
- B. Enjoin Defendant from operating its sewage collection system in a manner that will result in further violations of the NPDES Permits and the Act pursuant to 33 U.S.C. § 1365(a);
- C. Issue an Order pursuant to 33 U.S.C. § 1365(a) requiring Defendant to:
 - (1) Properly operate and maintain its sewage collection system in a manner that prevents future sanitary sewer overflows and basement backups;
 - (2) Eliminate discharges of untreated sewage from Defendant's collection lines into waters of the United States;

(3) Renovate its sewage collection system as necessary to eliminate SSOs, provide adequate capacity to convey base and peak flows at all times in all parts of the collection system, and ensure these flows receive effective treatment at the treatment plant;

(4) Immediately and effectively notify members of the public, including Plaintiff-Intervenors in the event of any impermissible discharge of sewage from Defendant's system; and

(5) Develop and implement a comprehensive program for monitoring the direct and indirect impacts of the collection system discharges on stream quality and public health;

D. Issue an order imposing maximum civil penalties against Defendant for its violations of the CWA in the amount of \$27,500 per violation per day for each violation occurring before March 15, 2004, and in the amount of \$32,500 per violation per day for each violation occurring on or after March 15, 2004, pursuant to 33 U.S.C. §§ 1319(d) and 1365(a);

E. Issue an injunction against creating a nuisance in violation of Maryland state law;

F. Issue an order awarding Plaintiff-Intervenors their costs of litigation, including reasonable attorney and expert witness fees pursuant to 33 U.S.C. § 1365(d); and

G. Grant such other legal and equitable relief as the Court deems just and proper.

Respectfully submitted,

/s/ David I. Ackerman

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