UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.
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UNITED STATES OF AMERICA, Plaintiff, COMMONWEALTH OF MASSACHUSETTS, Plaintiff-Intervenor, v. CITY OF BROCKTON, MASSACHUSETTS, Defendant.	)	Civil Action No. 06 CA 11334 NMG PLAINTIFF-INTERVENOR'S COMPLAINT

DESCRIPTION OF CASE

1. The City of Brockton, Massachusetts, owns and operates a wastewater collection and treatment system in a manner that results in the illegal discharge of excessive levels of pollutants, including suspended solids, fecal coliform, copper, ammonia, and phosphorus, into the Salisbury Plain River. The plaintiff-intervenor Commonwealth of Massachusetts brings claims against the defendant (the "City" or "Brockton") for violations of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), 33 U.S.C. §§ 1251, et seq., and supplemental state law claims for violations of the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53 ("Massachusetts Act"), and the regulations promulgated under the Massachusetts Act at 314 C.M.R. §§ 3.00, et seq., 7.00, et seq., and 12.00, et seq. The Commonwealth seeks injunctive relief and civil penalties under federal and state law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b) and (e) of the CWA, 33 U.S.C. §§ 1319, and pursuant to 28 U.S.C. § 1331. This Court has pendent jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and pursuant to 28 U.S.C. §§ 1391(b).

PARTIES

4. The plaintiff-intervenor (the "Commonwealth") is a sovereign state of the United States. The Commonwealth is acting by and through the Massachusetts Department of Environmental Protection ("DEP") and the Massachusetts Attorney General. DEP, which has offices at One Winter Street, Boston, Massachusetts, is the Commonwealth agency primarily responsible for the administration of various environmental statutes, including the Massachusetts Act. The Massachusetts Attorney General, who has his office at One Ashburton Place, Boston, Massachusetts, is the chief legal officer of the Commonwealth. He is authorized to bring this action and to seek the relief requested pursuant to M.G.L. c. 12, §§ 3 and 11D, and c. 21, §§ 42 and 46.

5. Brockton, a municipal corporation and a political subdivision of the Commonwealth, owns and operates a sanitary sewerage system, including a publicly owned treatment works ("POTW"), from which it discharges wastewater to the Salisbury Plain River, a water of the Commonwealth and a navigable water of the United States. The City maintains its offices at 45 School Street, Brockton, Massachusetts.

STATUTORY BACKGROUND

A. Federal Clean Water Act

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person," except as authorized by and in compliance with the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include sewage, biological materials, and municipal waste. Section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" to mean "the waters of the United States." Section 502(14), 33 U.S.C. § 1362(14), defines "point source" to be "any discernible, confined and discrete conveyance, including . . . any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure . . . from which pollutants are or may be discharged."

8. Section 502(5), 33 U.S.C. § 1362(5), defines "person" to include a "municipality . . . or political subdivision of a State." Section 502(4), 33 U.S.C. § 1362(4), defines "municipality" to include "a city, town . . . or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage . . . or other wastes."

9. The NPDES permit program is jointly administered by EPA and DEP, pursuant to Section 402(b), 33 U.S.C. § 1342(b).

B. Massachusetts Clean Waters Act

10. Section 43(2) of the Massachusetts Act, M.G.L. c. 21, prohibits a person from discharging pollutants into waters of the Commonwealth without a valid permit issued by DEP pursuant to Chapter 21.

11. Under 314 C.M.R. 3.02, 7.02, and 12.02, "discharge of pollutants" means "any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any source." Under Section 26A of the Massachusetts Act, M.G.L. c. 21, and 314 C.M.R 3.02, 7.02, and 12.02, "waters of the Commonwealth" means "all waters within the jurisdiction of the Commonwealth, including . . . rivers and ground waters."

12. Section 43(7) of the Massachusetts Act, M.G.L. c. 21, requires that every permit specify effluent limitations, requirements for proper operation and maintenance, monitoring, sampling, and reporting. Regulations at 314 C.M.R. 3.00, et seq., 7.00, et seq., and 12.00, et seq., establish requirements and procedures for the Commonwealth's discharge permit program, for sewer system extensions and connections, and for operation and maintenance of wastewater treatment works.

FACTUAL BACKGROUND

A. The Brockton POTW

13. The City owns, operates, and maintains a collection system for sanitary sewage and other wastewater, and a publicly owned treatment works or POTW, located at 303 Oak Hill Way, Brockton, Massachusetts. The POTW discharges wastewater into the Salisbury Plain River, a water of the Commonwealth and a navigable water of the United States, under the terms of a National Pollution Discharge Elimination System ("NPDES") permit.

14. The City's wastewater collection system includes pipes and manholes that are too small, defective, or leaky, and also accepts flow from unauthorized sump pump and roof drain connections. As a result, during storms and periods of high groundwater levels, extraneous flows of groundwater and storm water enter the collection system and the POTW. Such extraneous flows are commonly referred to as "infiltration and inflow" or "I/I."

15. The I/I entering the City's collection system overloads and impairs operation of the POTW. As a result of this and other factors, the City has been in ongoing noncompliance with numerous requirements of its NPDES permit.

B. NPDES Permit

16. EPA and DEP issued a NPDES permit, NPDES Permit No. MA0101010, to Brockton on September 26, 1994 (the "1994 Permit"), and later re-issued a NPDES permit to Brockton on September 30, 1999, effective 30 days thereafter (the "1999 Permit"), authorizing Brockton to discharge wastewater after treatment in the City's POTW.

On May 11, 2005, EPA and DEP re-issued a NPDES permit to Brockton (the "2005 Permit"). On May 28, 2005, Timothy A. Watts and Douglas H. Watts, citizens of Brockton who are not parties to this suit, filed an appeal of the 2005 Permit. As a result of this permit appeal, the terms and conditions of the 2005 Permit are stayed and the terms and conditions of the 1999 Permit are in effect.

C. NPDES Permit Requirements and Violations

CBOD and BOD Summer Concentration Effluent Limits

17. The 1999 Permit requires that during the period May 1 through October 31 each year, carbonaceous biological oxygen demand ("CBOD") in the effluent from the POTW shall

not exceed an average monthly concentration of 5 milligrams/liter ("mg/l"), an average weekly concentration of 8 mg/l, and a maximum daily concentration of 15 mg/l, and that the monthly removal of biological oxygen demand ("BOD"), based on monthly average values, shall be a minimum of 85%.

18. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, and May 2003 to June 2003, among other times, the average monthly concentration of CBOD in the effluent from the POTW periodically exceeded 5 mg/l.

19. During the periods June 2000 to October 2000, May 2001 to October 2001, and May 2002 to August 2002, among other times, the average weekly concentration of CBOD in the effluent from the POTW periodically exceeded 8 mg/l.

20. During the periods June 2000 to October 2000, May 2001 to October 2001, and May 2002 to June 2002, among other times, the maximum daily concentration of CBOD in the effluent from the POTW periodically exceeded 15 mg/l.

Summer BOD Mass Effluent Limits

21. The 1999 Permit also requires that for the period May 1 through October 31 each year, CBOD in the effluent from the POTW shall not exceed, among other parameters, an average monthly mass of 750 pounds/day ("lb/day"), an average weekly mass of 1,200 lbs/day, and a maximum daily mass of 2,250 lbs/day.

22. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, and May 2003 to August 2003, the average monthly mass of CBOD in the effluent from the POTW periodically exceeded 750 lbs/day.

23. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, and May 2003 to August 2003, the maximum daily mass of CBOD in the effluent from the POTW periodically exceeded 2,250 lbs/day.

Summer TSS Concentration Effluent Limits

24. The 1999 Permit requires that for the period May 1 through October 31 each year, Total Suspended Solids ("TSS") in the effluent from the POTW shall not exceed an average monthly concentration of 5 mg/l, an average weekly concentration of 8 mg/l, and a maximum daily concentration of 15 mg/l, and that the monthly removal of TSS, based on monthly average values, shall be a minimum of 85%.

25. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, and May 2003 to August 2003, the average monthly concentration of TSS in the effluent from the POTW periodically exceeded 5 mg/l.

26. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, and May 2003 to October 2003, and in May 2004, the average weekly concentration of TSS in the effluent from the POTW periodically exceeded 8 mg/l.

27. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, and May 2003 to August 2003, the maximum daily concentration of TSS in the effluent from the POTW periodically exceeded 15 mg/l.

28. For the month of May 2002, the monthly minimum removal of TSS in the effluent from the POTW periodically was less than 85%.

Summer TSS Mass Effluent Limits

29. The 1999 Permit requires that for the period May 1 through October 31 each year, Total Suspended Solids ("TSS") in the effluent from the POTW shall not exceed an average monthly mass of 750 lbs/day, an average weekly mass of 1,200 lbs/day, and a maximum daily mass of 2,250 lbs/day.

30. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, May 2003 to October 2003, May 2004 to October 2004, and May 2005 to October 2005, the average monthly mass of TSS in the effluent from the POTW periodically exceeded 750 lbs/day.

31. During the periods June 2000 to October 2000, May 2001 to October 2001, May 2002 to October 2002, May 2003 to October 2003, May 2004 to October 2004, and May 2005 to October 2005, the maximum daily mass of TSS in the effluent from the POTW periodically exceeded 2,250 lbs/day.

Winter CBOD and BOD Concentration Effluent Limits

32. The 1999 permit requires that for the period November 1 through April 30 each year, CBOD in the effluent from the POTW shall not exceed an average monthly concentration of 15 mg/l, an average weekly concentration of 25 mg/l, and a maximum daily concentration of 30 mg/l, and that the monthly removal of BOD, based on monthly average values, shall be a minimum of 85%.

33. During the periods March 2000 to April 2000, November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, November 2003 to April 2004,

and November 2004 to April 2005, and in November 2005, the average monthly concentration of CBOD in the effluent from the POTW periodically exceeded 15 mg/l.

34. During the periods March 2001 to April 2001, November 2001 to April 2002, November 2002 to April 2003, November 2003 to April 2004, and November 2004 to April 2005, and in November 2005, the average weekly concentration of CBOD in the effluent from the POTW periodically exceeded 25 mg/l.

35. In April 2000, and during the periods November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, November 2003 to April 2004, and November 2004 to April 2005, and in November 2005, the maximum daily concentration of CBOD in the effluent from the POTW periodically exceeded 30 mg/l.

36. In April 2000, and during the periods November 2000 to April 2001, November 2001 to April 2002, and November 2002 to April 2003, the monthly minimum removal of BOD in the effluent from the POTW periodically was less than 85%.

Winter CBOD Mass Effluent Limits

37. The 1999 Permit requires that for the period November 1 through April 30 each year, CBOD in the effluent from the POTW shall not exceed an average monthly mass of 2,250 lbs/day, an average weekly mass of 3,750 lbs/day, and a maximum daily mass of 4,500 lbs/day.

38. In April 2000, and during the periods November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, November 2003 to April 2004, and November 2004 to April 2005, and in November 2005, the average monthly mass of CBOD in the effluent from the POTW periodically exceeded 2,250 lbs/day.

39. In April 2000, and during the periods November 2000 to April 2001,

November 2001 to April 2002, November 2002 to April 2003, November 2003 to April 2004, and November 2004 to April 2005, and in November 2005, the average daily mass of CBOD in the effluent from the POTW periodically exceeded 4,500 lbs/day.

Winter TSS Concentration Effluent Limits

40. The 1999 Permit requires that for the period November 1 through April 30 each year, TSS in the effluent from the POTW shall not exceed an average monthly concentration of 15 mg/l, an average weekly concentration of 25 mg/l, and maximum daily concentration of 30 mg/l, and that the monthly removal of TSS, based on monthly average values, shall be a minimum of 85%.

41. In April 2000, and during the periods November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, and November 2003 to December 2003, the average monthly concentration of TSS in the effluent from the POTW periodically exceeded 15 mg/l.

42. In April 2000, and during the periods November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, and November 2003 to December 2003, the average weekly concentration of TSS in the effluent from the POTW periodically exceeded 25 mg/l.

43. In April 2000, and during the periods November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, and November 2003 to December 2003, the maximum daily concentration of TSS in the effluent from the POTW periodically exceeded 30 mg/l.

44. In April 2000, and during the periods November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, and November 2003 to December 2003, the monthly minimum removal of TSS in the effluent from the POTW periodically was less than 85%.

Winter TSS Mass Effluent Limits

45. The 1999 Permit requires that for the period November 1 through April 30 each year, TSS in the effluent from the POTW shall not exceed an average monthly mass of 2,250 lbs/day, an average weekly mass of 3,750 lbs/day, and a maximum daily mass of 4,500 lbs/day.

46. During the periods March 2000 to April 2000, November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, November 2003 to April 2004, and November 2004 to January 2005, the average monthly mass of TSS in the effluent from the POTW periodically exceeded 2,250 lbs/day.

47. During the periods February 2000 to April 2000, November 2000 to April 2001, November 2001 to April 2002, November 2002 to April 2003, November 2003 to April 2004, and November 2004 to April 2005, the daily maximum mass of TSS in the effluent from the POTW periodically exceeded 4,500 lbs/day.

Total Residual Chlorine Effluent Violations

48. For at least the past five years, the level of Total Residual Chlorine ("TRC") discharged in the effluent from the POTW exceeded the limitations allowed in the 1999 Permit.

49. The 1999 permit required that TRC in the effluent from the POTW shall not exceed an average monthly concentration of 0.11 mg/l and a maximum daily concentration of 0.19 mg/l.

50. From April 2003 to July 2003, the average monthly concentration of TRC in the effluent from the POTW periodically exceeded 0.11 mg/l.

51. From July 2002 to October 2005, the maximum daily concentration of TRC in the effluent from the POTW periodically exceeded 0.19 mg/l.

Fecal Coliform Effluent Violations

52. From April 2001 to October 2005, the level of Fecal Coliform discharged in the effluent from the POTW exceeded the limitations allowed in the 1999 Permit.

53. The 1999 Permit requires that Fecal Coliform in the effluent from the POTW shall not exceed an average monthly concentration of 200 colonies/100 milliliter (ml), and a maximum daily concentration of 400 colonies/100 ml.

54. From May 2002 to April 2003, the average monthly concentration of Fecal Coliform in the effluent from the POTW periodically exceeded 200 colonies/100 ml.

55. From April 2001 to October 2005, the maximum daily concentration of Fecal Coliform in the effluent from the POTW periodically exceeded 400 colonies/100 ml.

Violation of Copper Permit Limits

56. From November 1999 to December 2005, the level of copper discharged in the effluent from the POTW exceeded the limitations allowed in the 1999 Permit.

57. The 1999 Permit requires that copper in the effluent from the POTW shall not exceed an average monthly concentration of 53 micrograms/liter ("ug/l") and a maximum daily concentration of 74 ug/l.

58. From November 1999 to December 2005, the average monthly concentration of Copper in the effluent from the POTW periodically exceeded the 53 ug/l limitation in the 1999 Permit.

59. From November 1999 to April 2005, the maximum daily concentration of Copper in the effluent from the POTW periodically exceeded 74 ug/l limitation in the 1999 Permit.

Ammonia Summer Concentration Effluent Limits

60. The 1999 Permit requires that for the period June 1 through October 31 each year, Ammonia in the effluent from the POTW shall not exceed an average monthly concentration of 1.0 mg/l, an average weekly concentration of 1.0 mg/l, and a maximum daily concentration of 1.5 mg/l,

61. During the periods June 2001 to October 2001, June 2002 to October 2002, and June 2003 to October 2003, among other times, the average monthly concentration of Ammonia in the effluent from the POTW periodically exceeded 1.0 mg/l.

62. During the periods June 2001 to October 2001, June 2002 to October 2002, June 2003 to October 2003, and June 2004 to October 2004, and in June 2005, among other times, the average weekly concentration of Ammonia in the effluent from the POTW periodically exceeded 1.0 mg/l.

63. During the periods June 2001 to October 2001, June 2002 to October 2002, June 2003 to October 2003, and June 2004 to October 2004, and in June 2005, among other times, From at least June 2001 to June 2005, the maximum daily concentration of Ammonia in the effluent from the POTW periodically exceeded 1.5 mg/l.

Summer Ammonia Mass Effluent Limits

64. The 1999 Permit requires that, for the period May 1 through October 31 each year, CBOD in the effluent from the POTW shall not exceed, among other things, an average monthly mass of 150 lbs/day, an average weekly mass of 150 lbs/day, and a maximum daily mass of 225 lbs/day.

65. During the periods June 2001 to October 2001, May 2002 to October 2002, and May 2003 to October 2003, the average monthly mass of Ammonia in the effluent from the POTW periodically exceeded 150 lbs/day.

66. During the periods June 2001 to October 2001, May 2002 to October 2002, May 2003 to October 2003, May 2004 to October 2004, and May 2005 to June 2005, the maximum daily mass of Ammonia in the effluent from the POTW periodically exceeded 225 lbs/day.

Ammonia Non-Summer Concentration Effluent Limits

67. The 1999 Permit requires that for the period May 1 through May 30 each year , Ammonia in the effluent from the POTW shall not exceed an average monthly concentration of 3.2 mg/l.

68. During at least May 2000, May 2001, and May 2003, the average monthly concentration of Ammonia in the effluent from the POTW periodically exceeded the non-Summer effluent limits.

Violation of Phosphorus Permit Limits

69. The 1999 Permit requires that for the period May 1 through October 31 each year, Phosphorus in the effluent from the POTW shall not exceed an average monthly concentration of 1.0 mg/l, an average weekly concentration of 1.0 mg/l, and a maximum daily concentration of 1.5 mg/l.

70. During the period September 2001 to October 2001, and in May 2002, among other times, the average monthly concentration of Phosphorus in the effluent from the POTW periodically exceeded 1.0 mg/l.

71. During the periods September 2001 to October 2001, and May 2002 to October 2002, and in May 2003, among other times, the average weekly concentration of Phosphorus in the effluent from the POTW periodically exceeded 1.0 mg/l.

72. During the periods September 2001 to October 2001, and May 2002 to October 2002, and in May 2003, among other times, the maximum daily concentration of Phosphorus in the effluent from the POTW periodically exceeded 1.5 mg/l.

Violation of Toxicity Permit Limits

73. The 1999 Permit requires that there be no acute toxicity of the effluent, as measured by the 48 hour *ceriodaphnia* lethal concentration for 50% of the organisms (LC 50) in a sample of 100% effluent. In addition, the permit requires that there be no chronic toxicity in a sample of 98% effluent. These are known as "Whole Effluent Toxicity" requirements.

74. From at least April 2000 to February 2005, the effluent toxicity of the effluent from the POTW periodically exceeded both the acute and chronic Whole Effluent Toxicity requirements.

D. EPA Administrative Order

75. In March 2003, EPA issued an Administrative Order to the City. The Administrative Order addressed certain aspects of the City's noncompliance with the terms of its NPDES permit, but did not seek penalties or address the City's continuing noncompliance with the effluent discharge limitation requirements of the City's permit.

FIRST CLAIM FOR RELIEF UNDER FEDERAL LAW:
INJUNCTIVE RELIEF AND CIVIL PENALTIES FOR
PROHIBITED DISCHARGES

76. The Commonwealth realleges and incorporates by reference the allegations of paragraphs 1 through 75.

77. The City is a "municipality" within the meaning of Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4). The City is a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

78. The wastewater from the City's collection and treatment system contains "pollutants," as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), that are discharged from "point sources," as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to "a navigable water of the United States," as defined in Section 502(7) of the Act, 33 U.S.C.§ 1362(7).

79. Each time the City discharged insufficiently treated wastewater constitutes a violation of the 1999 Permit.

80. Each violation of the 1999 Permit constitutes a prohibited discharge under Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day the violation occurred.

81. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 370, for each day of each violation of the 1994 or 1998 Permit and the CWA, the City is subject to injunctive relief and the assessment of civil penalties not to exceed $27,500.

82. As specifically set forth in paragraphs 17 through 75 above, on numerous occasions the concentration and mass of CBOD, BOD, TSS, TRC, fecal coliform, copper, ammonia and phosphorus discharged in the POTW's effluent and the toxicity level of the POTW effluent exceeded the effluent limitations provided in the 1999 Permit.

83. Each time the concentration and mass of CBOD, BOD, TSS, TRC, fecal coliform, copper, ammonia or phosphorus or the toxicity level exceeded the 1999 Permit limitation constitutes a violation of the Permit on each day it occurred. Each violation of the Permit constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1319(a), for each day the violation occurred.

84. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, for each day of each violation of the Permit and the CWA, the Town is subject to injunctive relief and the assessment of civil penalties not to exceed $27,500.

FIRST SUPPLEMENTAL CLAIM FOR RELIEF UNDER STATE LAW: INJUNCTIVE RELIEF AND CIVIL PENALTIES FOR PROHIBITED DISCHARGES

85. The Commonwealth realleges and incorporates by reference the allegations of paragraphs 1 through 75.

86. The City is a "person" within the meaning of Section 26A of the Massachusetts Act, M.G.L. c. 21, and 314 C.M.R. §§ 3.02, 7.02, and 12.02.

87. The wastewater from the City's collection and treatment system contains "pollutant[s]," as defined in Section 26A of the Massachusetts Act, M.G.L. c. 21, and 314 C.M.R. §§ 3.02, 7.02, and 12.02, and is discharged to the "waters of the Commonwealth" as defined by Section 26A of the Massachusetts Act, M.G.L. c. 21, and 314 C.M.R. §§ 3.02, 7.02, and 12.02.

88. Each time the City discharged CBOD, TSS, TRC, fecal coliform, copper, ammonia, or phosphorous in excess of the effluent limitations provided in the City's Permit, and each time it discharged effluent with a toxicity level above the level permitted by the Permit, as alleged in paragraphs 17 thorough 75 above, constitutes a violation of the Permit, Section 43 of the Massachusetts Act, M.G.L. c. 21, and 314 C.M.R. § 3.03, for each day the violations occurred.

89. Pursuant to Sections 42 and 46 of the Massachusetts Act, M.G.L. c. 21, for each day of each violation of the Permit, Section 43 of the Massachusetts Act, or regulations promulgated under the Massachusetts Act, the Commonwealth is entitled to injunctive relief and the assessment of civil penalties of up to $25,000 for each day that each violation occurs or continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiff-intervenor Commonwealth of Massachusetts respectfully requests that this Court:

1. Enter judgment in favor of the Commonwealth and against the City;

2. Enter a permanent injunction ordering the City to:

a. Repair and adequately maintain the City's current wastewater treatment facilities pending the construction of the upgraded facilities;

b. Design and construct an expanded and upgraded POTW with capacity to adequately and consistently treat the wastewater and extraneous flows that remain after the rehabilitation of the City's collection system;

c. Implement the recommendations of prior and ongoing I/I investigations designed to reduce the extraneous flow entering the sanitary sewer system, including further evaluation of private inflow sources;

d. Evaluate, design, and construct additional interceptor and pumping capacity necessary to convey wastewater and extraneous flows that remain after the rehabilitation of the City's collection system;

e. Establish and implement preventive maintenance programs necessary to maintain both the City's wastewater treatment facility and collection systems; and

f. Comply with all terms and conditions of its NPDES permit.

3. Order the City to pay a civil penalty not to exceed twenty-seven thousand five hundred dollars ($27,500) for each day of each violation of the 1999 Permit;

4. Order the City to pay a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each day of each violation of the Permit or Section 43 of the Massachusetts Act, M.G.L. c. 21;

5. Award the Commonwealth all costs to maintain this action; and

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

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS
By its attorney,

THOMAS F. REILLY
ATTORNEY GENERAL

I. Andrew Goldberg, BBO# 560843
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200

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