

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
THE CITY OF INDEPENDENCE,	)	
MISSOURI,	)	
	)	
Defendant.	)	
_____	)	
	)	
THE STATE OF MISSOURI,	)	
	)	
Non-aligned Party	)	
joined pursuant to	)	
to 33 U.S.C. § 1319(e).	)	
_____	)	

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action for injunctive relief and civil penalties brought against the City of Independence, Missouri (“City” or “Independence”), pursuant to Sections 309(b) and (d)

of the federal Clean Water Act, 33 U.S.C. §§ 1319(b) and (d), for Independence's numerous illegal discharges of pollutants, including untreated sewage, from its sanitary sewer system into waters of the United States in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

2. The State of Missouri is a party to this action in accordance with the requirements of Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e).

### **JURISDICTION, VENUE, NOTICE, AND AUTHORITY**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and the Clean Water Act, 33 U.S.C. § 1319(b).

4. Venue is proper in the Western District of Missouri pursuant to 28 U.S.C. § 1391(b) and 33 U.S.C. § 1319(b), because it is the judicial district in which Independence is located and in which the alleged violations occurred.

5. Pursuant to 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State of Missouri.

6. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and the Clean Water Act, 33 U.S.C. § 1366.

### **DEFENDANT**

7. Defendant Independence is a political subdivision of the State of Missouri and a "municipality" as defined by Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4).

8. Independence is a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5).

9. Independence owns and operates, and at all times relevant to this Complaint has owned and operated, the City's sanitary sewer system. The Independence Water Pollution

Control Department, a City-owned utility, is responsible for the operation and maintenance of the sanitary sewer system.

### **STATUTORY BACKGROUND**

10. The purpose of the Clean Water Act is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The Act establishes a national goal to eliminate the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a)(1).

11. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and implementing regulations, prohibit the discharge of pollutants into navigable waters of the United States by any person, except as in compliance with other sections of the Act, including Section 402, 33 U.S.C. § 1342, which governs the issuance of National Pollutant Discharge Elimination System (“NPDES”) permits.

12. The Clean Water Act defines the term “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

13. “Pollutant” within the meaning of the Clean Water Act includes, “. . . solid waste . . . sewage, garbage, sewage sludge . . . biological materials . . . and . . . industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

14. Navigable waters are “waters of the United States.” 33 U.S.C. § 1362(7).

15. Federal regulations promulgated pursuant to the Clean Water Act define the phrase “waters of the United States” to include, among other things, (i) all 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; (ii) all

interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate or foreign commerce; (iv) tributaries of waters of the United States; and (v) wetlands adjacent to these waters. 40 C.F.R. § 122.2.

16. The Clean Water Act defines the term “point source” to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

17. Section 402(a) of the Clean Water Act, 33 U.S.C. § 1342(a), provides that the permit-issuing authority may issue an NPDES permit which authorizes the discharge of any pollutant, but only in compliance with the applicable requirements of Section 301, 33 U.S.C. § 1311, and such other conditions as the Administrator determines are necessary to carry out the provisions of the Clean Water Act.

18. Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), provides that the EPA Administrator may approve a state to administer the NPDES program within its jurisdiction. The State of Missouri has been authorized to administer the NPDES program in Missouri since 1974. Pursuant to Sections 309 and 402(i) of the Clean Water, 33 U.S.C. §§ 1319 and 1342(i), EPA retains authority, concurrent with authorized state NPDES programs, to enforce state-issued permits.

19. The Administrator of the EPA may commence a civil action for appropriate relief when any person discharges pollutants to navigable waters without a permit or violates the terms or conditions of an NPDES permit. 33 U.S.C. § 1319(b).

20. A person who violates the Clean Water Act by discharging without a permit, or failing to comply with conditions and limitations of an NPDES permit, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. 33 U.S.C. § 1319(d). Under 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, as amended, and pursuant to 28 U.S.C. § 2461, the civil penalty amount was raised to a maximum of \$27,500 per day for each violation occurring after January 30, 1997, \$32,500 per day for each violation occurring after March 15, 2004 (*See 69 Fed. Reg.* 7121, February 13, 2004), and \$37,500 per day for each violation occurring after January 12, 2009 (*See 73 Fed. Reg.* 75340, December 11, 2008).

### **GENERAL ALLEGATIONS**

21. Independence's sanitary sewer system includes the Rock Creek Wastewater Treatment Plant, located at 9600 Norledge, Independence, Missouri, and associated collection and transmission system which receives and treats wastewater from residential, commercial and industrial sources within Independence and surrounding areas. The sanitary sewer system collects and receives wastewater from more than 50,000 sanitary sewer customers within Independence and surrounding areas and includes over 500 miles of sanitary sewer lines.

22. For purposes of this Complaint, Independence's sanitary sewer system refers only to the portions of the City's sanitary sewer system that are designed to convey wastewater to the Rock Creek Wastewater Treatment Plant and serve the Rock Creek, Mill Creek, and Sugar Creek watersheds.

23. Independence's sanitary sewer system is a "treatment works" within the meaning of Section 212(2) of the Clean Water Act, 33 U.S.C. § 1292(2), and a "publicly owned

treatment works” as defined by federal regulations implementing the Clean Water Act at 40 C.F.R. § 403.3(q).

24. The sanitary sewer system includes pipes, force mains, gravity sewer lines, lift stations, pump stations, and appurtenances thereto.

25. Wastewater, including raw sewage, collected by Independence’s sanitary sewer system is a “pollutant” as that term is defined by the Clean Water Act, 33 U.S.C. § 1362(6).

26. Independence operates the Rock Creek Wastewater Treatment Plant under an NPDES Permit issued by MDNR, NPDES Permit Number MO 0089681, which only authorizes the discharge of treated effluent from specified point sources (identified in the permit as numbered “outfalls”) into waters of the United States, subject to certain limitations and conditions set forth in the permit.

27. During the past five years and before, Independence has “discharged pollutants,” including untreated wastewater containing raw sewage, within the meaning of Sections 502(6) and (12) of the Clean Water Act, 33 U.S.C. §§ 1362(6) and (12), from the sanitary sewer system through “point sources,” as defined by 33 U.S.C. § 1362(14), into Mill Creek, Rock Creek, the Missouri River, and their tributaries, which are “navigable waters” as defined by Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7) and the federal regulations implementing the Clean Water Act at 40 C.F.R. § 122.2.

28. Independence has unlawfully discharged millions of gallons of untreated wastewater containing raw sewage through unpermitted point sources. The unauthorized discharges include numerous overflows from the sanitary sewer system at four pump stations, Sugar Creek, Kentucky I, Kentucky II, and Dickinson, as well as at several manholes.

29. The discharge of pollutants described in Paragraphs 27 and 28 above is not permitted or otherwise authorized by the Clean Water Act, or other federal, state or local law or regulation.

**CLAIM FOR RELIEF**  
**(Unauthorized Discharges of Untreated Sewage)**

30. The allegations of the foregoing paragraphs are realleged and incorporated herein by reference.

31. On numerous occasions during the past five years and before, Independence has discharged, and will continue to discharge, untreated wastewater containing raw sewage through point sources within its sanitary sewer system which are not identified in an NPDES permit as authorized outfalls, including pump stations and manholes, into waters of the United States. None of these discharges are permitted or otherwise authorized by the Clean Water Act.

32. Each day of each illegal discharge of pollutants is a separate violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

33. Unless enjoined, Independence will continue to discharge pollutants into waters of the United States.

34. Pursuant to 33 U.S.C. §§ 1319(b) and (d), as modified by 40 C.F.R. Part 19, Independence is liable for civil penalties of up to \$25,000 per day per each violation occurring before January 30, 1997, up to \$27,500 per day per each violation occurring after January 31, 1997, up to \$32,500 per day per each violation occurring after March 15, 2004, and up to \$37,500 per day for each violation occurring after January 12, 2009.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Pursuant to 33 U.S.C. § 1319(d), assess civil penalties against Independence, as permitted by law, up to the date of judgment herein;
2. Pursuant to 33 U.S.C. § 1319(b), enjoin Independence from any and all ongoing and future violations of the Clean Water Act by ordering compliance with the Act;
3. Order Independence to take all steps necessary to come into permanent and consistent compliance with the prohibition on unpermitted discharges contained in Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a);
4. Order Independence to take all steps necessary to redress or mitigate the effects of its violations;
5. Award the United States its costs of this action; and
6. Award such other and further relief as the Court deems appropriate.

Date: \_\_\_\_\_, 2009

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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