

August 2, 2010

By Certified Mail – Return Receipt Requested

The Honorable Ron Littlefield, Mayor
City of Chattanooga
Suite 100, City Hall
101 E. 11th St.
Chattanooga, TN 37402

Tracking #7003-0500-0000-4541-9493

Steven C. Leach, Administrator
Department of Public Works
City of Chattanooga
455 Moccasin Bend Road
Chattanooga, TN 37405

Tracking #7003-0500-0000-4541-9486

**RE: Chattanooga - Moccasin Bend WWTP & Combined Sewer System, TN0024210
60-Day Notice of Violation Pursuant to Section 505(b)(1)(A) of the Clean Water Act,
33 U.S.C. § 1365(b)(1)(A)**

Dear Sirs:

This letter is to notify the City of Chattanooga, as well as the state and federal agencies listed below, of ongoing violations of the Clean Water Act (the “Act”) at the Moccasin Bend Waste Water Treatment Plant & Combined Sewer System (“Moccasin Bend”) in Chattanooga, Tennessee. The Tennessee Clean Water Network (“TCWN”) and its members are very concerned about serious and chronic violations of the Act at this plant and throughout the sewer system that are having a significant impact on the Tennessee River and its tributaries.

LOCATION OF VIOLATIONS

Moccasin Bend is located at 455 Moccasin Bend Road, Chattanooga, Tennessee 38127. The plant discharges treated effluent to the Tennessee River at mile 457.8. Moccasin Bend also operates six Combined Sewer Overflows (“CSOs”) to the Tennessee River, two CSOs to Chattanooga Creek, approximately 1,250 miles of sanitary sewer lines, and 70 pump stations. In addition, Moccasin Bend discharges untreated sewage through two unpermitted outfalls, the West Bank Tide Gate CSO Outfall and the East Bank Tide Gate CSO Outfall. The location of each individual violation is listed on the tables below and in the attached exhibits.

DESCRIPTION OF VIOLATIONS

Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a

National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Each violation of the permit, and each discharge that is not authorized by the permit, is a violation of the Clean Water Act.

Pursuant to its delegated authority under Section 402(b) of the Act, 33 U.S.C. § 1342(b), the Tennessee Department of Environment and Conservation (“TDEC”) issued NPDES permit number TN0024210 to the City of Chattanooga for Moccasin Bend. The current version of this permit became effective April 1, 2007. The prior version of the permit became effective on February 1, 2004, and was similar to the existing permit in relevant part except that there was no daily maximum E. coli limit.

Through file reviews at TDEC and the Environmental Protection Agency (“EPA”), TCWN has identified several types of ongoing violations at Moccasin Bend: unpermitted discharges from the West Bank and East Bank Tide Gates; sanitary sewer overflows; unpermitted CSOs; exceedances of the daily maximum E. coli limit at outfall 001 at the WWTP; and monitoring and reporting violations.

These violations are ongoing and are likely to continue upon filing of this lawsuit. Based on TCWN’s file reviews, neither TDEC nor EPA has issued a final administrative penalty order or filed a court case to address these serious Clean Water Act violations.

1. UNPERMITTED DISCHARGES OF RAW SEWAGE: WEST BANK & EAST BANK CSO¹ OUTFALLS

The Moccasin Bend WWTP has a treatment capacity of 140 million gallons per day (“MGD”), plus an additional wet weather treatment capacity of 90 MGD. However, because of the combined sewer system and significant amounts of rain infiltration into the entire sanitary sewer system, the plant is occasionally inundated with excess flow above its wet weather capacity.

When this happens, Moccasin Bend discharges raw sewage from the West Bank Tide Gate CSO Outfall directly to the Tennessee River, often in amounts that exceed ten million gallons. On occasion, Moccasin Bend also discharges untreated sewage from the East Bank Outfall, which is located across the Tennessee River.

The NPDES permit expressly prohibits these discharges. Section 2.1.15(a) of the permit provides that the “West bank Tide Gate CSO Outfall is an overflow from the designed hydraulic relief point in the combined sewer system.”² Section 2.1.15(b) of the permit states, “Overflows are prohibited.” Every day on which Moccasin Bend discharges wastewater from either of these outfalls constitutes a violation of the Act.

¹ The permit, and some the DMRs, refer to these as CSO outfalls. However, they are properly defined as unpermitted discharge points.

² Because the East Bank CSO is linked to the West Bank CSO, it is covered by this prohibition as well. Even if this outfall were not prohibited in this manner, it would be prohibited because the outfall is not expressly authorized by the permit, which lists the authorized CSO locations on the cover sheet and in section 1.

From January 2006 through June 2010, Moccasin Bend reported 32 discharges totaling nearly 319 million gallons of untreated sewage discharged directly to the Tennessee River through these outfalls, as detailed in the table below. These are staggering numbers that reflect significant and chronic noncompliance with the Act.

Start Date	Location	Amount (gallons)
9/24/2006	West Bank CSO	8,650
11/16/2006	West Bank CSO	70
1/7/2007	West Bank CSO	6,150
1/7/2007	West Bank CSO	8,100
11/26/2007	West Bank CSO	1,978,000
11/26/2007	West Bank CSO	12,567,000
2/6/2008	West Bank CSO	44,000
2/8/2008	West Bank CSO	118,750
3/19/2008	West Bank CSO	3,019,000
7/22/2008	West Bank CSO	1,319,444
8/26/2008	East Bank CSO	313,500
8/26/2008	West Bank CSO	24,746,800
12/10/2008	West Bank CSO	325
12/10/2008	West Bank CSO	5,666,667
12/11/2008	West Bank CSO	301,000
1/6/2009	East Bank CSO	36,100,000
1/6/2009	West Bank CSO	45,725,000
4/3/2009	West Bank CSO	645,000
5/3/2009	West Bank CSO	1,500
7/5/2009	West Bank CSO	55,250
10/5/2009	West Bank CSO	1,690,500
11/10/2009	West Bank CSO	19,236,000
12/8/2009	West Bank CSO	Unknown
12/13/2009	West Bank CSO	Unknown
12/14/2009	West Bank CSO	Unknown
12/18/2009	West Bank CSO	18,900,000
1/21/2010	West Bank CSO	140,000,000
1/26/2010	East Bank CSO	Unknown
1/30/2010	West Bank CSO	Not given
2/5/2010	West Bank CSO	Not given
2/5/2010	East Bank CSO	5,449,000
5/3/2010	West Bank CSO	950,000
	TOTAL	318,849,706

2. Sanitary Sewer Overflows

Moccasin Bend has a serious and chronic pattern of sanitary sewer overflows throughout its collection system. All of these SSOs are permit violations. Section 2.1.15(a) of the permit defines “overflow” as “any release of sewage from any portion of the collection, transmission, or

treatment system other than through permitted outfalls.” Section 2.1.15(b) states, “Overflows are prohibited.”

Furthermore, Section 1.15(c) of the permit requires that the City of Chattanooga “shall operate the collection system so as to avoid overflows” and prohibits the addition of new flows “upstream of any point in the collection system which experiences chronic bypassing (greater than 5 events per year) or would otherwise overload any portion of the system.” Similarly, Section 2.1.4 of the permit requires that the “permittee shall at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit.” The number and severity of Moccasin Bend’s SSOs indicate a chronic failure to operate the collection system in compliance with these mandatory permit provisions.

Section 1.1.10(a) of the permit requires Moccasin Bend to report all overflows on its Discharge Monitoring Reports (“DMRs”) and on its summary of overflows that accompanies these DMRs. The overflow summary must include the date and duration of overflows, the estimated quantity of wastewater released, and the actions taken to identify, correct, and prevent overflows.

From January 2006 through June 2010, Moccasin Bend has reported at least 489 sanitary sewer overflows totaling nearly 35 million gallons of raw sewage discharged to streams, streets, and private property in Chattanooga. The SSOs have been increasing over time, with 139 SSOs totaling nearly 5 million gallons in the first six months of 2010 alone. A detailed table of the SSO violations is attached hereto as Exhibit 1.

These overflows of raw sewage constitute a substantial threat to water quality. Many streams in Chattanooga that are likely being impacted by these SSOs³ are listed pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), as impaired by E. coli, a pollutant that is contained in raw sewage. These impaired streams include at least: Citico Creek, Chattanooga Creek, Dobbs Branch, Friar Branch, Market Street Branch, and South Chickamauga Creek.

All of these water bodies are subject to the Total Maximum Daily Load (“TMDL”) for E. coli in the Lower Tennessee River Watershed (HUC 06020001). The TMDL assigns a wasteload allocation of zero to leaking collection systems such as Moccasin Bend’s, and expressly recognizes that these SSOs are unpermitted discharges.

Moreover, these untreated sewage overflows constitute a threat to human health and create nuisance conditions that reduce the quality of life in Chattanooga. EPA describes the potential impacts as follows:

Because SSOs contain raw sewage they can carry bacteria, viruses, protozoa (parasitic organisms), helminths (intestinal worms), and borroughs (inhaled molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infections hepatitis, and severe gastroenteritis.

³ Moccasin Bend has been inconsistent in reporting the name of the impacted waterbody for those SSOs that reach streams. Sometimes it lists the name of the stream, and sometimes it does not.

http://cfpub.epa.gov/npdes/faqs.cfm?program_id=4#75. These overflows impact streams, streets, and private property.

3. Unpermitted CSOs

Moccasin Bend reports numerous combined sewer overflows. The average annual CSO volume from 2006-2009 was nearly 220 million gallons/year. In 2009, Moccasin Bend reported CSOs totaling more than 452 million gallons.

Most of these discharges are authorized by the NPDES permit, which allows the discharge of certain “treated” CSOs. “Treatment” includes fine screening and primary clarification, but not disinfection. Because these discharges are not disinfected, they likely contain high concentrations of E. coli and other pathogens.

However, there are two categories of CSOs that likely violate the permit.

a. CSOs that Cause Water Quality Violations. Two of the CSOs - the Central CSO and Williams Street CSO – discharge to Chattanooga Creek, which is 303(d) listed as impaired by E. coli. The impairment listing identifies CSOs as a pollutant source contributing to this impairment. Because the discharges are significant – totaling nearly 54 million gallons in 2009 alone - and are not disinfected, it is likely that they are causing water quality violations for E. coli in Chattanooga Creek. In particular, these discharges likely cause violations of the individual sample limit for instream water quality, and possibly also of the chronic limit, set forth at Tenn. Comp. R. & Regs. 1200-4-3-.03(4)(f). Causing such water quality exceedances violates Section 3.7 of the permit by “causing deviation from the state water quality criteria of Chapter 1200-4-3.”

From January 2006 through June 2010, Moccasin Bend has reported 36 CSO discharges totaling more than 156 million gallons to Chattanooga Creek, including 61 million gallons in the first six months of 2010 alone, likely causing instream water quality violations, as follows:

Start Date	Location of Overflow	Amount (gallons)
1/21/2006	Central Avenue CSO (002)	2,523,168
4/1/2006	Central Avenue CSO (002)	178,218
9/24/2006	Central Avenue CSO (002)	4,209,855
11/15/2006	Central Avenue CSO (002)	5,191,739
10/23/2007	Central Avenue CSO (002)	2,956,184
2/6/2008	Central CSO (002)	7,993,338
3/7/2008	Central CSO (002)	141
7/22/2008	Central CSO (002)	126,696
8/26/2008	Central CSO (002)	1,638,466
12/10/2008	Central CSO (002)	4,224,252
12/11/2008	Williams Street CSO (003)	10,074,819
12/26/2008	Central CSO (002)	2,333,161

12/28/2008	Central CSO (002)	111,908
1/6/2009	Central CSO (002)	5,582,798
7/5/2009	Central CSO (002)	1,904,796
9/16/2009	Central CSO (002)	23,159,627
9/18/2009	Central CSO (002)	7,044
9/19/2009	Central CSO (002)	4,061,993
9/20/2009	Central CSO (002)	6,527,579
9/23/2009	Central CSO (002)	8,724
9/24/2009	Central CSO (002)	25,186
9/25/2009	Central CSO (002)	5,463
9/26/2009	Central CSO (002)	6,848,856
9/28/2009	Central CSO (002)	4,471
10/5/2009	Central CSO (002)	2,154,278
10/7/2009	Central CSO (002)	3,071,456
1/24/2010	Williams Street CSO (003)	9,746,816
1/24/2010	Central CSO (002)	6,115,230
1/30/2010	Williams Street CSO (003)	7,909,474
2/5/2010	Williams Street CSO (003)	18,874,387
2/5/2010	Central CSO (002)	11,230,910
2/6/2010	Williams Street CSO (003)	1,734,870
2/6/2010	Williams Street CSO (003)	1,734,870
5/3/2010	Central CSO (002)	4,018,817
	TOTAL	156,289,590

b. Dry Weather CSOs. Sections 1.5-1.7 & 3.7 of the permit prohibit dry weather CSOs. A number of Moccasin Bend's self-reported CSOs appear to be dry weather CSOs, and would thus constitute permit violations. Specifically, Moccasin Bend has reported 19 CSOs totaling more than 4.7 million gallons on dates when it reports that there has been no rainfall, as follows:

Start Date	Location of Overflow	Amount (gallons)
11/27/2006	19th Street CSO (008)	115,816
12/13/2006	19th Street CSO (008)	145,675
1/1/2007	Carter Street CSO (009)	869,382
1/2/2007	Carter Street CSO (009)	982,385
1/8/2007	19th Street CSO (008)	190,631
1/23/2007	19th Street CSO (008)	204,870
2/20/2008	19th Street CSO (008)	9,334
7/20/2008	19th Street CSO (008)	32,323
8/7/2009	Carter Street CSO (009)	1,489,905
9/18/2009	Central CSO (002)	7,044
9/18/2009	19th Street CSO (008)	580
9/18/2009	19th Street CSO (008)	7,156
9/18/2009	Carter Street CSO (009)	611

9/23/2009	Central CSO (002)	8,724
9/24/2009	Central CSO (002)	25,186
9/25/2009	Central CSO (002)	5,463
9/28/2009	Central CSO (002)	4,471
2/16/2010	19th Street CSO (008)	42,955
5/28/2010	Carter Street CSO (009)	602,795
	TOTAL	4,745,306

4. E. Coli Violations at Outfall 001

Sections 1.1 through 1.4 of the permit establish a daily maximum limit for E. coli of 487 colonies per 100 milliliters at Outfall 001. From the time this limit became effective on April 1, 2007 through June 2010, Moccasin Bend has reported 26 violations of this daily maximum limit for Outfall 001, as follows:

Date	Discharge	% Excess
6/25/2007	2,420	397%
9/10/2007	816	68%
9/14/2007	1,200	146%
9/19/2007	613	26%
11/27/2007	488	0%
5/6/2008	2,420	397%
9/13/2008	649	33%
12/10/2008	980	101%
12/11/2008	2,420	397%
12/12/2008	3,470	613%
12/26/2008	2,420	397%
9/21/2009	2,420	397%
9/22/2009	2,420	397%
9/23/2009	2,420	397%
9/24/2009	2,420	397%
9/27/2009	1,550	218%
9/28/2009	1,410	190%
9/29/2009	1,200	146%
12/9/2009	2,420	397%
12/10/2009	2,420	397%
12/11/2009	2,420	397%
12/13/2009	2,420	397%
12/14/2009	2,420	397%
1/30/2010	1,300	167%
2/8/2010	1,410	190%
2/9/2010	1,730	255%

5. Monitoring and Reporting Violations

Moccasin Bend often fails to report the estimated volume of its SSOs. Section 1.1.10.a of the Permit requires that “[a] summary report of known or suspected instances of overflows in the collection system other than through permitted outfalls ... shall accompany the Discharge Monitoring Report. The report must contain the date and duration of the instances of overflow and/or bypassing and the estimated quantity of wastewater released and/or bypassed.” (emphasis added).

As detailed in Exhibit 2, Moccasin Bend has reported 91 SSOs without reporting an estimated volume of wastewater released from January 2006 through June 2010. Each reported SSO that does not include an estimated volume constitutes a violation of the permit’s monitoring and reporting requirements.

PERSONS RESPONSIBLE FOR VIOLATIONS

Moccasin Bend is owned and operated by the City of Chattanooga, Tennessee, a municipality. The City of Chattanooga is responsible for all violations at the plant and throughout the sewer system.

PERSON GIVING NOTICE

The Tennessee Clean Water Network is a Tennessee nonprofit corporation. TCWN empowers Tennesseans to claim their right to clean water and healthy communities by fostering civic engagement, building coalitions and advancing water policy for a sustainable future. TCWN is a membership organization, and has members who are injured by illegal discharges from Moccasin Bend, including SSOs and CSOs. The name, address, and phone number of the person giving notice are:

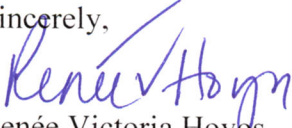
Renée Victoria Hoyos
Executive Director
Tennessee Clean Water Network
123A South Gay Street
Knoxville, TN 37902
865-522-7007 x 100

TCWN believes that a negotiated settlement of these violations, codified through a court-approved consent decree, would be preferable to protracted litigation. However, if we are unable to reach an enforceable settlement agreement, TCWN is prepared to file suit in the United States District Court for the Eastern District of Tennessee pursuant to Section 505(a)(1) of the Act, 33 U.S.C. § 1365(a)(1), after sixty days. This lawsuit would seek injunctive relief, an appropriate monetary penalty, fees & costs of litigation, and such other relief as the Court deems appropriate.

If you believe any of the above information is in error, or if you have questions concerning this letter or the described violations, please contact us at 865-522-7007.

Thank you for your prompt attention to this matter.

Sincerely,


Renée Victoria Hoyos
Executive Director


Stephanie Durman Matheny
Staff Attorney

Attachments:

Exhibit 1 – Sanitary Sewer Overflow Violation Table

Exhibit 2 – SSO Monitoring and Reporting Violation Table

cc: (by certified mail, return receipt requested)

Ms. Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Tracking #7003-0500-0000-4541-9509

Stan Meiburg, Regional Administrator
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

Tracking #7003-0500-0000-4541-9462

Paul E. Davis, P.E., Director
Tennessee Department of Environment and Conservation
Division of Water Pollution Control
6th Floor, L&C Annex
401 Church Street
Nashville, TN 37243-1534

Tracking #7003-0500-0000-4541-9479

cc: (via email)

Dr. Richard Urban, TDEC
Patrick Parker, TDEC
Brad Ammons, EPA Region 4
Bill Bush, EPA Region 4