

IN THE CIRCUIT COURT FOR ST. MARY’S COUNTY

STATE OF MARYLAND *
DEPARTMENT OF THE *
ENVIRONMENT *
1800 Washington Boulevard *
Baltimore, Maryland 21230, *

Plaintiff, *

v. *

ST. MARY’S COUNTY *
METROPOLITAN COMMISSION *
23121 Camden Way *
California, Maryland 20619 *

Case No: _____

Serve on: *
George A. Erichsen *
Executive Director *
23121 Camden Way *
California, Maryland 20619, *

Defendant. *

* * * * *

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

The State of Maryland, Department of the Environment (the “Department”), through its attorneys, files this complaint for injunctive relief and civil penalties against the St. Mary’s County Metropolitan Commission (“MetCom”).

INTRODUCTION

1. The Department brings this action against MetCom to eliminate unpermitted overflows and discharges of pollution to waters of the State in violation of State and federal water pollution control laws and for civil penalties.

2. MetCom owns and operates various sanitary sewer systems throughout St. Mary's County (the "Sanitary Sewer System") that convey sewage to wastewater treatment plants for treatment and disposal.¹

3. MetCom's Sanitary Sewer System has experienced 58 sanitary sewer overflows ("Overflows") since 2017. Overflows discharge raw sewage and its associated pollutants to the ground surface and waters of the State and create a nuisance and a public health hazard. MetCom reported each of these incidents to the Department.

4. The Department brings this action to require MetCom to operate its Sanitary Sewer System in accordance with State and federal law and to seek penalties for unauthorized Overflows and discharges of pollutants to waters of the State.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to § 1-501 of the Courts and Judicial Proceedings Article.

6. This Court has personal jurisdiction pursuant to § 6-102 and § 103 of the Courts and Judicial Proceedings Article because MetCom is a body politic and corporate organized under the laws of the State of Maryland, has an interest in property, and conducted business in Maryland at all times relevant to this complaint.

7. This Court is the proper venue for this action pursuant to § 6-201 of the Courts and Judicial Proceedings Article because MetCom resides or carries on a regular

¹ MetCom's Sanitary Sewer System is designed to convey sewage and is not designed to convey stormwater or groundwater.

business in St. Mary's County, Maryland.

PARTIES

8. Plaintiff is a State agency within the Executive Branch of the State of Maryland. The Secretary of the Environment is charged with regulating water pollution and enforcing the State's water pollution laws pursuant to Title 9, Subtitle 3 of the Environment Article.

9. Defendant St. Mary's County Metropolitan Commission is a body politic and corporate created under the Public Local Laws of St. Mary's County, Maryland that provides sewerage service in St. Mary's County and carried out the unlawful activities specified in this complaint in St. Mary's County, Maryland.

STATUTORY AND REGULATORY AUTHORITY

10. The Maryland General Assembly has enacted a comprehensive licensing and regulatory system governing the discharge of pollutants and other activities that impact waters of the State, including discharges to streams and river channels, and their 100-year flood plains. The Department implements and enforces this system under § 1-301(a) and § 9-319 of the Environment Article.

11. A person may not discharge any pollutant into waters of the State unless authorized by Title 4, Subtitle 4, or by Title 9, Subtitle 3 of the Environment Article. Md. Code Ann., Envir. § 9-322.

12. Title 9, Subtitle 3 of the Environment Article declares that it is the policy of the State to improve, conserve, and manage the quality of the waters of the State for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural,

industrial, recreational, and other legitimate beneficial uses, to ensure that waste is not discharged to waters of the State without necessary treatment, to prevent, abate, and control water pollution, and to promote conservation consistent with the Clean Water Act and the Chesapeake Bay Agreement. Envir. § 9-302(b).

13. Under Title 9, Subtitle 3 and Code of Maryland Regulations (“COMAR”), a person may not discharge any pollutant into waters of the State without a discharge permit issued by the Department.² Envir. § 9-323; COMAR 26.08.04.01B.

14. The Department has also established regulations under Title 9, Subtitle 3 that prohibit any overflow of sewage from a sanitary sewer system without a discharge permit issued by the Department. Envir. § 9-323; COMAR 26.08.10.02.

15. “Overflow” is defined as “any loss of wastewater or discharge from a sanitary sewer system, combined sewer system, or wastewater treatment plant bypass which results in the direct or potential discharge of raw, partially treated or diluted sewage into waters of the State” including “any overflow or discharge of raw or diluted sewage onto the surface of the ground, into waterways, storm drains, ditches or other manmade or natural drainage conveyances to surface or ground waters” except (1) discharges to the ground that are 50 gallons or fewer and cleaned up within one hour, or (2) discharges to impervious surfaces

² The Clean Water Act, 33 U.S.C. §§ 1251 through 1376, prohibits the discharge of pollutants into waters of the United States unless the U.S. Environmental Protection Agency issues a National Pollutant Discharge Elimination System permit. The EPA may delegate its permitting authority to a state, 33 U.S.C. § 1342(b), and has done so to the State of Maryland, which has vested that authority in the Secretary of the Department. *See, e.g.*, Envir. § 9-253. The Department thus issues permits that authorize discharges to waters of the United States under both federal and State law.

that are contained and cleaned up so there is no direct or potential pollution of waters of the State. COMAR 26.08.10.01B.

16. Section 9-101(l) of the Environment Article defines “Waters of the State” to include both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of the State; the Chesapeake Bay and its tributaries; and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage. In addition, the flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency is included as waters of the State.

17. “Discharge” is defined as the addition, introduction, leaking, spilling, or emitting of a pollutant into waters of the State; or placing a pollutant in a location where the pollutant is likely to pollute waters of the State. Envir. § 9-101(b); COMAR 26.08.01.01B(20).

18. “Pollutant” is defined as any waste or wastewater that is discharged from a publicly owned treatment works, industrial source, or any other liquid, gaseous, solid, or other substance that will pollute any waters of this State. Envir. § 9-101(g).

19. “Pollution” is defined as any contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including a change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into the waters of this State, that will render the waters harmful or detrimental

to: (1) public health, safety, or welfare; (2) domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; (3) livestock, wild animals, or birds; or (4) fish or other aquatic life. Envir. § 9-101(h); COMAR 26.08.01.01B(67).

20. The owner or operator of any sanitary sewer system must report any Overflow “that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State” to the Department. Envir. § 9-331.1(a)(1). The owner or operator must report the Overflow to the Department within 24 hours after becoming aware of the Overflow and submit a written report to the Department within five calendar days after the 24-hour notification “that includes any information required by the Department.” Envir. § 9-331.1(a)(2) – (3). The Department has established requirements for these reports at COMAR 26.08.10. The Maryland Department of Health and the local health department “shall make all decisions and determinations as to public health issues resulting from sewer overflows or treatment bypasses.” Envir. § 9-331.1(c)(1).

FACTUAL ALLEGATIONS

21. MetCom owns and operates its Sanitary Sewer System in St. Mary’s County, Maryland, including the following sanitary districts:

- Luckland Run Sanitary District No. 1
- Dukehart’s Creek Sanitary District No. 2
- Leonardtown Sanitary District No. 3
- Piney Point Sanitary District No. 5
- Lake Conoy Sanitary District No. 6

- Pine Hill Run Sanitary District No. 8

22. In 2017, MetCom discharged an estimated 13,200 gallons of untreated sewage from the Sanitary Sewer System to the permeable surface of the ground and/or waters of the State in six Overflow events over nine days. MetCom's discharges to the surface of the ground created a potential discharge of pollutants to waters of the State. These Overflows occurred in the Piney Point Sanitary District and the Pine Hill Run Sanitary District. None of these events was authorized by a discharge permit issued by the Department.

23. In 2018, MetCom discharged 278,198 gallons of untreated sewage from the Sanitary Sewer System to a pumping station, the permeable surface of the ground, and/or waters of the State in four Overflow events over five days. MetCom's discharges to the surface of the ground created a potential discharge of pollutants to waters of the State. Three of these Overflows occurred in the Piney Point Sanitary District and the Pine Hill Run Sanitary District. One of these Overflows occurred in the Luckland Run Sanitary District. None of these events was authorized by a discharge permit issued by the Department.

24. In 2019, MetCom discharged an estimated 40,200 gallons of untreated sewage from the Sanitary Sewer System to the permeable surface of the ground and/or waters of the State in ten Overflow events over ten days. MetCom's discharges to the surface of the ground created a potential discharge of pollutants to waters of the State. One of these Overflows discharged an additional, unspecified volume of untreated sewage to the ground surface and/or waters of the State. These Overflows occurred in the Piney

Point Sanitary District and the Pine Hill Run Sanitary District. None of these events was authorized by a discharge permit issued by the Department.

25. In 2020, MetCom discharged an estimated 1,571,070 gallons of untreated sewage from the Sanitary Sewer System to the permeable surface of the ground and/or waters of the State in 17 Overflow events over 21 days. MetCom's discharges to the surface of the ground created a potential discharge of pollutants to waters of the State. One of these Overflows discharged an additional, unspecified volume of untreated sewage to the ground surface and/or waters of the State. These Overflows occurred in the Piney Point Sanitary District, the Pine Hill Run Sanitary District, and the Dukehart's Creek Sanitary District. None of these events was authorized by a discharge permit issued by the Department.

26. In 2021, MetCom discharged an estimated 212,140 gallons of untreated sewage from the Sanitary Sewer System to the permeable surface of the ground and/or waters of the State in 14 Overflow events over 20 days. One of these Overflows discharged an additional, unspecified volume of untreated sewage to the ground surface and/or waters of the State. MetCom's discharges to the surface of the ground created a potential discharge of pollutants to waters of the State. These Overflows occurred in the Piney Point Sanitary District and the Pine Hill Run Sanitary District. None of these events was authorized by a discharge permit issued by the Department.

27. On January 19, 2022, MetCom discharged 2,100 gallons of untreated sewage from the Sanitary Sewer System at 45501 Bethson Drive, California, Maryland 20619 in the Pine Hill Run Sanitary District. The Overflow discharged to waters of the State: a

storm drain and a stormwater management pond. The Overflow was caused by a blockage in MetCom's Sanitary Sewer System and was not authorized by a discharge permit issued by the Department.

28. On January 31, 2022, the Department assessed administrative penalties to MetCom for the Overflows that occurred from 2017 through 2020. On June 23, 2022, the Department assessed administrative penalties to MetCom for the Overflows that occurred during 2021. The Department received timely payment for these administrative penalties from MetCom.

29. From March 20, 2022 to March 21, 2022, MetCom released 4,050 gallons of untreated sewage from the Sanitary Sewer System at 19880 Piney Point Road, Valley Lee, Maryland 20692 in the Pine Hill Run Sanitary District. The Overflow released untreated sewage to the permeable surface of the ground, including a wooded area. MetCom's loss of untreated sewage to the surface of the ground created a potential discharge of pollutants to waters of the State. The Overflow was caused by a leaking force main³ in MetCom's Sanitary Sewer System and was not authorized by a discharge permit issued by the Department.

30. On July 26, 2022, MetCom discharged 1,400 gallons of untreated sewage from the Sanitary Sewer System at 19880 Piney Point Road, Valley Lee, Maryland 20692 in the Pine Hill Run Sanitary District. The Overflow discharged to the permeable surface of the ground and a ditch. MetCom's discharge of untreated sewage to the surface of the

³ A force main is a sewer pipe that is pressurized.

ground created a potential discharge of pollutants to waters of the State. The Overflow was caused by a leaking force main in MetCom's Sanitary Sewer System and was not authorized by a discharge permit issued by the Department.

31. On July 27, 2022, MetCom released 718 gallons of untreated sewage from the Sanitary Sewer System at 19880 Piney Point Road, Valley Lee, Maryland 20692 in the Pine Hill Run Sanitary District. The Overflow released untreated sewage to the permeable surface of the ground: a trench where repairs were being made. MetCom's release of untreated sewage to the surface of the ground created a potential discharge of pollutants to waters of the State. The Overflow was caused by a leaking force main in MetCom's Sanitary Sewer System and was not authorized by a discharge permit issued by the Department.

32. On August 16, 2022, MetCom released 500 gallons of untreated sewage from the Sanitary Sewer System at 43855 Airport View Drive, Hollywood, Maryland 20636 in the Pine Hill Run Sanitary District. The Overflow released untreated sewage to the permeable surface of the ground and pooled near a wooded area, creating a potential discharge of pollutants to waters of the State. The Overflow was caused by a leaking force main in MetCom's Sanitary Sewer System and was not authorized by a discharge permit issued by the Department.

33. On October 11, 2022, MetCom discharged 13,000 gallons of untreated sewage from the Sanitary Sewer System at the north-bound side of Route 249 near Springer Road and Peninsular Court in Valley Lee, Maryland in the Piney Point Sanitary District. The Overflow discharged to the permeable surface of the ground and to waters

of the State: a storm drain ditch approximately 400 yards from St. George Creek. MetCom's discharge of untreated sewage to the surface of the ground also created a potential discharge of pollutants to waters of the State. The Overflow was caused by a leaking force main in MetCom's Sanitary Sewer System and was not authorized by a discharge permit issued by the Department.

34. From October 20, 2022 to October 21, 2022, MetCom discharged 36,400 gallons of untreated sewage from the Sanitary Sewer System at 18550 Peninsulas Court, Valley Lee, Maryland, 20692 in the Piney Point Sanitary District. The Overflow discharged to waters of the State: a storm drain ditch approximately 400 yards from St. George Creek. The Overflow was caused by a leaking force main in MetCom's Sanitary Sewer System and was not authorized by a discharge permit issued by the Department.

35. Under § 9-342 of the Environment Article, a person who violates any provision of Title 9, Subtitle 3 or any rule, regulation, order, or permit adopted or issued under Title 9, Subtitle 3 is liable for a civil penalty not exceeding \$10,000 to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation.

36. Under § 9-339 of the Environment Article, this Court may issue an injunction on a showing that a person is violating or is about to violate Title 9, Subtitle 3 or any rule, regulation, order, or permit adopted or issued by the Department under Title 9, Subtitle 3 without the necessity of showing lack of an adequate remedy at law.

**COUNT I
(Overflow)**

37. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

38. MetCom's releases of untreated sewage from the Sanitary Sewer System to the permeable surface of the ground and/or to waters of the State on January 19, 2022, March 20, 2022, March 21, 2022, July 26, 2022, July 27, 2022, August 16, 2022, October 11, 2022, October 20, 2022, and October 21, 2022 constitute separate violations of COMAR 26.08.10.02.

**COUNT II
(Discharge without a permit)**

39. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

40. MetCom's discharges of untreated sewage from its Sanitary Sewer System to waters of the State on January 19, 2022, October 11, 2022, October 20, 2022, and October 21, 2022 constitute separate violations of § 9-322 and § 9-323 of the Environment Article and their implementing regulations, including COMAR 26.08.04.01B.

WHEREFORE, the Department asks that this Court, pursuant to § 9-339 and § 9-342 of the Environment Article, impose a civil penalty of up to \$10,000 on MetCom for each day of violation under Count I and Count II, and enter an injunction compelling MetCom to cease all Overflows and unauthorized discharges to waters of the State, to perform all necessary remediation to bring the Sanitary Sewer System into compliance with, and to operate the Sanitary Sewer System in conformity with, Title 9, Subtitle 3 of

the Environment Article and its implementing regulations, and for such other relief as this Court deems appropriate.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ James Phillips-Farley
JAMES S. PHILLIPS-FARLEY
Attorney No. 1312190007
Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3035
(410) 537-3943 (facsimile)
james.phillips-farley@maryland.gov

Attorney for Plaintiff
Maryland Department of the Environment