

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

**UNITED STATES OF AMERICA and** )  
**STATE OF TEXAS,** )  
 )  
 **Plaintiffs,** )  
 )  
 **v.** )  
 )  
**CITY OF DALLAS** )  
 )  
 **Defendant.** )  
\_\_\_\_\_ )

**Civil Action No.**

**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 of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Texas, acting at the request and on behalf of the Texas Commission on Environmental Quality (“TCEQ”), allege as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the City of Dallas (“City”) pursuant to Sections 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d), Section 26.121 of the Texas Water Code, and Section 3008 of the Solid Waste Disposal Act, 42 U.S.C. § 6928. The Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, is also known as the Resource Conservation and Recovery Act (hereinafter “RCRA”). The United States and the State allege that the City has violated the Clean Water Act and the Texas Water Code, respectively, by failing to comply with the terms of the City’s National Pollutant Discharge Elimination System (“NPDES”) permits for storm water discharges. The United States also alleges that certain activities at City service centers violated RCRA.

2. The State joins this action as a party pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e), which provides that whenever a municipality is a party to a civil action brought by the United States under Section 309 of the CWA, the State in which the municipality is located shall be joined as a party. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA has authorized the State of Texas, through TCEQ, to administer the NPDES program in Texas.

3. The United States has the authority to bring this action on behalf of the Administrator of the EPA (“the Administrator”) under Section 506 of the CWA, 33 U.S.C.

§ 1366, and 28 U.S.C. §§ 516 and 519.

### JURISDICTION, VENUE, AND NOTICE

4. This Court has jurisdiction over the subject matter of this action under Section 309 of the CWA, 33 U.S.C. § 1319, Section 3008 of RCRA, 42 U.S.C. § 6928, and under 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

5. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), and 28 U.S.C. §§ 1391(b) and 1395, because this is the district in which the City is located, the district in which a substantial part of the events and omissions giving rise to claims occurred, the district in which the violations occurred, and the district in which the defendant is found.

6. Notice of the commencement of this action has been given to the State of Texas in accordance with 33 U.S.C. § 1319(b) and 42 U.S.C. § 6928(a)(2).

### THE DEFENDANT

7. The City is a municipal corporation duly chartered under the laws of the State of Texas.

8. The City is a municipality within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

### STATUTORY AND REGULATORY BACKGROUND

#### A. CLEAN WATER ACT

9. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of a pollutant by any person, except as authorized by and in compliance with certain enumerated sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

10. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator may issue an NPDES permit that authorizes the discharge of a pollutant, upon the condition that such discharge meet the requirements of the CWA or other conditions that the Administrator may find are necessary.

11. Section 402(p)(4)(A) of the CWA, 33 U.S.C. § 1342(p)(4)(A), sets out a schedule for the issuance of NPDES permits for storm water discharges from municipal separate storm sewer systems serving a population of 250,000 people or more.

12. “Municipal separate storm sewer” means, inter alia, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains . . . [o]wned or operated by a . . . city . . . [and] [d]esigned or used for collecting or conveying storm water . . . .” 40 C.F.R. § 122.26(b)(8).

13. 40 C.F.R. § 122.26(b)(4) defines “large municipal separate storm sewer system” to mean “all municipal separate storm sewers . . . located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census.”

14. Cities applying for permits for discharges from large municipal separate storm sewer systems must submit a proposed storm water management program. 40 C.F.R. § 122.26(d)(2)(iv).

15. Section 309 of the CWA, 33 U.S.C. § 1319, authorizes EPA to commence a civil action for injunctive relief and civil penalties when any person is in violation of the CWA or a permit. Such person is subject to a civil penalty of up to \$25,000 per day for each such violation. 33 U.S.C. § 1319(d). Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. No. 101-410, 104 Stat. 890), as amended by the Debt Collection

Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. No. 104-134, § 31001(s), 110 Stat. 1321-373), the maximum civil penalty per day for each such violation occurring after January 30, 1997, but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

16. On September 14, 1998, EPA approved Texas's application to have TCEQ administer the NPDES program in Texas. 63 Fed.Reg. 51,164 (Sept. 24, 1998) (*State Program Requirements; Approval of Application to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Texas*).

B. RCRA

17. RCRA establishes a comprehensive statutory scheme for the management of hazardous wastes from their initial generation until their final disposal. Pursuant to RCRA Section 3002(a), 42 U.S.C. § 6922(a), EPA promulgated regulations applicable to generators of hazardous waste, and pursuant to RCRA Section 3005(a), 42 U.S.C. § 6925(a), EPA promulgated regulations prohibiting the treatment, storage, or disposal of hazardous wastes without a permit. These regulations are codified at 40 C.F.R. Part 260 *et seq.*

18. Under RCRA Section 3006(b), 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, any state may apply for and receive authorization to enforce its own hazardous waste management program in place of the federal hazardous waste management program described in the preceding paragraph, provided the state requirements are consistent with and equivalent to the federal requirements. To the extent that the state hazardous waste program is authorized by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the requirements of the state program are

effective in lieu of the federal hazardous waste management program set forth in 40 C.F.R. Part 260 *et seq.*

19. Texas has promulgated hazardous waste management regulations at Tex. Admin. Code Tit. 30, Ch. 335 and received authorization from EPA, effective December 26, 1984, to administer various aspects of the hazardous waste management program within Texas. 49 Fed. Reg. 48,300 (Dec. 12, 1984).

20. Tex. Admin. Code Tit. 30 §§ 335.2 and 335.43(a) provide that, with certain exceptions which are not relevant here, no person shall store, process, or dispose of hazardous waste without first having obtained a permit from TNRCC (predecessor agency to TCEQ).

21. Tex. Admin. Code Tit. 30 § 335.69 provides that a generator of hazardous waste may accumulate hazardous waste on-site for 90 days without a permit provided that the generator complies with certain requirements concerning placement of the waste, marking of containers, and certain other requirements.

22. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the United States is authorized to enforce the regulations that comprise the federally-approved Texas hazardous waste management program.

23. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that when any person has violated or is in violation of any requirement of RCRA, including provisions of a federally-approved state hazardous waste management program, the Administrator of EPA may commence a civil action in U.S. District Court for appropriate relief.

24. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes penalties of up to \$25,000 per day. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28

U.S.C. § 2461 note; Pub. L. No. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. No. 104-134, § 31001(s), 110 Stat. 1321-373), the maximum civil penalty per day for each such violation occurring after January 30, 1997, but before March 16, 2004, has been increased to \$27,500, and the maximum civil penalty per day for each such violation occurring on or after March 16, 2004 has been increased to \$32,500. 40 C.F.R. §§ 19.1-19.4.

### GENERAL ALLEGATIONS

#### A. CLEAN WATER ACT

25. The City is a “person” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

26. The City owns and operates a municipal separate storm sewer system within the meaning of Section 402(p)(2) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(18), a large municipal separate storm sewer system within the meaning of 40 C.F.R. § 122.26(b)(4), and a municipal separate storm sewer system serving a population of 250,000 or more within the meaning of Section 402(p)(2)(C) of the CWA.

27. The City’s discharges from its municipal separate storm sewer system constitute the “discharge” of “pollutants” from “point sources” to “navigable waters” within the meaning of Sections 502(12), (6), (14), and (7) of the CWA, 33 U.S.C. § 1362(12), (6), (14), and (7).

28. On March 28, 1997, EPA issued the City NPDES Permit No. TXS000701 (the “1997 Permit”) for discharges from the City’s municipal separate storm sewer system.

29. The 1997 Permit contained a storm water management program (“SWMP”), which the City had proposed as part of its permit application, and which EPA, with some

modifications, approved and made part of the 1997 Permit.

30. The 1997 Permit required the City to “provide adequate finances, staff, equipment, and support capabilities to implement [the] activities under the [SWMP].” 1997 Permit, Part II. “F” (in the Permit’s Table of Contents (“TOC”) enumeration) [Part II, Section “VI” (in the internal organization of the Permit)], page 8 of 8 of Part II of the Permit.

31. The 1997 Permit required the City to comply with all conditions of the Permit, 1997 Permit, Part I.C.1.A (TOC enumeration) [Part I, Section III.1.A (internal enumeration)] and 1997 Permit, Part VI.A (both enumerations), including the implementation of the SWMP, 1997 Permit, Part I.C.1.B (TOC enumeration) [Part I, Section III.1.B (internal enumeration)].

32. On February 6, 2004, EPA issued an order titled “Findings of Violation and Order for Compliance” (the “Compliance Order”) for alleged violations of the Clean Water Act and RCRA.

33. On February 28, 2006, TCEQ issued the City a storm water permit, TPDES Permit No. WQ0004396000 (the “2006 Permit”), which is a renewal of the 1997 Permit. The same SWMP that was part of and effective under the 1997 Permit is part of and effective under the 2006 Permit.

B. RCRA

34. The City is a “person” within the meaning Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, and 30 Texas Administrative Code (“TAC”) § 335.1.

35. The City owns and/or operates the service center at 3112-3212 Canton Street, Dallas, Texas, known as the Central Service Center, and the service center at 8915-8519 Adlora Lane, Dallas, Texas, known as the Northeast Service Center.



36. The City's Central Service Center and Northeast Service Center are "facilities" within the meaning of 40 C.F.R. § 260.10 and 30 TAC § 335.1.

37. The City is a "generator" of hazardous waste as the term is defined at 40 C.F.R. § 260.10 and 30 TAC § 335.1.

38. EPA inspected the Central Service Center and the Northeast Service Center on November 19 and 21, 2003.

39. On February 6, 2004, EPA issued the "Compliance Order" for alleged violations of the Clean Water Act and RCRA.

FIRST CLAIM FOR RELIEF (CWA)

40. Paragraph Numbers 1 through 16 and 25 through 33 are realleged and incorporated herein by reference.

41. The 1997 Permit required, and the 2006 Permit requires, the City to implement:

- a Public Participation and Government Coordination Program pursuant to Section 4.1 of the SWMP;
- a Maintenance Activities and Schedule Program pursuant to Section 4.2 of the SWMP;
- a New Development and Redevelopment Management Program pursuant to Section 4.3 of the SWMP;
- a Program of Best Management Practices for Fully-Developed Areas pursuant to Section 4.4 of the SWMP;
- a Public Transportation Right-of-Way Operations and Maintenance Program pursuant to Section 4.5 of the SWMP;
- Procedures for Existing Flood Management Projects pursuant to Section 4.6 of the SWMP;
- a Landfill Program pursuant to Section 4.7 of the SWMP;

- an Illicit Discharge Detection and Elimination Program pursuant to Section 4.9 of the SWMP;
- a Program of Detailed Investigation Procedures pursuant to Section 4.11 of the SWMP;
- a Used Oil Program pursuant to Section 4.13 of the SWMP;
- an Industrial Inspection and Control Program pursuant to Section 4.16 of the SWMP;
- a Monitoring Program for Industrial Facilities pursuant to Section 4.17 of the SWMP;
- a Site Planning Practices Program (regarding construction sites) pursuant to Section 4.18 of the SWMP; and
- an Inspection Priorities Program (regarding construction sites) pursuant to Section 4.20 of the SWMP.

42. The City failed and/or is failing to fully implement the Programs listed above in accordance with the schedules set forth in the applicable sections of the SWMP.

43. The City failed and/or is failing to provide adequate finances, staff, equipment, and support for each of the Programs listed above.

44. Each of the City's failures to comply with the 1997 and/or 2006 Permits' requirements regarding the above-listed Programs violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the 1997 and/or 2006 Permits.

45. The City is liable under Section 309 of the CWA, 33 U.S.C. § 1319, for a civil penalty up to \$27,500 per day for each such violation occurring before March 16, 2004, and up to \$32,500 per day for each violation occurring on or after March 16, 2004.

#### SECOND CLAIM FOR RELIEF (RCRA)

46. Paragraph Numbers 1 through 7 and 17 through 24 are realleged and incorporated herein by reference.

47. In connection with the operation of the vehicle service garage and with painting operations at the Central Service Center, the City failed to perform hazardous waste determinations, in violation of 30 TAC § 335.62.

48. Each of the City's failures to comply with 30 TAC § 335.62 constituted a separate violation of Section 3008 of RCRA.

49. The City is liable under Section 3008 of RCRA, 42 U.S.C § 6928, for a civil penalty up to \$27,500 per day for each such violation occurring before March 16, 2004, and up to \$32,500 per day for each violation occurring on or after March 16, 2004.

#### THIRD CLAIM FOR RELIEF (RCRA)

50. Paragraph Numbers 1 through 7 and 17 through 24 are realleged and incorporated herein by reference.

51. In connection with the operation of a waste fuel storage tank at the Central Service Center, the City failed to comply with hazardous waste storage tank requirements with respect to tank inspections and record keeping, as required by 30 TAC § 335.69(f) [40 C.F.R. § 262.34(d)(3)].

52. The City's therefore stored hazardous waste without a permit, in violation of 30 TAC § 335.151 and Section 3005 of RCRA, 42 U.S.C § 6925.

53. The City is liable under Section 3008 of RCRA, 42 U.S.C § 6928, for a civil penalty up to \$27,500 per day for each such violation occurring before March 16, 2004, and up to \$32,500 per day for each violation occurring on or after March 16, 2004.

#### FOURTH CLAIM FOR RELIEF (RCRA)

54. Paragraph Numbers 1 through 7 and 17 through 24 are realleged and incorporated

herein by reference.

55. At the time of EPA's inspection, the City had failed to label two used oil containers at the Northeast Service Center as required by 30 TAC § 324.6, which incorporates 40 C.F.R. § 279.22(c).

56. Each of the City's failures to comply with 30 TAC § 324.6 constituted a separate violation of Section 3008 of RCRA.

57. The City is liable under Section 3008 of RCRA, 42 U.S.C § 6928, for a civil penalty up to \$27,500 per day for each such violation occurring before March 16, 2004, and up to \$32,500 per day for each violation occurring on or after March 16, 2004.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Grant injunctive relief to ensure that the City complies with the CWA and its NPDES permit for storm water discharges;
- B. Assess civil penalties of up to \$27,500 per day for each violation of the CWA and RCRA occurring before March 16, 2004, and up to \$32,500 per day for each violation occurring on or after March 16, 2004.
- C. Award Plaintiffs the costs and disbursements of this action; and

D. Grant any and all relief to which the Plaintiffs are otherwise entitled.

Respectfully submitted,

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