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"What You Gonna Do When the EPA Knocks On Your Door?"

Herman Morris Jr. and **CC Drayton**
City Attorney **Senior Asst. City Attorney**
Memphis, Tennessee **Memphis, Tennessee**

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Roughly ten years ago, the Environmental Protection Agency ("EPA") began its Wet Weather Enforcement Initiative across the United States to ensure compliance with the Clean Water Act (CWA) which is the federal standard codified at 33 USC §1318 that governs water quality. Wet weather discharges include storm water runoff, Combined Sewer Overflows ("CSOs") and in the instance of the City of Memphis, Sanitary Sewer Overflows (commonly known as "SSOs").

On June 18, 2008, the City of Memphis received a Section 308 Information Request from the EPA pursuant to the CWA. Per the request, the City provided information regarding Sanitary Sewer Overflows (SSOs) and additional information regarding the City's Waste Water Treatment Plants, NPDES Permit (National Pollutant Discharge Elimination System), and its Industrial Pretreatment Program.

In response to the information provided, the EPA conducted a Compliance Evaluation Inspection in August 2008 of two (2) of the City's waste water treatment plants, the sanitary sewer system and the pretreatment program. The EPA later notified the City **a year later** in September 2009 that the agency's inspection revealed violations of the Clean Water Act and the NPDES Permit, and that the EPA would be bringing an enforcement action based upon the City's alleged violations of the CWA. In December 2009, the parties informally met in Memphis, and sat down to discuss the alleged violations and establish a course of action for compliance. During the discussions, EPA advised that Memphis was not the worse than other cities, and that it was "just Memphis' turn". The cities of Knoxville and Nashville had already entered into Consent Decrees.

Shortly after its informal meeting with EPA, the City also received a 60 Day Notice of Intent to Sue from the Tennessee Clean Water Network (TCWN), a third party environmental advocacy group from Knoxville for alleged SSOs, visible floating foam and other permit violations. The City informed TCWN that the EPA, Department of Justice ("DOJ") and Tennessee Department of Environment and Conservation (TDEC) had already begun initiating enforcement action against the City and the City would be sitting down to potentially discuss settlement thru a Consent Decree.

On February 5, 2010, the EPA filed its complaint in federal court in Memphis. Specifically, the EPA alleged Memphis had experienced numerous sanitary sewer overflows and effluent limit violations. The complaint also alleged Memphis had discharged pollutants which resulted in high volumes of foam and color contaminants in violation of the CWA.

Tennessee Clean Water Network (TCWN), filed a Motion to Intervene in the lawsuit on February 12, 2010 citing its statutory right to intervene in accordance with 33 U.S.C. 1365(b)(1)(B) of the CWA. TCWN's complaint essentially asserted the same allegations asserted by the EPA and the City ultimately agreed to give TCWN a seat at the table for purposes of negotiations. Thereafter, the parties began official negotiations and held numerous meetings between Memphis and Atlanta (which is the location of the EPA Region IV office) until as late as October 2011.

Negotiated Settlement

The parties engaged in extensive negotiations beginning late December 2010 (prior to EPA filing its formal complaint) until as late as October 2011. During such negotiations, numerous issues were addressed including the number of SSOs, effluent limits and the City's regulation of industry (pretreatment). At some point, the City was able to convince EPA that pretreatment and effluent limits (except foam and color) were not issues. Thus, the EPA's primary focus became mandating the City implement a program that would result in the elimination of SSOs.

The City of Memphis owns and operates a Wastewater Collection and Transmission System ("WCTS") that transports wastewater to two publicly owned wastewater treatment plants ("WWTPs"), M.C. Stiles WWTP and T.E. Maxson WWTP. These two WWTPs have a designated treatment capacity of 225 million gallons per day and process on average, 143 million gallons per day. The City's sewage collection and transmission system includes an estimated 2,400 miles of sanitary sewers, 85,000 manholes and approximately 100 pump stations.

Like a lot of cities across the nation, the City of Memphis has an aging WCTS. This WCTS consists mostly of buried pipes, concrete manholes for maintenance access and pumping stations with pressure force mains. The City operates its WCTS pursuant to two NPDES permits. Much of the WCTS was built well over 100 years ago. Over time pipes deteriorate, joints break apart, roots penetrate pipes, corrosion causes pipes and manholes to degrade and/or oil and grease can clog the sewer. As a result, the City sometimes experiences line stoppages that in turn result in SSOs that discharge untreated sewerage into the environment.

The EPA alleged that on numerous occasions since July 2003, pollutants were discharged to the waters of the United States, or the state of Tennessee, from SSOs that were from point sources within Memphis' WCTS. These SSOs were not identified in the NPDES permits as authorized outfalls; therefore, none of these discharges were permitted or otherwise authorized by the Clean Water Act. The EPA also alleged that the City failed to properly operate and maintain its permitted facilities, the collection and transmission systems and the treatment system. The agency asserted the City's failure to properly manage, operate and maintain its permitted facilities resulted in many of the SSOs. Additionally, the EPA maintained the City failed to comply with the effluent permit condition which precludes "distinctly visible floating scum, oil, or other matter contained in the wastewater discharge." Both EPA and TDEC documented

photos which attempted to demonstrate visible discharges of foam from the City's M.C. Stiles wastewater treatment plant facility to the Mississippi River. TCWN also presented pictures of foam floating in the Mississippi River that alleged came from industry discharging thru Memphis' WWTP.

Although the City was able to demonstrate that it experienced SSOs that are generally associated with sanitary sewer systems the size of Memphis, and that the City had been proactive in the maintenance of its sewer system, the City took additional measures to reduce sewer blockages during negotiations rather than wait until the Consent Decree was finalized. In furtherance of its efforts, the City also put up billboards around Memphis related to the proper disposal of grease and implementation of the City's "can the grease" efforts to educate the public about the negative impact of improperly disposed fats, grease and oils. Due to proactive maintenance, the City was also able to demonstrate to EPA, TDEC and TCWN that over the last 10-12 years, Memphis SSO's have decreased approximately 70%.

Under the Consent Decree, Memphis will assess its sewer system and undertake specifically identified rehabilitation efforts over the next nine (9) to ten (10) years which is far less than the typical fifteen (15) to twenty (20) year compliance period imposed by most federal Consent Decrees, and a good indication that Memphis does not have much work to perform as other major cities.

The City agreed to pay a penalty in the amount of $1,290,000.00 based upon the size of Memphis, months of violations, economic benefit and the impact of the violations on the human/health environment. However, $645,000 of the penalty was paid as a State Project for a color study that Memphis is undertaking to develop numerical color limits and for the development and implementation of a City Geographic Information System (GIS). The parties also agreed to Stipulated Penalties for future violations.

While the penalty was hefty in every sense of the word, the penalty amount was considered favorable by Memphis when other settlements with the EPA for similar violations are taken into consideration. As reflected in the table below, Memphis will likely spend an estimated $250 million to complete the requirements under the Consent Decree and other improvements. This estimated amount represents the lowest in comparison to other municipalities within EPA Region IV and other cities such as the City of St. Louis that negotiated a program costing approximately $4.7 billion and Cincinnati's negotiated program cost of $2.5 billion.

CITY	PENALTY	EPA PROJECTS	INJUNCTIVE RELIEF	TOTAL EXPENDITURE
Memphis ('12)	$1,290,000	$0	$251M	$252.29M
Nashville ('07)	$564,000	$2,800,000	$300-$400M *($1 - $1.5B)	$1.003-$1.503B
Louisville & Jefferson Co. ('05)	$1,230,000	$2,250,000	>$500M	>$503.48M
Knoxville ('04)	$334,000	$2,000,000	$530M	$532.33M
Atlanta ('99)	$2,500,000 $700,000	$27,500,000	~4B	~$4.03B
Jefferson Co. (Birmingham) ('96)	$750,000	$30,000,000	$3.2B**	$3.24B

*** Actual costs far exceeded public cost estimates.**

**** Costs were to comply with consent decree and expand to newly-developed areas.**

CD Program Requirements

Under the terms of the Consent Decree, Memphis agreed to continue to assess and rehabilitate its sanitary sewer system. Specifically, Memphis agreed to assess ten percent (10%) of its sewer system each year, focusing on areas where the system is the oldest and, frequency and volumes of the SSOs. Memphis also identified areas for priority assessment and rehab based on an area's proximity to CWA 303 listed streams (impaired streams) and environmental justice communities. The City committed to three large infrastructure projects where interceptors will be replaced to ensure the integrity of the infrastructure in an effort to avoid a failure that could result in a major SSO. The City will also rehabilitate manholes, gravity lines, lift stations and the force main. Rehabilitation projects in designated priority areas, which include most of the areas near downtown Memphis, are estimated to be completed within six years and seven months following EPA's approval of Memphis' Infrastructure Rehabilitation Program.

In addition to its assessment and rehab obligations under the CD, Memphis is required to implement specific programs designed to ensure proper management, operation and maintenance (MOM) of its sewer system in an effort to eliminate SSOs. These ongoing MOM programs will include the development of a Sewer Overflow Response Plan (SORP), the implementation of a comprehensive Fats, Oil and Grease (FOG) program, and numerous other programs.

The CD also requires Memphis undertake two (2) State projects. These projects include the implementation of improvements related to Memphis' GIS Program and the implementation of a color study. The GIS Program will be used to map the City's sewer system and ultimately replace the City's use of a "Sewer Bible" which is a paper copy of the sewer system that is manually used by employees to update repairs and maintenance of the system. The goal of the color study is to help Memphis obtain information that will assist in determining appropriate numerical limits for color and the source that was causing a color contrast in the Mississippi River.

Funding of the CD Scope of Work

Funding for the work to be performed by the City under the CD is expected to come from resources such as sewer revenue bonds, state loans, and cash.