

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and
the COMMONWEALTH OF PENNSYLVANIA,

Plaintiffs,

and

STATE OF MARYLAND, DEPARTMENT
OF NATURAL RESOURCES,

Plaintiff-Intervenors,

and

SIERRA CLUB, et al.,

Plaintiff-Intervenors,

vs.

CIVIL ACTION

NO. 78-1732

and

NO. 78-1733

CITY OF PHILADELPHIA, A Municipal
Corporation of the Commonwealth of
Pennsylvania,
FRANK L. RIZZO, Mayor of Philadelphia,
HILLEL LEVINSON, Managing Director of
Philadelphia,
THE WATER DEPARTMENT OF THE CITY OF
PHILADELPHIA and CARMEN F. GUARINO,
its Commissioner,
THE PHILADELPHIA CITY COUNCIL,
GEORGE X. SCHWARTZ, President, ETHEL D.
ALLEN, BEATRICE K. CHERNOCK, JOHN B.
KELLEY, JR., CHARLES E. MURRAY, AL
PEARLMAN, FRANCIS RAFFERTY, EARL VANN,
JAMES J. TAYOUN, ANNA CIBOTTI VERNA,
LUCIEN E. BLACKWELL, CECIL B. MOORE,
JOSEPH ZAZYCZNY, HARRY P. JANNOTTI,
JOSEPH E. COLEMAN, LOUIS C. JOHANSON,
MELVIN C. GREENBERG, in their official capacities

Defendants.

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COMPLAINT

I. Preliminary Statement

1. Plaintiffs are five Delaware Valley environmental and citizen's groups and two individuals (hereinafter "Environmental Intervenors"). They bring this action as an intervention pursuant to Federal Rule 24 in two federal enforcement actions against the City of Philadelphia for violations of the Clean Water Act of 1977, 33 U.S.C. Section 1251, et seq., and the Marine Protection, Research and Sanctuaries Act of 1972 (hereinafter the "MPRSA"), 33 U.S.C. Section 1401, et seq.

2. These two federal enforcement actions (Civ. Nos. 78-1732 and 78-1733) were brought by the Environmental Protection Agency (hereinafter "EPA") and the Commonwealth of Pennsylvania on May 24, 1978.

3. On July 14, 1978, the State of Maryland, Department of Natural Resources petitioned this Court to intervene in Civ. No. 78-1732.

4. These cases are related to two civil suits captioned City of Philadelphia v. EPA, Civ. Nos. 78-878 (March 17, 1978) and 78-1851 (June 2, 1978).

5. A motion to consolidate these cases was filed by the City of Philadelphia and opposed by EPA and the State of Maryland. Environmental Intervenors do not oppose consolidation of these cases.

6. For the past decade, the City of Philadelphia has been beset by problems regarding its sewage treatment, sewage sludge disposal,* and drinking water.

7. Since 1968, these troubles, which will be enumerated, infra, have been played out in state, interstate (Delaware River Basin Commission), and federal administrative forums.

8. Perhaps it was inevitable that these matters would one day come before a federal district court judge for resolution,

9. Plaintiffs urge this Court, upon taking jurisdiction, to decide once and for all the serious sewage treatment, sludge disposal, and drinking water issues presented in this case.

* The MPRSA defines "sewage sludge" as: "... any solid, semi-solid or liquid waste generated by a municipal wastewater treatment plant, the ocean dumping of which may unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems, or economic potentialities." 33 U.S.C. Section 1412 a (b).

The Issues

10. On March 17, 1978, the City of Philadelphia filed a civil action (Civ. No. 78-878) in this court requesting, inter alia;

- (a) an extension of the 7/1/77 deadline for secondary treatment* of its sewage effluent flowing into the Delaware River required by Section 1311(b)(1)(B) of the Clean Water Act;
- (b) federal funding for removal of City-dumped incinerator ash residue at the site for expansion of its Southeast (S. E.) water pollution control plant (hereinafter "WPCP");
- (c) federal approval of the City's plan to spread contaminated sewage sludge from three lagoons ("A", "C", and "E") at the City's Northeast WPCP on Fairmount Park.

11. Subsequently on May 24, 1978, EPA filed two enforcement actions (Civ. Nos. 78-1732 and 78-1733). No. 1732 was brought under the Clean Water Act of 1977, 33 U.S.C. Section 1251, et seq., for:

* "Secondary treatment" is defined in 40 C.F.R. Section 133.102 in terms of effluent limitations for biochemical oxygen demand (BOD), suspended solids (SS), and pH and the percent removal attainable by the sewage treatment process. These standards are as follows:

- (a) BOD (five-day) : 30-day arithmetic mean = 30 mg/l.
7-day arithmetic mean = 45 mg/l.
85% removal
- (b) suspended solids : 30-day arithmetic mean = 30 mg/l.
7-day arithmetic mean = 45 mg/l.
85% removal
- (c) pH : range shall be from 6.0 to 9.0

- (a) failure of the City to meet the 7/1/77 deadlines for secondary treatment at any of its three water pollution control plants;
- (b) violations of the City's National Pollution Discharge Elimination System (hereinafter "NPDES") permits at the three WPCPs, which were issued on December 31, 1974 and expired on June 30, 1977. Those violations included:
 - 1. construction deadlines missed;
 - 2. effluent limits exceeded;
 - 3. reporting requirements ignored.

11a. A second federal enforcement action was filed under the MPRSA (Civ. No. 78-1733) to inter alia;

- (a) prevent Philadelphia from dumping sludge except in accord with its ocean dumping permit, which was issued by EPA on September 4, 1977;
- (b) insure City compliance with the schedule to cease ocean dumping by January 1, 1981; and,

- c) collect a \$225,000 administrative fine from Philadelphia, which was imposed after a hearing by an EPA Administrative Law Judge and review by the Regional Administrator.

12. On June 2, 1978, Philadelphia filed a second civil action (Civ. No. 78-1851) seeking to review the EPA Regional Administrator's decision to impose a \$225,000 fine for violations of the Ocean Dumping permits issued to the City of Philadelphia by EPA.

13. On June 5, 1978, the City filed a petition for review in the Third Circuit (Civ. No. 78-1739) also to review the \$225,000 fine.

14. The above-cited cases, taken together, raise most of the issues that concern the Environmental Intervenors.

14a. There are, however, five important issues not raised heretofore by plaintiffs or defendants. They are:

- a) Should the contaminated sewage sludge from the N. E. lagoons be chemically fused into an inert rock-like substance, which would biologically isolate it from the environment?
- b) Should the daily output of sewage sludge from the three WPCPs be monitored for those heavy metals, toxic substances, and carcinogens known to be discharged into

the plants; and, should land spreading of digested sludge be permitted only if the daily generated sludges meet all federal and state chemical requirements?

- c) Should limits on toxic and carcinogenic chemicals and heavy metals be imposed on Philadelphia's three NPDES permits in accordance with the Delaware River Basin Commission's (hereinafter "DRBC") Effluent Quality Requirements (Amendment 72-1)?
- d) Should a moratorium on additional tie-ins to Philadelphia's sewer system from industrial and municipal sources be imposed until Philadelphia complies with the secondary treatment and water quality standard requirements of the Clean Water Act and State and DRBC regulations?
- e) Should the Court appoint a special master to oversee the Philadelphia Water Department's implementation of the requirements of the Clean Water and MPRS Acts?

14b. Environmental Intervenors allege that all of the questions in paragraph #13 must be answered in the affirmative, and in support thereof aver the following:

II. Parties

Organizational Plaintiffs

15. Plaintiff Sierra Club is a non-profit membership corporation organized and existing under the laws of California, with its home office at 530 Bush Street, San Francisco, California. The Sierra Club has over 160,000 members in the United States and elsewhere throughout the world. The Club is organized into Chapters and Groups. The Pennsylvania Chapter has over 4500 members, 2000 of whom are part of the Eastern Pennsylvania Group. The boundaries of the Eastern Pennsylvania Group encompass the five-county, Philadelphia Metropolitan area. The New Jersey Chapter has over 4,000 members, 400 of whom are part of the West Jersey Group. The boundaries of the West Jersey Group include part of Burlington, part of Ocean, and all of Atlantic, Camden, Gloucester, Cumberland, Salem, and Cape May counties.

16. The Sierra Club has among its purposes the protection and enhancement of environmental quality, including the quality of the Nation's waters. To that end, the Sierra Club carries out research, publishes reports, and engages in litigation. The Pennsylvania and New Jersey Chapters of the Sierra Club have sponsored, assisted, and participated in meetings, programs, and other events designed to educate their members and the public about the problems of pollution in the Delaware River and Atlantic Ocean.

17. Sierra's members use and depend upon the Delaware River and Atlantic Ocean for drinking water, food supply, and recreation. The quality of these waters directly affects the health, economic, recreational, aesthetic and environmental interests of these individuals. Sierra Club members use Fairmount Park for recreation and may be adversely affected in their use and enjoyment of it if the City spreads contaminated sewage sludge on the Park. Sierra Club members are in the class of persons whom the Clean Water Act and MPRSA were intended to benefit and protect. The interests of Sierra Club's members in using and enjoying the Delaware River and Atlantic Ocean have been and will continue to be adversely affected and irreparably injured by the acts of defendants specified herein.

18. Plaintiff Delaware Valley Diving Council (hereinafter "DVDC") is a non-profit membership corporation organized and existing under the laws of New Jersey with its headquarters at P.O. Box 214, Runnemede, New Jersey. The DVDC is a coalition of seventeen member scuba diving clubs throughout the Delaware Valley. The DVDC also has over eleven supporting organizations that have thousands of members who support DVDC's work.

19. The DVDC has among its purposes the protection and enhancement of environmental quality, including specifically the water quality of the Atlantic Ocean. To that end, the DVDC carries out research, publishes reports, and engages in litigation. DVDC recently conducted a four-point

program against ocean dumping. Members of the DVDC collected sludge samples from the New York Bight area, had them chemically analyzed, and mailed them to representatives of the media, political, and community leaders throughout the East Coast of the United States. DVDC has sponsored, assisted, and participated in meetings, programs, and other events designed to educate their members and the public about the problems of pollution in the Atlantic Ocean.

20. DVDC's members use and depend upon the Delaware River and Atlantic Ocean for drinking water, food supply, and recreation. The quality of these waters directly affects the health, economic, recreational, aesthetic and environmental interests of these individuals. DVDC members are in the class of persons whom the Clean Water Act and MPRSA were intended to benefit and protect. The interests of DVDC members in using and enjoying the Delaware River and Atlantic Ocean have been and will continue to be adversely affected and irreparably injured by the acts of defendants specified herein;

21. Plaintiff Wyncote Audubon Society is a 1200 member independent affiliate of the National Audubon Society, with an assigned territory comprising most of Philadelphia and portions of Montgomery County. The National Audubon Society is a non-profit membership corporation organized and existing under the laws of New York, with its home office at 950 Third Avenue, New York, New York. The National Audubon Society has over 394,000 members in the United States and elsewhere throughout the world.

22. Wyncote Audubon Society (hereinafter "Audubon") has among its purposes the protection and enhancement of environmental quality, including the quality of the Nation's waters. To that end, Audubon carries out research, publishes reports, and engages in litigation. Audubon has sponsored, assisted, and participated in meetings, programs, and other events designed to educate their members and the public about the problems of pollution in the Delaware River and Atlantic Ocean.

23. Audubon's members use and depend upon the Delaware River and Atlantic Ocean for drinking water, food supply, and recreation. The quality of these waters directly effects the health, economic, recreational, aesthetic and environmental interests of these individuals. Audubon's members are in the class of persons whom the Clean Water Act and MPRSA were intended to protect. The interests of Audubon's members in using and enjoying the Delaware River and Atlantic Ocean have been and will continue to be adversely affected and irreparably injured by the acts of defendants specified herein.

24. Plaintiff Friends of the Earth (hereinafter "FOE") is a non-profit membership corporation organized and existing under the laws of California with its home offices at 529 Commercial Street, San Francisco, California. FOE has over 30,000 members in the United States and elsewhere throughout the world. FOE has a 500 member affiliate, Friends of the Earth-Delaware Valley.

25. FOE has among its purposes the protection and enhancement of environmental quality, including the quality of the Nation's waters. To that end, FOE carries out research, publishes reports, and engages in litigation. The FOE-Delaware Valley has sponsored, assisted, and participated in meetings, programs, and other events designed to educate its members and the public about the problems of pollution in the Delaware River and Atlantic Ocean.

26. FOE members use and depend upon the Delaware River and Atlantic Ocean for drinking water, food supply, and recreation. The quality of these waters directly affects the health, economic, recreational, aesthetic, and environmental interests of these individuals. FOE members are in the class of persons whom the Clean Water Act and MPRSA were intended to benefit and protect. The interests of FOE members in using and enjoying the Delaware River and Atlantic Ocean have been and will continue to be adversely affected and irreparably injured by the acts of defendants specified herein.

Individual Plaintiffs

27. Plaintiff, Thomas Punnett, Ph.D., 611 W. Upsal Street, Philadelphia, Pa., 19119, is a resident of Philadelphia. Dr. Punnett is a professor of Biology at Temple University. He is one of the founders of the Eastern Pennsylvania Group of the Sierra Club and has served on its executive committee for many years. Dr. Punnett shares the Sierra Club's commitment to the preservation of environmental value and public health in particular as they are affected by the City of Philadelphia's sewage pollution and ocean dumping. Dr. Punnett's interests in the environment and safe drinking water and in consuming uncontaminated fish and shellfish are adversely affected by the defendant's failure to comply with the Clean Water Act and the MPRSA. Furthermore, Dr. Punnett hikes in Fairmount Park; his use of the park may be adversely affected by the City's proposal to spread contaminated sewage sludge on 864 acres of Fairmount Park.

28. Plaintiff, Carol Barrett, 1305 Walnut Avenue, West Collingswood, New Jersey, 08107 is a resident of New Jersey. Mrs. Barrett was one of the founders of the West Jersey Group of the Sierra Club and has served on its Executive Committee for many years. Mrs. Barrett shares the Sierra Club's commitment to preservation of environmental values and public

health in particular as they are affected by the City of Philadelphia's sewage pollution and ocean dumping. Mrs. Barrett travels to Philadelphia often and drinks the City's water. Her interests in the environment, safe drinking water, and in consuming uncontaminated fish and shellfish are adversely affected by the defendants' failure to comply with the Clean Water Act and MPRSA.

Defendants

29. Defendant City of Philadelphia is a municipal corporation of the Commonwealth of Pennsylvania chartered under the First Class City Home Rule Act, 53 P.S. 13101, and is located in the Eastern District of Pennsylvania.

30. Defendant Frank L. Rizzo is the Mayor and chief executive officer of Philadelphia. The Philadelphia City Charter vests him with responsibility for all the City's administrative and executive activities.

31. Defendant Water Department of the City of Philadelphia is the executive-branch department charged by the City Charter with operating, maintaining, and improving the quality of both the City's water supply and the City's sewage treatment plants.

32. Defendant Carmen F. Guarino is the Commissioner of Philadelphia's Water Department. The Commissioner is the chief executive of the Water Department.

33. Defendant Hillel Levinson is the City's Managing Director. Philadelphia's City Charter vests the Managing Director with direct supervision of the City's Water Department.

34. The Philadelphia City Council is the legislative branch of the City's government. It has the authority to appropriate funds as may be necessary

to meet the City's lawful obligations. Defendants George X. Schwartz, Ethel D. Allen, Beatrice K. Chernock, John B. Kelly, Jr., Charles E. Murray, Al Pearlman, Francis Rafferty, Earl Van, James J. Tayoun, Anna Cibotti Verna, Lucien E. Blackwell, Cecil B. Moore, Joseph L. Zazyczny, Harry P. Jannotti, Joseph E. Coleman, Louis C. Johanson, Melvin J. Greenberg are the members of the Philadelphia City Council.

III. Jurisdiction and Venue

35. This Court has jurisdiction over the subject matter of this case pursuant to the Clean Water Act of 1977, 33 U.S.C. Section 1365 (b)(1)(B); the MPRSA 33 U.S.C. Section 1415 (g)(2)(B); and 28 U.S.C. Section 1331. The matter in controversy exceeds \$10,000, exclusive of interests and cost. Declaratory relief is authorized by 28 U.S.C. Sections 2201 and 2202.

36. Venue of this action is in the United States District Court for the Eastern District of Pennsylvania by virtue of 33 U.S.C. Section 1365 (c)(1) and 33 U.S.C. Section 1415 (g)(3)(A).

37. Plaintiffs have no adequate remedy at law; they have suffered and will continue to suffer immediate and irreparable injury from actions and inactions of defendant here complained of and therefore seek equitable relief.

IV. Chronology

38. Over 15 years ago, on June 25, 1962, the City of Philadelphia was issued sewerage permit #761 S38 by the Commonwealth of Pennsylvania's Sanitary Water Board (hereinafter "SWB"). The permit for the Northeast sewage treatment plant required 75% removal of biochemical oxygen demand (hereinafter "BOD").

39. On May 14, 1968, almost six years after Philadelphia was issued the state permit, an employee of the Sanitary Water Board, Mr. Heitzenrater, sent a memorandum to his superiors, Mr. Boardman and Mr. Lyon, stating that the N. E. WPCP was not meeting the required 75% removal.

40. As a result of this finding, the SWB denied an application (No. 7685012) by the Bucks County Water and Sewer Authority to tie into the Philadelphia N. E. WPCP.

* Biochemical oxygen demand (BOD) is defined as: the amount of oxygen that sewage wastes demand from the receiving water as determined under standard laboratory procedures for 5 days at 20° C. DRBC Administrative Manual, 3.10.6(A).

41. The SWB, by Mr. C. T. Beechwood, sent a letter to the Philadelphia Water Department in May, 1968, imposing a sewer hookup moratorium and requiring that the City increase the hydraulic capacity of the N. E. WPCP.

42. After receiving the letter from Mr. Beechwood, then Water Commissioner, Samuel Baxter, replied that the installation of some additional "blowers" at the N. E. plant would take care of the problem and, as soon as they were operating, 75% removal would be achieved.

43. On May 21, 1968, the Federal Water Pollutional Control Administration (then under the Department of the Interior) approved the Commonwealth's water quality standards for its receiving streams, which required Philadelphia to meet secondary treatment as a minimum at all three WPCPs.*

* Pennsylvania's current water quality standards can be found at 25 Pa. Code Section 93 and have been federally-approved, 40 C. F. R. Section 120.1.

44. On June 21, 1968, the Delaware River Basin Commission* issued an abatement schedule to Philadelphia setting forth dates by which the City was obligated to reduce the pollution of its discharge to certain specified levels (e.g., the City's share of the assimilative capacity of the Delaware River) by using secondary treatment at all three WPCPs.

45. The DRBC allocated certain pound limits to Philadelphia in 1968. These are still in force:

- N.W. WPCP - 69,320 lbs./day COD**
- S.E. WPCP - 33,200 lbs./day COD
- S.W. WPCP - 29,000 lbs./day COD

45a. These pound discharge limits are not being met today.

* The DRBC was established as joint federal-state regulatory agency to protect the water resources of the Delaware River. Act of September 27, 1961, 75 Stat. 688. Signatory parties include: the United States, Delaware (Del. Code Ann. tit. 7, Sections 6501-13) (Supp. 1970); New Jersey (N.J. Stat. Ann. Sections 32:110-1 to 115)(1963), as amended, (Supp. 1973); New York (N.Y. Conserv. Law Sections 801-12) (McKinney 1967); and Pennsylvania (Pa. Stat. Ann. tit. 32 Sections 815.101-106) (1967).

** "COD" or carbonaceous oxygen demand is defined as: That part of the ultimate oxygen demand associated with biochemical oxidation of carbonaceous as distinct from nitrogenous, material. See DRBC Administrative Manual, 3.106(B).

46. In its 1968 abatement order, the DRBC also stated:

"In preparing an abatement schedule, a discharger should give consideration to the necessity for meeting the additional effluent quality requirements of the Water Quality Standards and Regulations. These may include effective disinfection, acid and pH control, toxic substances ect." (emphasis added).

47. In response to the DRBC order, Philadelphia Water Department submitted an abatement schedule that established the dates by which it would construct three "activated sludge" (secondary treatment) plants at its N. E., S. E., and S. W. locations. The City claimed that these new plants would be sufficient to comply with the DRBC allocations. The City offered the following dates for commencement of operation and compliance with DRBC limits:

- N. E. - 10/1/1975
- S. W. - 10/1/1976
- S. E. - 10/1/1977*

48. On July 18, 1968, the SWB amended Philadelphia's three permits to include the DRBC waste load allocations. In addition, the SWB required:

* See DRBC Docket Nos. A-70-1, 2, and 3.

"... such treatment of sewage as will remove practically all the suspended solids, will provide effective disinfection to control disease - producing organisms, will provide satisfactory disposal of sludge, and will reduce the quantities of ... toxic ... substances ... inimical to the public interest ... Effective disinfection to control disease producing organisms shall be the production of an effluent which will contain a concentration not greater than 200/100 ml. of Fecal Coli form organisms as a geometric average value nor greater than 1,000/100 ml of these organisms in more than 10% of the samples tested."*

49. Although the City had submitted an abatement schedule pursuant to the DRBC order, it decided not to accept the DRBC and SWB orders limiting its COD discharge, and requiring disinfection of sewage effluent. The Water Department appealed the orders and, on December 16, 1968, a joint DRBC-SWB hearing was held (Docket Nos. 68-20; 21, 22, 23).

50. According to a November 25, 1968, letter from Water Commissioner Samuel Baxter to James Wright, Executive Director of the DRBC:

* A recent self-monitoring report submitted by the City of Philadelphia to EPA covering the period from 3/1/78 to 3/31/78 showed an average of 440,000 fecal coliforms/100 ml. for the month.

• the 69,300 lb. allocation at the N. E. WPCP would require 91.2% removal of BOD;

• the 33,200 lb. allocation at the S. E. WPCP would require 90.8% removal of BOD; and,

• the 29,400 lb. allocation at the S. W. WPCP would require as high as 94% removal.

51. On June 13, 1969, the joint Hearing Board denied Philadelphia's appeal of its waste load allocations.

52. During 1969, a hard line by DRBC on its wasteload allocations and a sewer ban imposed by the SWB (until Philadelphia achieved 75% removal at the N. E. WPCP) appeared to get some positive response from the Water Department.

53. For example, on July 22, 1969, a letter from Water Commissioner Baxter to Deputy Health Commissioner Gilbertson stated:

"I appreciate the opportunity of talking to you in my office on July 18, on the matter of permits for the construction of sewers which are tributary to our Northeast Water Pollution Control Plant . . .

"We have been using polyelectrolytes and ferric chloride since June 27 . . . (and) . . . I believe that we can maintain averages above 75% with the use of these chemicals . . .

"I trust that this will permit early reconsideration of the decision which has withheld issuance of permits for sewer construction tributary to our Northeast plant."

54. In a December 23, 1969, letter to the Acting Secretary of the Sanitary Water Board, Commissioner Baxter agreed to comply with the requirements of the SWB "[F]or the purpose of releasing pending applications for sewer extensions to our Northeast plant ..."

55. In another letter on December 23, 1969, this one to the Executive Director of the DRBC, Commissioner Baxter stated:

"In connection with disinfection of effluents, I still believe that this expense cannot be justified, at least for the present time ..."

"At the same time I recognize that existing standards both Federal, State and Interstate require disinfection and that any appeal would delay progress of work on the river. For that reason we will not continue this appeal and we will provide disinfection facilities in the new plant."

56. On March 23, 1970, DRBC approved a stipulation of withdrawal of the City's wasteload allocation appeals.

57. Although the sewer ban had been the most effective method of accelerating City compliance to date, various Bucks County officials had pressed the State to permit the connections. On June 17, 1970, the SWB ceased requiring the N. E. plant to meet the 75% requirement by combining all three City plants for determining the waste load allocation, thereby permitting the

City to accept wastes from Bucks County.

58. Once the sewer ban was rescinded, the "heat" was off the Philadelphia Water Department and over the next four years the abatement schedules for the three sewage treatment plants slipped dramatically. Below is a chart of the dates on which compliance dates were modified and the proposed or agreed upon dates:

Date of Modification	Compliance Date		
	NE	SE	SW
1970 (3/26/70)	10/1/75	10/1/77	10/1/76
1972 (7/26/72)	Phase I 12/31/75	Phase II 12/31/77	10/1/76 12/31/75
1974 (2/22/74)	7/79	6/79	1/78
1974 (6/6/74)	Phase I 1/15/80	Phase II mid-1981	Phase I 8/1/80 12/1/78
NPDES permits (12/31/74)	2/15/80	9/1/80	12/31/78

59. In a letter dated March 15, 1978, Water Commissioner Carmen Guarino stated that Philadelphia cannot meet the dates set forth in the NPDES permits. In fact, construction has not begun at the S. E. plant and very little progress has been made at the N. E. plant.

60. In the early 1950s, Philadelphia began to deposit sewage sludge into lagoons adjacent to the N. E. WPCP. Soon, those lagoons became filled and the City began in 1961 to dump its sludge in the Atlantic Ocean.

60a. In those early days, controls over industrial discharges was even less adequate than today and, consequently, the sludge in N. E. lagoons A, C, and E, became quite contaminated with heavy metals, PCBs, and pesticides.

61. The June 11, 1971 letter from Commissioner Baxter to the DRBC illustrates that the problem of disposal of sludge in N. E. lagoons was not "new."

"... disposal of sludge from two lagoons at our Northeast plant ... is necessary for the construction of the new facilities ... Under the schedule which has been approved, we should complete construction plans at the Northeast plant by January 2, 1973 and start construction by October 1, 1973. We feel that it is necessary to place under contract the removal of this sludge at an early date and hopefully by the end of this year, in order that we can meet the major construction schedules.

"This matter of sludge disposal has been seriously affected by the recent clamor over the disposal of our sludge at sea. I believe that I had indicated to you that although we are now disposing all the daily sludge about 11 1/2 nautical miles at sea, we are willing to take this large amount from Northeast 100 miles out, provided there are no objections. One recent objection with which you might not yet be familiar, is a suit filed in the Federal Court in Delaware against our contractor which would prevent him from hauling the sludge down the Delaware River. *"

* This letter at least raises the inference that Commissioner Baxter knew of the highly contaminated nature of the N. E. lagooned sludge or he would not have volunteered to dump the sludge nearly 10 times further out to sea with the attendant extra expense.

62. On October 10, 1972, Congress passed the Federal Water Pollution Control Act Amendments of 1972, which required publicly owned treatment works to reach secondary treatment no later than July 1, 1977. Section 1311 (b)(1)(B).

63. New schedules (see foregoing chart, para 58) and new excuses for delay were frequent during the next two years.

64. Section 1311 of the Clean Water Act prohibits pollution discharge without a NPDES, Section 1342 permit. These permits set forth in stages the effluent limitations and steps necessary to achieve the more stringent of secondary treatment or water quality standards.

65. On December 27, 1974, immediately before EPA Region III issued NPDES permits to the City of Philadelphia, the EPA Deputy Director of Enforcement wrote the following memorandum to the Regional Administrator:

"Virtually every large city in the region will be at a near secondary treatment by 1977 (statutory deadline) with the exception of Philadelphia. Attachments I (table) and II (bar chart) show that in 1977 Philadelphia's total pollutant load will be 1.75 times the total combined pollutant load of the following large cities in Region III: Blue Plains (D.C.), Alcosan (Pittsburgh), Erie, Harrisburg, Baltimore, Richmond, and Wilmington. The per capita load for Philadelphia will be almost three times that of these cities. Model studies have shown that until Philadelphia significantly decreases their pollutant load to the Delaware River the river will not show substantial improvement irregardless of the efforts of other dischargers. This data clearly identifies the City of Philadelphia as Region III's most serious municipal water pollution problem . . .

"In cases similar to the Philadelphia situation (i. e., Fairfax Co., Va. and Blue Plains) the Agency has required the initiation of interim chemical treatment methods to increase STP efficiencies and sewer moratoria to limit sewage flows until adequate treatment facilities are constructed and operating ...

" The City's schedules for upgrading these plants has consistently been extended, presumably because there has been no significant incentive for the establishment of or the adherence to an aggressive, timely abatement program. Current estimates by EPA, Pa. DER, and City of Philadelphia personnel are that further delays beyond 1980 are not only possible but probable.

" The City of Philadelphia's sewage sludge handling and disposal practices are yet another indicator of its lack of a meaningful commitment to environmental protection and management. Current activities involving efforts by this Region to solicit meaningful sludge disposal alternatives and plans (other than reliance upon ocean dumping) represent yet another attempt to extract a commitment from the City to develop and implement a timely abatement program. The recent request by the City to Pa. DER and EPA to authorize a raw sewage bypass of 30 to 40 mgd to the Delaware River for 30 to 60 days (to allow for more economical and less complicated construction of a collapsed interceptor sewer on Delaware Avenue) is another example of the City's lack of concern for pollution abatement and lack of a meaningful commitment to seek and implement proper waste handling methods.

"The continuing series of events during the past five years regarding ocean dumping, STP upgrading delays, lack of adequate control over combined sewer overflows (regulator maintenance) and the handling of raw sewage overflows clearly demonstrates the City of Philadelphia's approach to pollution abatement - i. e., not to do any more than regulatory agencies insist upon and then to extend compliance dates as much as possible through a series of continuing negotiating sessions and discussions."

66. On January 17, 1975, the City of Philadelphia appealed various provisions of its three NPDES permits, which were issued on December 31, 1974(Permit Nos. N. E. PA0026689; S. E. PA0026662; and S. W. PA0026671); those appealed provisions include, inter alia:

- (a) interim effluent limits;
- (b) requirement that the City promulgate an ordinance to control industrial effluents; and,
- (c) additional monitoring requirements for heavy metals and toxic substances.

67. On April 12, 1975, the Sierra Club and other environmental intervenors submitted a request to participate in the EPA adjudicatory hearing on the Philadelphia permits (EPA Docket No. PA-AH-0052-A) (Environmental Intervenors' Request to Intervene is attached hereto as Exhibit 1); the Intervenors' Request was granted on June 16, 1975.

68. On August 26, 1975, and September 29, 1975, Environmental Intervenors sent two Sixty-Day Notice letters to EPA pursuant to 33 U.S.C. Section 1365 (b)(1)(A). (These letter are attached hereto as Exhibits 2 and 3) Because of the posture of the adjudicatory hearing and assurances by EPA that negotiations with Philadelphia toward a Consent Decree were progressing, no citizens' suit was ever filed.

69. A prehearing conference was held before the Honorable Thomas Yost, EPA Administrative Law Judge, on November 19, 1975, to determine the legal issues to be presented to EPA's Office of General Counsel.

70. The parties to the adjudicatory hearing briefed the issues, and Environmental Intervenors submitted their brief on February 2, 1976.

71. A decision on the legal issues was not rendered by the EPA Office of General Counsel until January 13, 1977, almost one year later (Decision of General Counsel #55).

72. On February 2, 1977, EPA Region III Enforcement attorney wrote in a status report to Judge Yost:

"Due to the lapse of time while the legal questions were pending in the Office of General Counsel ... it (is) physically impossible to conduct an adjudicatory hearing and have a decision rendered by the Regional Administrator prior to the expiration date of the permits ."

73. The Adjudicatory Hearing was subsequently cancelled. Although Philadelphia's NPDES permits expired on June 30, 1977, they continue in effect, pending a decision by EPA on the permit applications submitted by the City in the winter of 1977. See 5 U.S.C. Section 558(c).

V. City of Philadelphia's Legal Obligations

74. 33 U.S.C. Section 1251, the Clean Water Act, sets forth the Congressional declaration of goals and policy relative to the national program to achieve clean water in America. It states:

- "a) The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that ...
1. it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;
 2. it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;
 3. it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited. . ."

75. Consistent with the scheme of the Clean Water Act, defendant is obliged to observe, implement, meet, and otherwise act consistently with the goals and policies of the Act.

76. The legislative scheme provides that publicly-owned treatment works (hereinafter "POTW") meet the more stringent of secondary treatment or state-determined water quality standards by July 1, 1977; 33 U.S.C. Section 1311(b)(2)(B), and (C), and achieve no later than July 1, 1983, "best practicable waste treatment technology over the life of the works . . ." 33 U.S.C. Section 1281 (g)(2)(A).

77. With respect to toxic pollutants, POTW must comply with effluent limitations for all pollutants referred to in Table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives not later than July 1, 1984. 33 U.S.C. Section 1311 (b)(2)(C).

78. 33 U.S.C. Section 1401, the MPRSA, sets forth the Congressional finding, policy, and declaration of purpose relative to the national program to restore the ocean waters of the United States. It provides:

"(a) Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems and economic potentialities.

"(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean

waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities."

79. Consistent with the provisions of the MPRSA, defendant is obliged to observe, implement, meet, and otherwise act consistently with the Congressional policy and declaration of purpose.

80. When the Federal Water Pollution Control Act was amended in 1977, new Section 1412a was added to the MPRSA. It states:

"The Administrator of the Environmental Protection Agency ... shall end the dumping of sewage sludge into ocean waters ... as soon as possible after November 4, 1977, but in no case may the Administrator issue any permit, or any renewal thereof ... which authorizes any such dumping after December 31, 1981."

81. By interstate agreement, namely the DRBC compact, Pa. Stat. Ann. tit. 32 Sections 15.101-106 (1967), the water quality standards established by DRBC apply to the interstate portions of the Delaware River bordering Philadelphia inter alia. Art V, Section 2.20, of the DRBC Administrative Manual, however, permits signatory states to impose water quality standards and effluent quality requirements more stringent than those provided by DRBC. *

* See proposed revisions to Pennsylvania Water Quality Standards, 8 Pa. Bull. 516 (March 4, 1978).

82. The Water Quality Standards and Effluent Quality Requirements applicable to the Delaware River Basin are contained in the DRBC's Administrative Manual - Part III, Article III. These requirements are incorporated herein and made a part hereof as Exhibit #4.

83. Besides requiring a minimum of secondary treatment (Section 3.10.4A) and disinfection (Section 3.10.4B), the DRBC regulations in Amendment 72-1 require specific limits on such heavy metals as lead (.10 mg/l) mercury (.01 mg/l), and cadmium (.02 mg/l); additional limits on individual toxic substances and pesticides are to be determined using bioassay techniques (72-1-(B)(3)(c)(i) and (iii)).

VI. The Facts

Philadelphia's Sewage Pollution

84. Self-monitoring reports (DMRs) for all three WPCPs submitted by the City of Philadelphia to EPA Region III from 1975 to the present show that: (1) secondary treatment is not being met at any of the City's plants; and, (2) the effluent limitations contained in the NPDES permits were not met on many occasions (see compilation of self-monitoring data,* attached hereto as Exhibit #5).

85. The effluent quality requirements of the DRBC and Commonwealth of Pennsylvania Water Quality Standards have not been met at any of Philadelphia's three sewage treatment plants for the following substances:

* This compilation is from "Evaluation and Wastewater Characterization, Northeast Philadelphia Water Pollution Control Plant, Philadelphia, Pa." National Enforcement Investigations Center, Denver, Colorado, January 1977.

Furthermore, DMRs from 7/1/77 to 3/31/78 attached to the United States' Requests for Admissions filed on July 3, 1978 in Civ. No. 78-1732, show that secondary treatment was not achieved on 7/1/77 and that permit effluent limits were subsequently violated.

- BOD
- Suspended Solids(SS)
- Toxic Substances
- Heavy Metals
- Pesticides
- Fecal Coliform Bacteria

86. The Delaware River serves as the drinking water supply for approximately 50 % of the residents of Philadelphia. One of the City's water supply intakes (the Torresdale Water Treatment Plant) is located in close proximity to the discharge from the City's N. E. WPCP sewage discharge outfalls.

87. Sewage effluent from the N. E. WPCP is carried upstream past the drinking water intake during each tidal cycle. According to a dye study performed by EPA on the N. E. WPCP effluent:

"Approximately 1-2% of the dye concentration at N. E. (sewage treatment plant) was found at the Torresdale intake. A persistent pollutant discharged from N. E. at a concentration of 1 mg/l could be expected to be in the Torresdale raw water at a concentration of .01 to .02 mg/l." NEIC Study at 6.

88. During EPA's NEIC study of Philadelphia's N. E. WPCP from September 16-23, 1976, NPDES permit limits on pH (6.0-9.0) were exceeded on

numerous occasions. NEIC Study at 6.

89. According to the EPA study, nine suspected carcinogens were detected in the influent to the N.E. WPCP (5,327 pounds in three days). NEIC Study, pp. 8-9.

90. EPA investigators found two suspected carcinogens in the Torresdale drinking water intake during this period: (bis-2 - chloroethyl) ether and chloroform (111 pounds). The finished water delivered to residents of Philadelphia contained two suspected carcinogens: tetramethyl butyl phenol, and chloroform (387 pounds in one day). NEIC Study at 8-9.

91. The EPA report further states that:

"... About 49% by weight of chemicals entering the N.E. WPCP were discharged to the river environment. In addition, an unknown quantity of the organic compounds reach the ocean through the barging of anaerobically digested sludge. . . .

"It appears that a great deal of the industrial chemical burden in the Delaware River comes from the N.E. WPCP discharge." NEIC Study at 79.

92. Furthermore, at p. 82, the NEIC report states:

"... 29 (compounds) ... occurred at the Torresdale intake ...

"... These compounds are of industrial origin. Twenty-one industrial chemicals in this subgroup were reported in one or more influents to the N. E. WPCP. Fourteen of these compounds occurred both in the discharge from the N. E. and in the Torresdale Water Treatment Plant intake."

93. EPA discovered 18 industrial compounds in Philadelphia's drinking water that have not previously been reported in any drinking water supplies. NEIC reported that these compounds were not human metabolites, but were either of industrial origin or chlorinated derivatives of chemicals of industrial origin. NEIC at 81.

94. Concerning the health effects of this array of chemicals, EPA stated:

"Exposure to such chemicals can cause adverse reactions in people, modified by individual susceptibility . . . Adverse reactions, which are manifested in a wide variety of physical and mental symptoms, are often chronic in nature and cyclic in occurrence, producing conditions which are frequently undiagnosed or poorly identified.

"One of the most critical aspects of this study to emerge is that the effects of long-term exposure to any one or exposure to the whole spectrum of 155 compounds listed in Tables 18 and 19 are unknown. It

has been determined that 60 of these compounds have been identified as toxic substances and that 10 are listed as suspected carcinogens. . . . NEIC, pp. 61-62.

" . . . Virtually no reports are available concerning long-term effects of exposure to most of the substances identified and data are not available on the combined effects of exposure to this wide spectrum of toxic substances." Id. at 69.

95. There have been some studies, however, on the pollutants mentioned heretofore. For example, the National Cancer Institute has performed tests on animals showing that chloroform, an industrial contaminant of Philadelphia's drinking water*, is carcinogenic. See 41 FR 15-26-29 (April 9, 1976), 41 FR 26842-46 (June 29, 1976). Studies have been performed on animals with bis (-2- chloroethyl) ether, Laskin, et al. "Inhalation Carcinogenicity of Alpha Halo Ethers," 30 Arch. Environ. Health 70 (1975) and, unfortunately, there has been some direct human experience with the carcinogenic effects of bis-chloromethyl ether, see W. Randall, S. Soloman, Building 6, the Tragedy at Bridesburg, (Boston, 1977).

* Chloroform is also produced by the water treatment plant itself when chlorine is used to disinfect the raw water and it combines with organic substances present. See 43 Fed. Reg. 5756 (May 31, 1978).

96. As far back as 1970, a blue ribbon Ad-Hoc Committee on the Evaluation of Low Levels of Environmental Chemical Carcinogens reported to the Surgeon General that:

"It is impossible to establish any absolute safe level of exposure to a carcinogen for man. The concept of 'toxicologically insignificant' levels, . . . of dubious merit in any life science, has absolutely no validity in the field of carcinogenesis." Id. at 7.

97. Recent statements by the Occupational Safety and Health Administration in the preamble to its new generic carcinogens standard, 42 Fed. Reg. 54148, reiterate this point:

". . . There is presently no means to determine a safe exposure level to a carcinogen . . .

". . . [Therefore] the permissible exposure limits will be set as low as feasible." Id. at 5.

97a. Construction of the three secondary treatment plants in Philadelphia will significantly reduce the discharge of chemicals into the Delaware River. These chemicals can also be removed by the discharging industries using currently available technology.

98. The foregoing facts illustrate the urgent need for construction of Philadelphia's sewage treatment plants, limits on toxic and carcinogenic substances at the water pollution control plant outfalls (with a consequent restriction on industrial pollution to the WPCPs), a rapid cessation of sludge dumping in the ocean, and implementation of known, environmentally sound, land application techniques.

99. In fact, in his testimony before the EPA at the July 11-12, 1978 public hearing on the proposed Trihalomethane drinking water standard (see 43 Fed. Reg. 5756, May 31, 1978), Philadelphia Water Commissioner, Carmen Guarino, admitted the feasibility of using NPDES limits on toxic and carcinogenic substances to eliminate contamination of drinking water supplies. He stated:

" . . . the FWPCA, P.L. 92-500, may serve as a vehicle in controlling organic pollutants by use of the NPDES provision, industrial pretreatment requirements and rules governing spills when it comes to point source discharges into a source of water supply. The Water Department, along with EPA Region III administrators, was able to remove industrial contaminants such as BCEE (bis (2-chloroethyl) ether) and 1, 2 dichloroethane (carcinogens) from our drinking water. There is no reason why cooperation cannot do the same for other synthetic organics."

100. Although cooperation is obviously superior to litigation, it was the City of Philadelphia that consistently appealed every pollution discharge permit issued and, now, has instigated a series of lawsuits that raise these vital public health issues to the light of judicial scrutiny.

101. For the moment, then, construction of a secondary treatment plant at N. E. still awaits removal of approximately 290,000 cubic yards (three lagoons) of contaminated sewage sludge. *

102. Construction of a secondary treatment plant at S. E. is stalled because approximately 1,000,000 cubic yards of incinerator ash, intentionally dumped there by the Philadelphia Streets Department, is blocking site preparation.

103. Philadelphia continues to discharge tons of heavy metals, toxic substances and carcinogens from its three sewage treatment plants, thereby contaminating the Philadelphia drinking water supply, and befouling the Atlantic Ocean with the sludge residue.

104. Philadelphia has requested a time extension pursuant to Section 1311 (i) of the Clean Water Act; however it cannot meet the requirements of Section 1311(i) for the following reasons:

* See paragraphs 107 through 117, infra.

- (a) Federal financial assistance was available in time to achieve compliance with the July 1, 1977 deadline; and the chronology cited, supra, shows that Philadelphia has not proceeded to implement the requirements of the Act in good faith. H. R. Rep. No. 95-830, 95th Cong. 1st Sess. 76-78 (1977).
- (b) Philadelphia was often late in submitting applications, reports, and responding to requests from the Regional Office of EPA.

Philadelphia's Ocean Dumping

107. EPA determined after an adjudicatory hearing on May 19-29, 1975 that Philadelphia could and, therefore, must completely eliminate ocean dumping of sewage sludge by January 1, 1981. This was the recommendation of the Hearing Panel issued September 19, 1975, and affirmed by former EPA Administrator Russell E. Train on September 25, 1975.

108. The Hearing Panel Report stated that:

"The Philadelphia sludge contains significant amounts of heavy metals, including cadmium, mercury, lead, copper, iron, zinc, selenium, manganese, beryllium, chromium, nickel, arsenic and vanadium. EPA's regulations place limitations on certain materials including cadmium and mercury. 40 CFR §§227.22 and 227.31. The City does not contest the fact that the constituents of its sewage sludge exceed the limitations in the regulations. (Tr. 1:27). The solid phase of the sludge from the Northeast plant contains 9.42 parts per million (ppm) mercury and 105.5 ppm cadmium. The sludge from the Southwest facility contains the same quantity of mercury and 36.16 ppm cadmium."

109. The Hearing Panel's Findings of Fact and Conclusions of Law,

which are set out at pp. 8-10 of the report, state, inter alia:

"4. Sampling of marine organisms in and around the dump site shows that there are organisms which contain quantities of heavy metals. Some of the organisms have levels of metals which are higher than levels in other similar organisms. Such higher levels are statistically significant.

"5. Shellfish and finfish, as well as other marine organisms, are capable of biological concentration of metals. Metals in the marine environment bioaccumulate in the food chain. The continued absorption of heavy metals by marine organisms will at some point cause physiological harm, with both lethal and sublethal effects."

110. Other EPA sampling of the Philadelphia sludge, particularly the N.E. sludge in A, C, and E lagoons showed it to contain polychlorinated biphenyls (PCBs) and pesticides (DDT, DDE, and DDD).

111. The City now proposes to spread this sludge on 864 acres of Fairmount Park. "Environmental Assessment of the Utilization Program for the NEWPCP Lagoons A, C, and E Sludge," Philadelphia Water Department (August 8, 1977).

112. The potential exists for possible adverse human health impacts if these PCB-laden materials find their way into the waterways around Philadelphia, especially since these rivers and streams are used as a source of drinking water for the City.

113. Philadelphia has several viable options for disposal of the heavily contaminated N.E. lagooned sludge and its daily production, which, while still contaminated, is somewhat less so. According to EPA testimony at an August 8, 1977, public hearing on the disposal of this sludge:

"Of the contractors who bid on the removal of the sludge from the lagoons at N.E., there is still one responsive, responsible bidder left who has received concept approval for his method of sludge handling from both the Pa. DER and EPA. This remaining proposal would be to chemically process the sludge into relatively impermeable, clay-like material that would stabilize the sludge and tend to prevent any leaching of metals or organics.

"Awarding the contract for this chemical fixation . . . could resolve the lagooned sludge problem in a manner that would eliminate the potential public health impacts of the surface application proposal and preserve the availability of the Fairmount Park land and the North Philadelphia Airport, as well as solve the delays in initiation of construction of the N.E. plant that is already significantly behind schedule.

"Since currently generated sludge does not contain those significant levels of PCBs it can be used for the trenching portion. Composted daily generated sludge, which the City is now starting to produce at the Southwest Plant could be used for the surface application on Fairmount Park.

"It should be noted here . . . that the volume of sludge, stated in the proposal to be used at the Airport and in Fairmount Park, roughly equals the amount of sludge that the city will be allowed to ocean dump until January 1, 1981, when it must cease this practice.

"Therefore by using chemical fixation process for the lagooned sludge, using the daily generated sludge and compost for North Philadelphia Airport and Fairmount Park ... (the City could save) delays in the construction of the N. E. plant, protect the public health from potential impacts from PCBs and stop ocean dumping of sludge by mid-1978, instead of 1981."

114. Although Commissioner Guarino called "EPA's schedule for gradual ocean phaseout up to 1981 ... sensible" (Inquirer, Op-ed, October 27, 1977) and stated that Philadelphia would be out of the ocean by 1980, he has not delivered on his promises of:

- a \$2.5 million sludge recycling center by summer, 1978;
- a \$2.3 million sludge fusion process center by June, 1978;
- a 7,000 ton per year giveaway program;
- a viable plan for transferring ocean dumped sludge to land by January 1, 1981.

115. According to EPA, Philadelphia has violated its interim ocean dumping permit (PA 012) by:

- (a) disposing of sludge in the ocean in excess of the monthly allowable amount established by Special Condition 3;
- (b) repeatedly and continually failing to take or causing unreasonable delay in actions necessary to develop and implement alternatives to ocean disposal as required by Special Condition 8 of Permit PA 012;

(c) failing repeatedly to comply with the notification requirements of Special Condition 10 of the Permit.

116. As a result of these violations and after a full adjudicatory hearing, Philadelphia was found on April 22, 1977, to be in violation of its ocean dumping permit and fined \$225,000 (Case No. 76-1). The EPA Administrative Law Judge noted Philadelphia's "indifferent attitude" (Opinion, pp. 17, 24, 30) toward compliance deadlines and reporting requirements.

117. EPA has determined that defendant's failure to meet the implementation plan to phase-out ocean dumping will result in defendant missing the remaining essential milestones imposed by permit PA 013 and will prevent it from complying with the January 1, 1981, cessation date.

117a. Philadelphia presently dumps sludge at an EPA designated site 35 miles off Cape Henlopen, Delaware.

117b. Economic harm to the shellfish and finfish industry as well as environmental degradation has resulted from the location of the 35 mile sludge dumping site.

117c. EPA has designated a site 100 miles off Cape Henlopen where the City could dump in deeper waters, away from important commercial fishing areas (see paragraph 61, supra).

First Cause of Action

118. Environmental Intervenors reallege paragraphs 1-117c of this complaint.

119. Philadelphia is required by 33 U.S.C. Section 1311 (b)(1)(B) to meet secondary treatment by July 1, 1977 at the N.E., S.E., and S.W. WPCPs.

120. Philadelphia has not met secondary treatment at any of its three WPCPs and is, therefore, in violation of the Clean Water Act.

121. Philadelphia will continue to violate Section 1311 (b)(1)(B) in its operation of the three plants unless enjoined by this court.

122. Although Section 1311 (i)(1)(B) of the 1977 Clean Water Act provides for extensions of the 1977 deadline , Philadelphia does not qualify under the criteria of that section.

123. 33 U.S.C. Section 1311(a) states that "except as in compliance with this section and ... inter alia ... Section 1342 ..., the discharge of any pollutant by any person shall be unlawful."

124. On numerous occasions Philadelphia has violated its NPDES discharge permits (PA 0026689, PA0026662, and PA 0026671) by exceeding effluent limitations for BOD and SS removal, pH, and flow.

125. Unless restrained by the court, defendants will continue to violate Section 1311 (a).

125a. Historically, Philadelphia has made significant efforts to upgrade its level of sewage treatment whenever a sewer hookup moratorium has been imposed by state or federal agencies.

125b. Philadelphia is now in violation of Section 1311 of the Clean Water Act and is discharging only partially treated waste into the Delaware River.

125c. A sewer extension moratorium will prevent additional pollutants from reaching the Philadelphia WPCPs and will prevent further pollution of the Delaware River from the plants until construction of the secondary treatment facilities is complete.

125d. The tasks necessary to bring Philadelphia into compliance with the law and to protect the environment are many and complex. They include:

- a) construction of three secondary treatment plants at a cost of over \$400 million;
- b) disposal of approximately 290,000 cubic yards of contaminated sewage sludge from three N. E. lagoons;
- c) disposal of approximately 1,000,000 cubic yards of incinerator ash residue from S. E. WPCP site;
- d) land application of increasing amounts of the daily sludge production of Philadelphia's three WPCPs, until January 1, 1981, when ocean dumping must cease, and all Philadelphia sludge must be applied to land;
- e) monitoring the sewage effluent, sludge, and drinking water for heavy metals, toxic substances, and carcinogens on a daily basis to protect drinking water supplies and prevent gross contamination of soil from land application of sludge;
- f) complying with effluent limits in NPDES permit and those imposed by DRBC Amendment 72-1.

125e. According to an EPA Administrative Law Judge, Philadelphia has displayed an "indifferent attitude" toward compliance deadlines and reporting requirements.

125f. If compliance deadlines are missed or actions are taken in a careless or "indifferent" manner, serious harm to the public health and welfare could result.

125g. Appointment of a Special Master by the Court to oversee the operation of the Water Department until the three secondary treatment plants are built and ocean dumping is eliminated is necessary to ensure that required actions are taken expeditiously and with due concern for the environment.

Second Cause of Action

126. Environmental Intervenors reallege paragraphs 1-117c of this complaint.

127. Philadelphia is required by 33 U.S.C. Section 1311 (b)(1)(C) to meet the more stringent of State and interstate water quality standards by July 1, 1977, at its three sewage treatment plants.

128. Philadelphia has not met the water quality standards of the DRBC and Commonwealth of Pennsylvania, nor has it met their effluent limitations or waste load allocations at the N. E., S. E., or S. W. WPCPs.

129. Philadelphia will continue to violate Section 1311(b)(1)(C) in its operation of the three plants unless enjoined by this Court.

130. DRBC Amendment 72-1 requires effluent limits on toxic substances, pesticides, heavy metals, and carcinogens to be imposed on the discharges from Philadelphia's three WPCPs.

131. Regular monitoring of Philadelphia's sewage effluents, sludge, and drinking water for toxic substances, heavy metals, and carcinogens is necessary to fully protect public health and welfare and to protect the Delaware River and Atlantic Ocean from ecological harm.

Third Cause of Action

132. Environmental Intervenors reallege paragraphs 1-117c of this complaint.

133. Philadelphia is required by its Ocean Dumping Permit (PA 013) and the Decision of Administrator Train to cease ocean dumping by January 1, 1981.

134. Philadelphia has failed to meet the implementation schedule contained in Permit PA 013 and past permits, has dumped sludge in excess of the amounts allowed by permit and will, in all likelihood, not meet its January 1, 1981 phase-out deadline.

135. 33 U.S.C. Section 1411 prohibits the transportation and dumping of wastes except as authorized by a permit.

136. Unless restrained by the court, defendant will continue to violate the MPRSA.

136a. Philadelphia's sewage sludge dumping at the 35 mile site is unreasonably degrading the environment there and causing economic harm.

136b. Unless required by this Court to move its dumping to the 100 mile site, Philadelphia will continue to violate the MPRSA.

137. Philadelphia's sewage sludge in lagoons A, C, and E at the N. E. WPCP is contaminated with heavy metals, pesticides, and PCBs.

138. Philadelphia is prohibited by 33 U. S. C. Section 1345(a) from removing in-place sewage sludge without a permit issued under Section 1342.

139. Philadelphia does not now have a permit under Section 1342 for the removal of and disposal of in-place sewage sludge.

140. One of the bidders on the sludge removal has offered Philadelphia an ecologically safe method of disposal of this contaminated sludge, which is approved by EPA and Pennsylvania Department of Environmental Resources.

141. Unless this contaminated sludge is biologically isolated from the environment it may cause harm to public health and welfare and serious ecological damage to Fairmount Park and the Philadelphia environment.

142. It is the policy of Congress stated in 33 U. S. C. Section 1251 (h)(3) that "the discharge of toxic pollutants in toxic amounts be prohibited."

143. In accordance with this policy, Philadelphia is obligated to monitor the daily output of sludge from its three sewage treatment plants for those heavy metals, toxic substances, and carcinogens known to be discharged into the plants and, furthermore, to only permit land spreading of those sludges that meet all federal and state chemical requirements.

143a. In accordance with this policy, Philadelphia is obligated to protect the environment by biologically isolating the N. E. lagooned sludge (A, C, and E) from the environment by converting it into an inert material using currently available processes.

WHEREFORE, Environmental Intervenors pray that judgment issue from this Honorable Court:

1. Declaring Philadelphia in violation of the July 1, 1977 deadline in Section 1311 (b)(1)(B) and (C) of the Clean Water Act for secondary treatment or water quality standards, whichever is more stringent;

2. Declaring Philadelphia ineligible for a time extension under Section 1311 (i) of the Clean Water Act;

3. Declaring Philadelphia in violation of Section 1311(a) of the Clean Water Act for its numerous permit violations from February, 1975 to the present;

4. Ordering Philadelphia to construct three secondary treatment plants as expeditiously as possible, but in no case later than:

- 9/01/80 - Southeast WPCP
- 2/15/80 - Northeast WPCP
- 12/31/78 - Southwest WPCP

5. Ordering Philadelphia to construct the three sewage treatment plants in such a manner that it will meet the following DRBC waste load allocations at each plant:

Northeast	-	69,300 lbs. /day BOD
Southeast	-	33,267 lbs/day BOD
Southwest	-	37,020 lbs. /day BOD*

6. Ordering the City to immediately operate its three WPCPs in such a manner as to remove the maximum amount of pollutants possible until the construction of the new plants is complete (methods such as chemical addition, etc. to be determined by the Special Master);

6a. Prohibiting Philadelphia from accepting any additional waste hook-ups from industry or outlying counties until its three WPCPs are upgraded to secondary treatment.

7. Establishing initial effluent limitations for the three Philadelphia WPCPs, which are no less stringent than those set out in the expired permits and will continue in effect until the new WPCPs are operational.

8. Establishing final effluent limitations for the three Philadelphia WPCPs for all toxic substances, heavy metals, and carcinogens (including suspected carcinogens) known to be discharged into the Philadelphia sewer system (including as a minimum, the DRBC effluent limits set out in Amendment 72-1, which are attached hereto and made a part hereof as Exhibit " 4 ") to take affect when the new WPCPs are operational.

* Revised DRBC waste load allocations.

9. Establishing immediate daily monitoring requirements for sewage effluent and sludge at all three Philadelphia WCPCs and at the Torresdale Water Treatment Plant for all toxic substances, heavy metals, and carcinogens (including suspected carcinogens) known to be discharged into the Philadelphia sewer system (including substances listed in DRBC Amendment 72-1 as a minimum).

10. Enjoining defendant from violating initial and final effluent limitations and monitoring requirements.

11. Ordering defendant to notify EPA, Environmental Intervenors, and the Special Master of any violation of such effluent limitations or monitoring requirements, within five days of the violation.

12. Ordering the City to immediately apply to EPA or DER for a Section 1342 permit for the removal of contaminated in-place sludge at N. E. lagoons pursuant to Section 1345 (a).

13. As soon as defendant has obtained a valid Section 1342 permit for sludge removal at N. E. lagoons, ordering the City to use chemical fusion or fixation to transform the contaminated sludge into an inert, clay-like substance, which can be biologically isolated from the environment.

14. Ordering the defendant City to cease dumping its sewage sludge in ocean waters as soon as possible, but in no event later than January 1, 1981.

14a. Ordering defendant to immediately move its sludge dumping operations to the EPA-designated 100 mile site.

15. Prohibiting defendant from disposing of more than the following amounts of sludge in the Atlantic Ocean:

- a) From June, 1978 to June, 1979 - not more than a total of 70,000,000 lbs;
- b) From June, 1979 to June, 1980 - not more than a total of 40,000,000 lbs.;
- c) From June, 1980 to January 1981 - not more than a total of 10,000,000 lbs.;

16. Declaring Philadelphia in violation of Section 1411 of the MPRSA for its numerous permit violations from February, 1975 to the present.

17. Ordering the City to notify EPA, Environmental Intervenors, and the Special Master of any violation of its ocean dumping permit within five days of the violation.

18. Appointing a Special Master to oversee implementation of all orders of this Court concerning compliance with the Clean Water Act and the MPRSA.

19. Granting such other further and additional relief as may be just and proper.

20. Award plaintiffs reasonable attorneys' fees and costs including expert witness fees as provided for in 33 U.S.C. Section 1365 (d).

PUBLIC INTEREST LAW CENTER
OF PHILADELPHIA

Albert J. Slap

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Attorney for Environmental
Intervenors

Date: 8-4-78