



## RIVERKEEPER®

**August 31, 2009**

City of Troy  
Department of Public Utilities  
25 Water Plant Road  
Troy, New York 12182

Harry J. Tutunjian, Mayor  
One Monument Square, City Hall  
Troy, New York 12180

Clement Campana, President Troy City Council  
16 Woodrow Ct  
Troy, NY 12180

John F. Brown, Public Utilities Committee Chair  
148 Maple Ave  
Troy, NY 12180

**Re: Illegal Dry Weather Discharge from City of Troy Combined Sewer Overflow Outfall**

Dear Mayor Tutunjian, City Council Members, and Public Utilities Staff:

We are writing to put you on notice of Clean Water Act violations resulting from dry weather combined sewer overflow (CSO) discharges into the Hudson River from City of Troy State Pollutant Discharge Elimination System (SPDES) permit # NY0099309, outfall No. 030 located between the Green Island and Congress Street bridges in the City of Troy.

On August 25, 2009 at approximately 11:00 am, while patrolling the Hudson River and conducting water quality sampling near the City of Troy, we observed an active discharge from outfall No. 030 of gray discolored water with a strong sewage odor. Water quality tests conducted by Riverkeeper revealed extremely high levels of Enterococcus, an indicator of raw sewage. On this date there had been no rain locally in more than 24 hours. The enclosed photographs we took depict the scene as we witnessed it. *See Exhibit A.* Dry weather discharges from CSO outfalls are prohibited under the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, the Environmental Protection Agency's Combined Sewer Overflow Control Policy, and the SPDES permit for this outfall.

## **Organizational Background**

Riverkeeper is an independent, member supported, not-for-profit environmental organization with offices in Tarrytown and White Plains, New York. Our mission is to protect the environmental, recreational, and commercial integrity of the Hudson River, its tributaries, and New York Harbor and to safeguard the New York City drinking water supply. We carry out this mission through enforcement, litigation, advocacy, and public education.

## **Violations of Clean Water Act**

The Clean Water Act (the "Act") prohibits discharges of pollutants from a point source into waters of the United States without a permit.<sup>1</sup> See 33 U.S.C. §§1311, 1362. The Act defines "pollutant" to include chemical wastes, biological materials, rock, sand, solid waste, heat, suspended solids and industrial waste discharged into water. See 33 U.S.C. §1362(6). "Point source" is defined as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, tunnel . . . vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. §1362(14). The concept of point source incorporates "the broadest possible definition of any identifiable conveyance from which pollutants might enter waters of the United States." *United States v. Earth Science, Inc.*, 599 F.2d 368, 373 (10<sup>th</sup> Cir. 1979).

While it is clear that the City of Troy has a permit for this outfall, it is not permitted to discharge during dry weather. Section 402(q) of the CWA, 33 U.S.C. §1342(q), requires that all CWA permits issued after December 21, 2000 comply with the Environmental Protection Agency's Combined Sewer Overflow Control Policy.<sup>2</sup> This policy requires nine minimum controls to reduce CSO impacts, one of which is the prohibition of dry weather CSOs.<sup>3</sup>

A search of the Department of Environmental Conservation (DEC) SPDES permit database shows that in 2001 SPDES permit # NY0099309 was modified by the department to include the requirements of the EPA's CSO control policy. Therefore any dry weather discharges from City of Troy permitted CSO outfalls are a violation of this permit and of the Clean Water Act.

Riverkeeper's observations on August 25, 2009 clearly show a dry weather CSO discharge. In addition, testing of the effluent being discharged from the outfall indicated highly unsafe levels of *Enterococcus*, an indicator of raw sewage. The federal BEACH Act<sup>4</sup> suggests that a single water sample with a value of greater than 104 *Enterococcus*/100ml, or five or more samples with a geometric mean (a weighted average) greater than 35 *Enterococcus*/100ml, indicates water quality that is unsafe for swimming. Test results from the August 25, 2009 overflow registered

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<sup>1</sup> The State of New York was delegated authority by the Environmental Protection Agency to administer the National Pollution Discharge Elimination System ("NPDES") permit program pursuant to 33 U.S.C. section 1342(b). The State Pollution Discharge Elimination System ("SPDES") permit program is the functional equivalent of NPDES.

<sup>2</sup> <http://cfpub.epa.gov/npdes/cso/cpolicy.cfm>

<sup>3</sup> [http://cfpub.epa.gov/npdes/cso/ninecontrols.cfm?program\\_id=5](http://cfpub.epa.gov/npdes/cso/ninecontrols.cfm?program_id=5)

<sup>4</sup> Beaches Environmental Assessment and Coastal Health Act of 2000, <http://www.epa.gov/waterscience/beaches/files/beachbill.pdf>

greater than **24,000/100ml** (this is the highest reading our system can detect-therefore levels may have been higher).

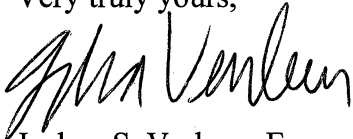
Any discharge of any pollutant into the Hudson River without a permit or in violation of an issued permit is a violation of the CWA, enforceable by citizens. *See* 33 U.S.C. §1365.

Riverkeeper protects and safeguards the ecological integrity of the Hudson River, its tributaries, and the waters of New York Harbor. On behalf of our members, we routinely file citizen suits under the Clean Water Act to prevent and remediate environmental pollution problems. While this is not a formal "notice of intent to sue" under the Clean Water Act, we reserve the right to bring such litigation if necessary.

We have forwarded pictures and a report of the conditions we observed to the New York State Department of Environmental Conservation, and encourage you to take steps to ensure that such dry weather overflows do not occur in the future. Riverkeeper will continue to conduct regular patrols of the Hudson River and look forward to seeing the steps you have taken to rectify this problem.

Thank you in advance for your attention to this matter. To discuss this further, I can be reached at [jverleun@riverkeeper.org](mailto:jverleun@riverkeeper.org) or 914-478-4501 x 247.

Very truly yours,



Joshua S. Verleun, Esq.  
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Cc:

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