

**IN THE SUPREME COURT OF MISSOURI
No. SC95658**

BISHOP & ASSOCIATES, LLC.,

Plaintiff-Appellant,

vs.

AMEREN CORPORATION, et al.,

Defendants-Respondents.

**On appeal from the Circuit Court of the City of St. Louis
The Hon. Joan L. Moriarty, presiding
No. 1222-CC09459**

**BRIEF OF AMICUS CURIAE
MISSOURI COALITION FOR THE ENVIRONMENT**

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July 13, 2016

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CONSENT OF PARTIES

Pursuant to Supreme Court Rule 84.05(f)(2), this brief amicus curiae is filed with the consent of all of the parties.

ARGUMENT

*The Missouri Coalition for the Environment's Interest
in Protecting Water Quality*

The Missouri Coalition for the Environment (MCE) is a nonprofit citizens' environmental organization whose mission is to protect and restore the environment through education, public engagement, and legal action. MCE began its work in 1969 in St. Louis as the region's first independent citizens' group created to address a broad range of environmental policy issues. Included among these issues is MCE's work to protect and restore Missouri's abundant and valuable water resources.

Over the past thirty years, MCE has worked to stop pollutants associated with the operation of St. Louis' sewer system (operated by the St. Louis Metropolitan Sewer District (MSD)) from fouling Missouri's waters. MSD's system transports waste and storm water for approximately 1.4 million people in a 535-square-mile service area covering St. Louis city and about 80% of St. Louis County. MSD's combined sewers are some of the oldest in the country - giant brick subterranean tunnels that underlay St. Louis' historic neighborhoods and downtown. During wet weather - especially during heavy rains - the volume of sewage and rainwater can overwhelm the capacity of the combined sewers. Under these circumstances, the mixture of sewage and rainwater often bypasses MSD's treatment facilities entirely and is discharged directly to St. Louis' rivers. Wet weather events also can overwhelm sewers in St. Louis area neighborhoods and cause a mixture of sewage and rainwater to back up into basements.

MCE's work to end this pollution includes obtaining a judgment which

compels MSD to conduct an expansive overhaul of its sewer infrastructure.¹

The Discharges of Oil and Sludge to the MSD System

This lawsuit between Bishop & Associates and Ameren Corporation involves the discharge of pollutants to the Region's waters, as well as discharges of oils and sludge to the MSD sewer system. Unfortunately, MSD's system, like other publicly owned wastewater treatment systems, is not designed to treat oil and grease.

Generally, fats, oils, and grease (often referred to by the acronym, "FOG") can cause extensive damage when released into a public sewer system. FOG accumulation can lead to blockage in the sewer system which, in turn, causes sewer overflows that damage the system and pollute the waters. U.S. EPA reports that, nationwide, "grease from restaurants, homes, and industrial sources is the most common cause (47%) of reported blockages. Grease is problematic because it solidifies, reduces conveyance capacity, and blocks flow." United States Environmental Protection Agency Report to Congress, *Impacts and Control of CSOs and SSOs*, EPA 833-R-04-001, p. 4-28, August 2004 (online at <http://nepis.epa.gov/Exe/ZyPDF.cgi/30006O5F.PDF?Dockey=30006O5F.PDF>). In the St. Louis area in particular, MSD estimates that about 15 percent of blockages in its public sewer system are caused by FOG. See MSD's "Project Clear," online at <http://www.projectclearstl.org/repair-and-maintain/fats-oils-and-grease/>.

The discharges of oil and sludge to MSD's system is a serious concern to MCE. These discharges have the potential to cause sewer overflows which may pollute the area's waters, as well as overwhelm sewers in area neighborhoods.

¹ MCE intervened in a U.S. EPA Clean Water Act enforcement lawsuit. MCE was a party to that suit because it shared a close and common interest in the enforcement of federal and state laws to protect the region's water quality. After more than two years of mediation, U.S. EPA, MSD, and MCE negotiated a Consent Decree.

*Whistleblowers Serve a Vital Role
in the Enforcement of Environmental Requirements*

Since 1969, MCE has been working to protect and preserve Missouri's environment. For more than four decades, MCE has witnessed the ebb and flow in the resources available to federal, state, and municipal authorities to enforce the environmental laws.² Persons other than government employees, including citizens, employees, and contractors have played, and will continue to play, an important role in the identification of environmental concerns.

Further, Congress has deemed whistleblower provisions to be of sufficient importance to have included them in the major federal environmental statutes. See, 42 U.S.C. § 7622 (Clean Air Act); 42 U.S.C. § 9610 (Comprehensive Environmental Response, Compensation, and Liability Act); 42 U.S.C. § 300j-9(i) (Safe Drinking Water Act); 42 U.S.C. § 6971 (Resource and Conservation and Recovery Act); 15 U.S.C. § 2622 (Toxic Substances Control Act); and 42 U.S.C. § 5851 (Energy Reorganization Act).

² See, e.g., *Missouri's local air pollution control programs lose funding*, St. Louis Post Dispatch, Aug. 19, 2011 ("state funding cuts are likely to force the city of St. Louis to drastically slash its air pollution control program and eliminate most of 24 positions at the end of next month. St. Louis County is also losing funding and faces certain cuts, though it's uncertain right now how many of its staff of 13 will lose their jobs"), available online at (http://www.stltoday.com/news/local/metro/missouri-s-local-air-pollution-control-programs-lose-funding/article_13ea0320-58f9-52d5-9a59-ebcc2b2752b9.html); *State air pollution program facing insolvency*, St. Louis Post Dispatch, April 26, 2014, available online at (http://www.stltoday.com/business/local/state-air-pollution-program-facing-insolvenc y/article_f5c105ab-799e-568a-b6d1-e0b9b932e313.html).

The courts also have recognized the important role whistleblowers play in the enforcement of the nation's environmental laws. For example, in *Passaic Valley Sewerage Comm'rs v. U.S. Dep't of Labor*, 992 F.2d 474, 475 (3d Cir. 1993), the court held that intracorporate complaints regarding a sewage treatment plant's operating practices were protected under the Federal Water Pollution Control Act's whistleblower provision. The court made clear that,

Such "whistle-blower" provisions are intended to promote a working environment in which employees are relatively free from the debilitating threat of employment reprisals for publicly asserting company violations of statutes protecting the environment, such as the Clean Water Act and nuclear safety statutes. They are intended to encourage employees to aid in the enforcement of these statutes by raising substantiated claims through protected procedural channels.

Passaic Valley Sewerage Comm's, 992 F.2d at 478.

Time and again the courts have recognized the importance of these whistleblower provisions, applying them to a wide variety of polluting sources. See, e.g., *DeKalb Cty. v. U.S. Dep't of Labor*, 812 F.3d 1015, 1018 (11th Cir. 2016) (reports of improper disposal of fats, oils, and grease made by employee compliance inspectors were protected by the whistleblower provisions of the Federal Water Pollution Control Act); *Charvat v. E. Ohio Reg'l Wastewater Auth.*, 246 F.3d 607, 610 (6th Cir. 2001) (complaint that an employee had cross-connected a sewer-plant system with the public water supply without installing backflow preventers, creating the potential for raw sewage to enter the public water supply); *Mackowiak v. Univ. Nuclear Sys., Inc.*, 735 F.2d 1159 (9th Cir. 1984) (internal complaints made by whistleblower regarding quality and safety problems at nuclear power plant were protected by the whistle blower provisions of the federal Energy Reorganization Act); *Phillips v. Interior Bd. of Mine Operations Appeals*, 500 F.2d 772, 783 (D.C.

Cir. 1974), *cert. denied*, 420 U.S. 938 (whistleblower's complaints of safety conditions within a mine were protected by the whistleblower provisions of the federal Mine Safety Act); and *Pogue v. U.S. Dep't of Labor*, 940 F.2d 1287, 1288 (9th Cir. 1991) (whistleblower's complaints concerning operations at a naval shipyard were protected under the whistleblower provisions of the Comprehensive Environmental Response Compensation and Liability Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act).

CONCLUSION

Bishop & Associates has raised serious environmental concerns. Persons who identify these types of concerns, whether citizens, employees, or independent contractors, should be protected from retaliation.

Respectfully submitted,

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Certifications

The undersigned certifies that on this 13th day of July, 2016, the foregoing was filed electronically with the Clerk of Court, and thereafter to be served electronically upon counsel for respondents, Robert T. Haar and Lisa A. Pake, by operation of the Court's electronic filing system.

The undersigned further certifies that the brief contains the information required by Rule 55.03, the brief complies with the limitations contained in rule 84.06 (b), and that there are 1,618 words in the brief.

/s/ Stuart P. Keating