

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE RIVERKEEPER, INC.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CITY OF COOKEVILLE, TENNESSEE,)	
dba COOKEVILLE WATER AND)	
SEWER DEPARTMENT,)	
)	
Defendant.)	JURY TRIAL DEMANDED

COMPLAINT

The Plaintiff, Tennessee Riverkeeper, states as follows:

NATURE OF THE CASE

1. This is a citizen’s suit, brought pursuant to the provisions of Section 505(a)(1) of the Federal Water Pollution Control Act, also known as the Clean Water Act (hereinafter “CWA”), as amended, 33 U.S.C. § 1365(a)(1), to address violations of the CWA by Defendant, City of Cookeville, Tennessee dba Cookeville Water and Wastewater Department (Collectively “Cookeville”), arising out of illegal discharges of pollutants from its sewage treatment plant located at Cookeville, Putnam County, Tennessee.

2. Defendant Cookeville is in violation of sections 301 and 402 of the CWA (33 U.S.C. §§1311 and 1342) and sections 122.1, *et sec.*, of Title 40 of the Code of Federal Regulations. These laws require that no facility shall discharge pollutants to waters of the United States or waters of the state except as authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”).

3. Cookeville is violating provisions of its NPDES permit by operating its sewage treatment plant in a manner that discharges pollutants to the waters of the United States and waters of the state due to its failure to operate its collection system so as to avoid overflows. Riverkeeper seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of litigation costs, including attorney and expert witness fees, for Defendant Cookeville's repeated and ongoing violations of the CWA.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the CWA claims set forth in this Complaint by virtue of Section 505(a)(1) of the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. § 1365(a)(1). Subject matter jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (Federal question).

5. Venue is appropriate in the Middle District of Tennessee pursuant to 33 U.S.C. § 1365(c)(1) and because the acts, omissions, and/or violations complained of herein occurred, and continue to occur, within Putnam County of the Middle District of Tennessee.

NOTICE

6. Tennessee Riverkeeper ("Riverkeeper") has complied with the pre-suit notice provisions of the CWA. Pursuant to 33 U.S.C. § 1365(b)(1)(A), 40 C.F.R. Part 135, Riverkeeper, on May 25, 2022 gave Defendant Cookeville notice of the violations alleged herein and its intent to sue after the expiration of sixty (60) days ("May Notice"). At the same time, Riverkeeper mailed a copy of the May Notice to the Administrator of the Environmental Protection Agency ("EPA"), the Regional Administrator of Region IV of the EPA, and the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC"). Service of notice on Defendant was by

certified mail. More than 60 days, and less than 120 days, have passed since the May Notice was served on Defendant and these agencies. The May Notice is attached hereto as Exhibit 1 and incorporated by reference herein.

7. Since Riverkeeper gave notice, the violations complained of have not ceased, and are ongoing. Neither the EPA nor the State of Tennessee has commenced and diligently prosecuted a civil or criminal enforcement action in a court of the United States or a state for the violations. Furthermore, prior to the May Notice, neither the EPA nor the State of Tennessee commenced and diligently prosecuted an administrative action under 33 U.S.C. §1319(g), or under a comparable Tennessee law, for the violations alleged herein.

8. Neither the EPA nor the state has issued a final order not subject to further judicial review and the Defendant has not paid a penalty assessed under 33 U.S.C. §1319(g), or under a comparable Tennessee law, for the violations.

9. Riverkeeper will mail, contemporaneously with the filing hereof, a copy of this Complaint to the Administrator of the EPA, the Regional Administrator of EPA Region 4, the Region in which the violations are alleged to have occurred, and the Attorney General of the United States.

PARTIES

10. Riverkeeper is a non-profit corporation formed in the State of Alabama and granted authority to operate in Tennessee by the Division of Business Services, State of Tennessee, as a nonprofit foreign corporation. Riverkeeper has approximately 3000 members, and is dedicated to the preservation, protection, and defense of the Tennessee and Cumberland Rivers and their tributaries. Riverkeeper actively supports effective enforcement and implementation of environmental laws, including the CWA, on behalf of and for the benefit of its members.

11. Members of Tennessee Riverkeeper have recreated in, on or near, or otherwise used and enjoyed, or attempted to use and enjoy, the Cumberland River (and its tributaries) in the past, and they intend to do so in the future. They have a direct and beneficial interest in the continued protection, preservation, and enhancement of the environmental, aesthetic, and recreational values in the Cumberland River and its tributaries. The quality of these waters directly affects the recreational, aesthetic, and environmental interests of certain members of Tennessee Riverkeeper. The recreational, aesthetic, and environmental interests of certain of Tennessee Riverkeeper's members have been, are being, and will be adversely affected by the Defendant's continued violation of the NPDES permit requirements, Tennessee NPDES rules, and the CWA as alleged in this complaint.

12. Defendant's illegal discharges enter Blackburn Fork, a tributary of Cumberland River; a tributary of Blackburn Fork; Little Creek, a tributary of Blackburn Fork; a tributary of Little Creek; Cane Creek, a tributary of Caney Fork of the Cumberland River; and a tributary of Cane Creek. These discharges affect Falling Water River, Caney Fork, and Center Hill Lake, all of which are tributaries of Cumberland River. The violations alleged herein have had a detrimental impact on Tennessee Riverkeeper members' interests because the violations have adversely affected and/or diminished aquatic life and water quality in these waters and have made these waters less suitable for fishing, boating, swimming, wading, walking, observing nature, or relaxing. Said members would recreate more in and around these waters but for Defendant's illegal discharges of pollution. Riverkeeper's members will recreate more often in or near these waters once the Defendant's illegal discharges cease.

13. The Declaration of Matthew Tobey is attached hereto as Exhibit 2 and incorporated by reference herein. Mr. Tobey is a member of Tennessee Riverkeeper. He is a resident of Cookeville, Tennessee. Mr. Tobey likes to hike and walk his dog in and around Cookeville, Tennessee. He usually goes to Cane Creek Park and sometimes Cummins Falls State Park. He enjoys the natural setting with birds, fish, and other aquatic creatures. He is concerned about the negative impact sewage has on the ecology of the creeks in and around Cookeville. His dog likes to wade and drink from the creeks but he tries to keep it out of the water because of the sewage. He would like to continue hiking and walking his dog along these creeks in the future and would enjoy it much more if the sewage was not in the water. He would like to fish in the creeks around Cookeville if he could do so without being exposed to the contaminated water but he currently avoids fishing in the area.

14. The Declaration of James M. Redwine is attached hereto as Exhibit 3 and incorporated by reference herein. Mr. Redwine is a member of Tennessee Riverkeeper. He has a home on Center Hill Lake downstream from Cookeville. He enjoys the rivers in the area including Falling Water River, Rock Island State Park and Burgess Falls State Park. He has visited those areas with family and friends on a number of occasions. Hiking, boating, swimming and fishing are some of the activities he enjoys there. He would enjoy these activities much more if he knew the waters were clean and not affected by the sewage overflows.

15. The Declaration of John Noel is attached hereto as Exhibit 4 and incorporated by reference herein. He is a member of Tennessee Riverkeeper. He is a resident of Nashville and has a lake house at Center Hill Lake. He has enjoyed Center Hill Lake for 60 years. He has enjoyed canoeing, motor boating, water skiing, swimming, hiking, and even scuba diving at the

lake and in the general area. He has hiked Falling Water River and Burgess Falls. He has long been concerned about pollution of the waters of Tennessee and particularly Center Hill Lake. He has noticed that a primary source of pollution of the lake is sewage from Cookeville. When the water level is high he can smell sewage at Burgess Falls. He plans to continue his use of the lake and area waters in the future and would enjoy all his activities at the lake, Burgess Falls, and in the general area more if the sewage from overflows at Cookeville was removed from the water.

16. The Declaration of Jon Jonakin, PhD is attached hereto as Exhibit 5 and incorporated by reference herein. He is a member of Tennessee Riverkeeper and resides at Cookeville. He frequently fishes and canoes on the Caney Fork River by himself or with companions. He feels that he and his neighbors should not be exposed to raw sewage and the infectious agents it contains. He is concerned about putting his hands in water or touching fish that have been in contaminated water. He would enjoy fishing much more if he knew that the water was not polluted by sewage.

17. Riverkeeper is a “citizen” within the meaning of 33 U.S.C. §§ 1365(g) and 1365(a), with standing to bring this action.

18. Defendant, Cookeville, is a Tennessee municipal corporation, within the Middle District of Tennessee, with principal offices in Cookeville, Marshall County, Tennessee. The City of Cookeville, as principal of Cookeville Water and Wastewater Department, is the owner and operator of a waste water treatment system with sewage collection lines.

19. Defendant Cookeville is a “person” within the meaning of 33 U.S.C. §§1362(5) and 1365(a)(1).

STATUTORY BACKGROUND

20. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States unless the discharge is in compliance with various enumerated sections of the CWA. Among other things, Section 301(a) prohibits such discharges not authorized by, or in violation of the terms of, a National Pollutant Discharge Elimination System permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. The State of Tennessee has been delegated the authority to implement the permitting programs of the Act by the EPA, including the NPDES permit program, pursuant to 33 U.S.C. § 1342(b). TDEC is the water pollution control agency for purposes of the Act, and has drafted regulations pursuant to that authority implementing the Act's permitting programs within the State of Tennessee.

22. A citizen suit, pursuant to 33 U.S.C. § 1365(a)(1), may be brought for violations of the terms and conditions of NPDES permits. 33 U.S.C. § 1365(f).

GENERAL ALLEGATIONS

23. This is an action for declaratory judgment, injunctive relief, civil penalties, and litigation costs, including reasonable attorney's and expert witness fees, to enforce provisions of the CWA, and regulations adopted pursuant to said act.

24. Cookeville is in violation of sections 301 and 402 of the CWA (33 U.S.C. §§1311 and 1342) and sections 122.1, *et sec.*, of Title 40 of the Code of Federal Regulations. These laws require that no facility shall discharge pollutants to waters of the United States or waters of the state except as authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System.

25. Cookeville was issued NPDES permit number TN0024198 ("NPDES Permit" or

“Permit”) which authorizes the permit holder to discharge treated municipal wastewater from Outfall 001, into the Pigeon Roost Creek at mile 2.3, subject to stated discharge limitations and monitoring requirements.

26. All discharges must be in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the NPDES Permit. Specifically, Section 2.3.3 of the NPDES Permit prohibits overflows and places a duty on the permit holder to avoid them. Any permit noncompliance constitutes a violation of applicable state and federal laws and is grounds for enforcement action. *See*, Permit §2.3.1. Cookeville is subject to strict liability for any violations of its NPDES Permit.

27. As set forth in Count One, below, and in the May Notice, Cookeville has violated the CWA by operating its sewage treatment plant in a manner which discharges pollutants to the waters of the United States and waters of the state in violation of its NPDES Permit, and by failure to operate its collection system so as to avoid overflows.

28. The violations set forth in the paragraphs above and in the May Notice are continuing and ongoing, or are likely to recur, as of the date this Complaint is being filed.

COUNT ONE
FAILURE TO AVOID OVERFLOWS IN VIOLATION OF AN NPDES PERMIT
AND THE CLEAN WATER ACT

29. Riverkeeper hereby repeats, re-alleges, adopts, and incorporates by reference the paragraphs above as if fully set out in this count.

30. Cookeville is in violation of provisions of its NPDES Permit by failing to operate its collection system so as to avoid overflows. The permit specifically prohibits overflows and places a duty upon Cookeville to avoid overflows. *See*, Permit §2.3.3. Overflows in violation of the

Permit have been reported to the TDEC on at least the occasions shown in **Appendix A**. This list shows three hundred six (306) violations within the past five years and over ten million nine hundred sixty-three thousand sixty (10,963,060) gallons of untreated sewage released into the environment. The violations set out in this count are continuing and ongoing and there is a reasonable likelihood that Defendant will continue these or similar violations in the future.

31. These violations have an adverse impact on waters of the United States and waters of the state, specifically of Blackburn Fork, a tributary of Cumberland River; a tributary of Blackburn Fork; Little Creek, a tributary of Blackburn Fork; a tributary of Little Creek; Cane Creek, a tributary of Caney Fork of the Cumberland River; a tributary of Cane Creek, Falling Water River, Caney Fork, Center Hill Lake, Pigeon Roost Creek, and the Cumberland River, and on the recreational, aesthetic, environmental, and pecuniary interests of Riverkeeper's members in those waterways as set out in paragraphs 11 thru 16 herein above.

32. Defendant Cookeville should be subject to an enforcement order or injunction ordering it to fully comply with all requirements of its NPDES Permit and the CWA.

33. Defendant Cookeville should be subject to the assessment of civil penalties for these violations of the CWA pursuant to Section 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365. For the purpose of assessing the maximum penalty which Defendant Cookeville is liable, each day that the Cookeville sewage treatment plant has discharged pollutants in violation of its NPDES Permit and/or without a permit authorizing such discharges constitutes a separate violation of Section 301(a) of the CWA, pursuant to Section 309(d), 33 U.S.C. § 1319(d).

**COUNT TWO
INJUNCTIVE RELIEF**

34. Riverkeeper hereby repeats, re-alleges, adopts, and incorporates by reference paragraphs 1 thru 26 above as if fully set out in this count.

35. The violations set out herein will continue unless this Court enjoins Defendant from continuing to violate its permit.

36. These violations have caused irreparable injury to some of Riverkeeper's members. Riverkeeper has no adequate remedy at law for the injuries caused to its members by Defendant's ongoing violations in that Riverkeeper would be forced to bring repeated and burdensome actions for each new injury to its interests if Defendant's ongoing violations are not enjoined.

37. An injunction will be in the public's interest in this case. Because Defendant is in continuing violation of the law, the equities for an injunction weigh in Riverkeeper's favor.

38. Therefore, Riverkeeper brings this cause of action to enjoin Defendant from engaging in any other affirmative act or conduct which would contribute to further permit violations.

PRAYER FOR RELIEF

WHEREFORE, Riverkeeper respectfully requests that the Court grant the following relief:

- a. Plaintiff Riverkeeper requests the Court render a judgment finding and declaring that Defendant Cookeville has violated and is in violation of the CWA, 33 U.S.C. §1311(a), and Tennessee NPDES rules;
- b. Plaintiff Riverkeeper requests and petitions this Court to enjoin the violations and any and all illegal conduct by Defendant set out and alleged in Count One above and issue an injunction compelling Defendant to remedy the illegal discharges of

pollutants into waters of the United States;

- c. Plaintiff Riverkeeper requests and petitions this Court to assess a \$59,973.00 (fifty-nine thousand, nine hundred seventy-three dollars) civil penalty (*see* 40 CFR § 19) against Defendant Cookeville for each violation and each day of continuing violation of the CWA for which Defendant is found liable pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a);
- d. Plaintiff Riverkeeper requests and petitions this Court for an award of litigation costs, including reasonable attorney's fees and expert fees, as authorized by 33 U.S.C. § 1365(d); and
- e. For such other, further or more general relief as this Court may deem appropriate.

Respectfully submitted this the 23rd day of September, 2022.

s/ Elizabeth A. Alexander
Elizabeth A. Alexander, BPR No. 19273
Pepper Law, PLC
1801 West End Avenue, Suite 850
Nashville, TN 37203
Telephone: 615-256-4838
balexander@pepperlawplc.com

s/ Mark E. Martin
Mark E. Martin
Alabama Bar No: ASB-9361-A41M
Admission Requested Pro Hac Vice
P.O. Box 1486
Oneonta, AL 35121
Telephone: (205) 516-9350
mmartin@markemartin.com

Attorneys for Plaintiff Tennessee Riverkeeper, Inc.