

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

COOSA RIVERKEEPER, INC.,)
Plaintiff,)
v.)
NEWCASTLE HOMES, INC.,) CASE NO.:
Defendant.)

COMPLAINT

Plaintiff, Coosa Riverkeeper, Inc. (“Riverkeeper”), by and through its counsel, hereby files this Complaint and alleges as follows:

I. Nature of the Case

1. For many years, Newcastle Homes, Inc. (“Newcastle”) has been polluting Alabama’s waterways through its irresponsible development activities. Specifically, in the construction of the Dunnavant Valley Subdivision, Newcastle has illegally discharged sediment into the North Fork of Yellowleaf Creek and Ivy Branch in Shelby County in violation of the Clean Water Act, 33 U.S.C. §§ 1251–1376. The violations raised in this Complaint are the latest in a continuous pattern of violations. The Alabama Department of Environmental Management (“ADEM”) has issued several Notices of Violation to Newcastle and has entered into an administrative order with the company, but the violations continue at the construction site.
2. Newcastle is violating its Clean Water Act National Permit Discharge Elimination System (“NPDES”) permit. This Complaint seeks the enforcement as to more than 150 violations of the Clean Water Act (“CWA”).

3. Through counsel, Riverkeeper issued a 60-day notice to Newcastle on June 16, 2021, stating its intention to file a citizen's suit to address numerous violations, pursuant to the CWA, 33 U.S.C. § 1365. The notice stated that Riverkeeper intended to file a complaint in federal court against Newcastle to enforce the requirements of the NPDES permit. A copy of the notice letter is attached as Exhibit 1.

4. After sixty days had passed, Riverkeeper's counsel also sent numerous written communications to Newcastle's counsel informing Newcastle that the violations were continuing.

5. Newcastle's counsel always responded that the company was working on the problems at the site and would abate the discharges.

6. Over a year has passed since the violations began and seven months have passed since Riverkeeper sent the notice letter. The violations identified in the notice letter have not been addressed and will continue in the future, absent a court order for corrective action.

7. Riverkeeper now seeks declaratory and injunctive relief, the assessment of penalties, and an award of litigation costs and fees to address Newcastle's violations of its NPDES permit and unauthorized discharges.

II. Jurisdiction and Venue

8. This action arises under the Clean Water Act § 505(a), 33 U.S.C. § 1365(a), and this Court has subject matter jurisdiction over the claims set forth in this Complaint under those provisions and under 28 U.S.C. § 1331 (federal question).

9. Venue is proper in the Northern District of Alabama because the source of the violations alleged herein is located within the Northern District of Alabama (Shelby County). 33 U.S.C. § 1365(c)(1) and 28 U.S.C. § 1391(b) and (c).

III. Parties

10. Plaintiff Riverkeeper is an Alabama nonprofit membership corporation with over 2,700 members that is dedicated to the protection and restoration of the Coosa River and its tributaries. Riverkeeper actively supports effective implementation and enforcement of environmental laws, including the CWA, on behalf and for the benefit of its members. (Overton Declaration, Exhibit 2). Riverkeeper is a “citizen” within the meaning of section 505(g) of the CWA, 33 U.S.C. § 1365(g), with associational standing to bring this case.

11. Members of Riverkeeper use and value the North Fork of Yellowleaf Creek and Ivy Branch, tributaries of the Coosa River, for recreation, including but not limited to fishing, swimming, wildlife observation, photography, and for aesthetic enjoyment. Shelby County built a 1.8-mile trail, called the Dunnnavant Valley Greenway, along a section of the North Fork of Yellowleaf Creek for citizens to enjoy. Newcastle’s construction site is across the Creek from this Greenway. Members’ enjoyment of this trail and the neighboring Creek is harmed by Newcastle’s illegal discharges.

12. For example, Riverkeeper Member Joe Craddock lives half a mile from Yellowleaf Creek. He fishes in Yellowleaf Creek and frequently visits the Dunnnavant Valley Greenway. His ability to fish at Yellowleaf Creek is impaired by Newcastle’s illegal discharges of sediment. (Craddock Declaration, Exhibit 3).

13. Riverkeeper Member Dr. Beau Beard works approximately half a mile from the Newcastle construction site. He runs along the Creek on the Dunnnavant Valley Greenway on a weekly basis. His enjoyment of the Greenway is harmed by Newcastle’s illegal discharges of sediment. (Beard Declaration, Exhibit 4).

14. The violations alleged herein harm members' recreational and aesthetic enjoyment of the North Fork of Yellowleaf Creek and Ivy Branch. They would use and enjoy these waters more if the violations alleged herein were abated. Enforcement by this Court of the CWA as to Plaintiff's claims, including injunctive relief and the imposition of fines, would remedy the recreational and aesthetic injuries suffered by Riverkeeper's members. The interests Plaintiff seeks to protect are germane to its purposes and objectives, but neither the claims asserted herein, nor any of the relief requested, require the participation of individual members in this lawsuit. Accordingly, Riverkeeper has associational standing to prosecute this action.

15. Newcastle Homes, Inc., otherwise known as Newcastle Construction, Newcastle Construction, Inc., Newcastle Development, Newcastle Development, LLC, and Newcastle Development Enterprises, LLC is owned by Glen Siddle. According to the Birmingham Business Journal, Newcastle is the second most active homebuilder in Shelby and Jefferson counties, based on its number of building permits. Newcastle has repeatedly violated its construction stormwater permits for its projects across the state, including at the Dunnnavant Valley Subdivision. A search for "Newcastle" in ADEM's efile database for the last five years alone reveals stormwater violations at thirteen of the fifteen Newcastle construction sites inspected by ADEM, and the issuance of at least five warning letters, eight notices of violation ("NOVs"), and two consent orders to the company (totaling \$39,200 in penalties).

IV. Plaintiff's Compliance with the Pre-Suit Notice Requirements

16. Section 505(a) of the CWA authorizes any "citizen" to "commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter." 33 U.S.C. § 1365(a). An "effluent standard or

limitation” is defined to include unlawful acts under the terms and conditions of an NPDES permit issued pursuant to Section 402 of the CWA.

17. The plaintiff must give 60 days notice to the EPA Administrator, to the State, and to the violator of the alleged violation before commencing suit. 33 U.S.C. § 1365(b).

18. Additionally, the State cannot be “diligently prosecuting” the violation of the specific standard or violation. 33 U.S.C. § 1319(g)(6)(A).

19. Pursuant to the CWA, 33 U.S.C. § 1365(b)(1)(A), Riverkeeper gave notice of the violations alleged in this Complaint on June 16, 2021. Copies of such notice were also served on the Administrator of the U.S. Environmental Protection Agency (“EPA”), the Regional Administrator of EPA - Region 4, and the Director of ADEM. (Exhibit 1).

20. At least 60 days have passed since service and receipt of Plaintiff’s June 16, 2021 notice letter and neither EPA nor the State of Alabama has commenced or is diligently prosecuting a civil or criminal action against Newcastle in a court of the United States, or a state court, to address the violations of the specific standards, limitations, and orders at issue in this Complaint.

21. ADEM entered into a Special Order Consent Decree with Newcastle on September 28, 2021 which included a \$21,000 penalty; however, this administrative order did not mention or enforce any of the violations that this Complaint seeks to enforce, namely violations of Part I of the permit and discharging without a permit.

22. Plaintiff is commencing this action within 236 days of the date of service of its notice letter.

V. Legal Background

23. The goal of the CWA is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

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