

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
Eastern Division

THE UNITED STATES OF AMERICA)
and THE STATE OF MISSISSIPPI,)
)
Plaintiffs,)
)
v.)
)
THE CITY OF HATTIESBURG, MISSISSIPPI,)
)
Defendant.)

Case No. 2:20-cv-158-KS-MTP

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), and the State of Mississippi, by and through the Mississippi Commission on Environmental Quality, acting through the Mississippi Department of Environmental Quality (MDEQ), hereby allege as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and penalties brought under Sections 309(b) and 309(d) of the Clean Water Act (CWA or “the Act”), 33 U.S.C. §§ 1319(b) and 1319(d), and under the Mississippi Air and Water Pollution Control Law (MAWPCL) (Miss. Code Ann. §§ 49-17-1 through 49-17-43), against the Defendant, the City of Hattiesburg, Mississippi for unauthorized discharges of pollutants from its wastewater collection and transmission system

(WCTS) in violation of Section 301 of the Act, 33 U.S.C. § 1311, and for violations of conditions established in the National Pollutant Discharge Elimination System (NPDES) permits issued to Hattiesburg by MDEQ pursuant to its EPA-approved permit program under Section 402 of the Act, 33 U.S.C. § 1342.

JURISDICTION, AUTHORITY, VENUE, AND NOTICE

2. This Court has subject matter jurisdiction over this action pursuant to Section 309(b) of the Act, 33 U.S.C. §§ 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. This Court has supplemental jurisdiction over the State law claims under the MAWPCL pursuant to 28 U.S.C. § 1367(a) because the State law claims are related to the federal law claims and form part of the same case or controversy.

3. The United States has authority to bring this action on behalf of the Administrator of EPA under Section 506 of the Act, 33 U.S.C. § 1366. MDEQ has the authority to bring this suit on behalf of the State of Mississippi in accordance with Miss. Code Ann. §§ 49-2-13, 49-2-21, 49-17-17, and 49-17-43 and the common law of Mississippi.

4. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), because it is the judicial district where Hattiesburg is located and where the alleged violations occurred.

5. Notice of the commencement of this action has been provided to the State of Mississippi pursuant to Section 309(b) of the Act, 33 U.S.C.

§ 1319(b). The State of Mississippi joins this action as a plaintiff, thereby satisfying the requirements of Section 309(e) of the Act, 33 U.S.C. § 1319(e).

DEFENDANT CITY OF HATTIESBURG

6. Defendant Hattiesburg is a “city” within the meaning of Miss. Code Ann. § 21-1-1 and was incorporated in 1884. Hattiesburg is also a “municipality” as that term is defined by Section 502(4) of the Act, 33 U.S.C. § 1362(4), and under state law. The City of Hattiesburg is located in both Forrest and Lamar Counties.

CLEAN WATER ACT AND MAWPCL STATUTORY REQUIREMENTS

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person to waters of the United States, except in compliance with certain sections of the Act, including, where applicable, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the permit-issuing authority may issue an NPDES permit which authorizes the discharge of any pollutant, but only in compliance with the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, and such other conditions as the EPA Administrator determines are necessary to carry out the provisions of the Act.

9. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that EPA may approve a state NPDES permitting program. The State, through MDEQ, is authorized to issue NPDES permits in Mississippi, and does so in accordance with the MAWPCL, Miss. Code Ann. §§ 49-17-1 *et seq.*, and Commission Regulations

Water Quality Criteria for Intrastate, Interstate, and Coastal Waters, WPC-1 and WPC-2. The State has been authorized by EPA to administer its NPDES permit since May 1, 1974.

10. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the EPA Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of Section 301 of the Act, 33 U.S.C. § 1311, or any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The MAWPCL provides similar authority to MDEQ at Miss. Code Ann. § 49-17-43(2).

11. Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Civil Monetary Penalty Inflation Adjustments set forth at 40 C.F.R. § 19.4, establish maximum civil penalties for violations of Section 301 or violations of conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The maximum civil penalty per day per violation of the CWA is \$32,500 for violations occurring after March 15, 2004 through January 12, 2009; \$37,500 between January 13, 2009 through on or before November 2, 2015; and \$55,800 for violations occurring after November 2, 2015.

12. Miss. Code Ann. § 49-17-29(2) prohibits any person “to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state” without a valid permit. Miss. Code Ann. § 49-17-43(1) provides that it is illegal to violate any permit provision.

13. The MAWPCL provides that any person that violates the MAWPCL is subject to a civil penalty of up to \$25,000 per day per violation. Miss. Code Ann. § 49-17-43(1). Polluters or violators can also be liable for damages including state investigation and enforcement costs, removing any pollution, and compensation for loss of wildlife, fish, aquatic life and any other actual damages caused by the pollution or violation. Miss. Code Ann. § 49-17-43(3) and (4).

GENERAL ALLEGATIONS

A. The City and its Wastewater Collection and Transmission System

14. Hattiesburg is a municipality. It is a city created by or pursuant to Mississippi law and has jurisdiction over disposal of sewage, industrial wastes, and other wastes. Because Hattiesburg is a municipality, at all times relevant herein, Hattiesburg is a “person,” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and Miss. Code Ann. § 49-17-5(3)(b).

15. The City’s Wastewater Collection and Transmission System (“WCTS”) transports wastewater to the City’s two wastewater treatment plants (“WWTPs”), the Hattiesburg South Wastewater Treatment Plant (“South Lagoon”) and the Hattiesburg North Wastewater Treatment Plant (“North Lagoon”). At all times relevant herein, Hattiesburg has owned and operated the South Lagoon WWTP located at 1903 East Hardy Street, and the North Lagoon WWTP located at 3401 Lakewood Road, and the associated WCTS, which receive and treat wastewater from residential, commercial, and industrial sources

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.