

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and	:	Civil Action No. 21-cv-5578
COMMONWEALTH OF	:	
PENNSYLVANIA, DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BUCKS COUNTY WATER AND	:	
SEWER AUTHORITY,	:	
	:	
Defendant.	:	

COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), and the Commonwealth of Pennsylvania, Department of Environmental Protection (“Commonwealth,” “PADEP”, or “the department”) (collectively “Plaintiffs”), allege as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties brought against the Bucks County Water and Sewer Authority (“BCWSA” or “the Authority”) pursuant to Sections 309(b) and (d) of the federal Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001 (“Clean Streams Law”), the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535, *as amended*, 35 P.S. §§ 750.1-750.20a (“Sewage Facilities Act”),

Section 1917-A of the Administrative Code of 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”), and the rules and regulations promulgated thereunder, for the Authority’s illegal discharges of pollutants in violation of Sections 301(a) and 402(a) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(a) and Sections 3, 201, 202, 401, and 402 the Clean Streams Law, 35 P.S. §§ 691.3, 691.201, 691.202, 691.401, and 691.402.

JURISDICTION, VENUE, NOTICE, AND AUTHORITY

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 301 and 309(b) and (d)) of the CWA, 33 U.S.C. §§ 1301 and 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. This Court has supplemental jurisdiction over Pennsylvania’s state law claims alleged herein pursuant to 28 U.S.C. § 1367(a) because the state claims are so related to the federal claims as to form part of the same case or controversy.

4. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b) and 1395(a) and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because it is the judicial district where the Authority is located and where the alleged violations occurred.

5. Notice of the commencement of this action has been provided to the Commonwealth of Pennsylvania, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

6. The Commonwealth has joined in this action in accordance with Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

7. Authority to bring this action is vested in the Attorney General of the United States under Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

8. PADEP is the state agency that is charged with the duty and the authority to administer and enforce the Clean Streams Law, Section 1917-A of the Administrative Code, and

the rules and regulations promulgated thereunder, and which has been authorized to administer the National Pollutant Discharge Elimination System (“NPDES”) permit program under Section 402 of the Clean Water Act, 33 U.S.C. § 1342. PADEP is a “state water pollution control agency” and “person” as defined in Section 502(1) and (5) of the Act, 33 U.S.C. § 1362(1) and (5). The Commonwealth has authority to join in this Complaint, pursuant to Sections 601 and 605 of the Clean Streams Law, 35 P.S. §§ 691.601 and 691.605.

DEFENDANT

9. The Authority is a Pennsylvania Municipal Authority created under the Pennsylvania Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, *as amended*, 53 Pa.C.S. §§ 5601-5623 (“Municipality Authorities Act”).

10. The Authority is a municipal water and sewer authority that provides sewerage services to municipalities in the Eastern District of Pennsylvania. It is run by a Board of Directors appointed by the Bucks County Commissioners and acts as a separate legal authority from the rest of the Bucks County government.

11. The Authority exists under the laws of the Commonwealth of Pennsylvania with its office located at 1275 Almshouse Road, Bucks County, Warrington, Pennsylvania 18976.

12. Defendant is a “person” within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5), and Section 1 of the Clean Streams Law, 35 P.S. § 691.1, and a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4) and Section 1 of the Clean Streams Law, 35 P.S. § 691.1.

STATUTORY AND REGULATORY BACKGROUND

13. The CWA is a comprehensive statute designed “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Section 101(a) of the CWA, 33 U.S.C. § 1251(a). To achieve that goal, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” except as in compliance with an NPDES permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

14. The CWA defines the phrase “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

15. “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters; and (iii) tributaries to such waters. *See, e.g.*, 40 C.F.R. §§ 122.2 (1993).

16. “Pollutant” within the meaning of the CWA includes “solid waste . . . sewage, garbage, sewage sludge . . . biological materials . . . and . . . industrial, municipal, and agricultural waste discharged into water.” Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The CWA defines the term “point source” to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged.” Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue NPDES permits to authorize the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits.

19. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a state may establish its own permit program, and after receiving EPA's authorization of that program, may issue NPDES permits within its jurisdiction.

20. On or about July 1, 1978, the Administrator of EPA authorized the Commonwealth to issue NPDES permits in Pennsylvania under the CWA, and the Commonwealth, through PADEP, does so in accordance with its Clean Streams Law, 35 P.S. § 691.1 *et seq.* The Commonwealth's authority to issue such permits, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), has been in effect at all times relevant to this Complaint.

21. EPA retains concurrent enforcement authority pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i).

22. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates, among other things, Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation implementing such sections in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

23. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (Pub. L. 104-134, Sec. 31001(s)), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note (Pub. L. 114-74, Section 701)) as reflected in the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R.

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