

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
WINCHESTER DIVISION**

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| <b>TENNESSEE RIVERKEEPER, INC.,</b>   | ) |                            |
|                                       | ) |                            |
| <b>Plaintiff,</b>                     | ) |                            |
|                                       | ) |                            |
| <b>vs.</b>                            | ) |                            |
|                                       | ) |                            |
| <b>CITY of MANCHESTER, TENNESSEE,</b> | ) |                            |
|                                       | ) |                            |
| <b>Defendant.</b>                     | ) | <b>JURY TRIAL DEMANDED</b> |

**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 Manchester, Tennessee (“Manchester”), arising out of illegal discharges of pollutants from the Manchester Sewage Treatment Plant located at Manchester, Coffee County, Tennessee.

2. Defendant Manchester 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. Manchester 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 Manchester'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 Winchester Division, Eastern 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 continues to occur, within Coffee County of the Eastern 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 March 10, 2020, gave Defendant Manchester notice of the violations alleged herein and its intent to sue after the expiration of sixty (60) days ("March Notice"). At the same time, Riverkeeper mailed a copy of the March 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 have passed since the March Notice was served on Defendant and these agencies. The March Notice is attached hereto as Exhibit “A” 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 March 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. The State of Tennessee brought an administrative action, Case No. WPC12-0138, for violations occurring prior to the date of the filing of the action. The date of the filing of the action is unknown but, by the convention of the case number, it is believed to be in the year 2012. It was concluded with an Agreed Order on August 28, 2014. All violations alleged in this Complaint occurred subsequent to August 28, 2014 and are not barred by that administrative action.

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 has mailed a copy of the 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 Tennessee 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 Tennessee 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 the Duck River, a tributary of the Tennessee River. Members of Tennessee Riverkeeper now recreate less on the Duck River because of the Defendant's illegal discharges. The violations alleged herein have had a detrimental impact on those members' interests because the violations have adversely affected and/or diminished aquatic life and water quality in the Duck River and have made the Duck River less suitable for fishing,

boating, wading, walking, observing nature, or relaxing. Said members would recreate more in and around Duck River but for Defendant's illegal discharges of pollution. Riverkeeper's members will recreate more often in or near Duck River once the Defendant's illegal discharges cease.

13. Riverkeeper is a "citizen" within the meaning of 33 U.S.C. §§ 1365(g) and 1365(a).

14. Defendant, Manchester, is a Tennessee municipal corporation, within the Eastern District of Tennessee, with principal offices in Manchester, Tennessee. Manchester is the owner and operator of the Manchester Sewage Treatment Plant and is in control of the facility, including its collection system.

15. Defendant Manchester is a "person" within the meaning of 33 U.S.C. §§1362(5) and 1365(a)(1).

### **STATUTORY BACKGROUND**

16. 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.

17. 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.

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