

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

_____)	
UNITED STATES OF AMERICA)	
)	
and)	
)	Civil Action No.
STATE OF TEXAS,)	
)	
Plaintiffs,)	Judge
v.)	
)	
CITY OF CORPUS CHRISTI, TEXAS,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America (“United States”), 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 (the “EPA”), and the State of Texas (“Texas” or “State of Texas”), by and through the Texas Commission on Environmental Quality (the “TCEQ”), file this Complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and civil penalties brought under Sections 309(b) and (d) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1319 (b) and (d), and under Chapter 7, §§ 7.002, 7.032, 7.101, 7.102, 7.105 and 7.108, and Chapter 26, § 26.001, *et seq.*, of the Texas Water Code (“Tex. Water Code”), against the Defendant, the City of Corpus Christi, Texas (“Corpus Christi” or the “City”), for: (1) failing to comply with the terms and conditions of the City’s Texas Pollutant Discharge Elimination System (“TPDES”) permits and (2) unpermitted and illegal discharges of pollutants in violation of the Texas Water Code.

2. In addition, the United States seeks an order pursuant to Section 504(a) of the CWA, 33 U.S.C. § 1364(a), requiring Corpus Christi to take such actions as may be necessary to abate the imminent and substantial endangerment to the health of persons caused by the City's violations of the CWA and the Tex. Water Code. Subject to a reasonable opportunity for further investigation and discovery, these violations have caused or contributed to high levels of bacteria in recreational waters at or near beaches in and around the City.

3. On numerous occasions since at least 2007, the City has discharged untreated sewage and other harmful pollutants from the sanitary sewage collection and treatment systems that are part of the City's Publicly Owned Treatment Works ("POTW"). These discharges impacted navigable waters flowing through and around Corpus Christi. Sewage was also discharged onto public and private property within the City. Some of these discharges were caused by the POTW's failure to fully treat wastewaters at its six waste water treatment plants ("WWTPs"). Others were caused by poor maintenance and operation of the collection systems associated with those WWTPs. As a result, and as further alleged in this Complaint, Corpus Christi violated: a) several terms and conditions of the TPDES permits that govern the operation and maintenance of the Defendant's POTW and b) Texas law.

4. Untreated sewage contains organic matter, bacteria, and other potential pathogens that can cause a number of diseases in humans, including, but not limited to, enteric diseases such as gastroenteritis, dysentery, and cholera. The bacteria and pathogens contained in sewage are also harmful to the environment, including, but not limited to, aquatic life.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

5. This Court has subject matter jurisdiction over the claims made by the United States in this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and under 28 U.S.C. §§ 1331, 1345, and 1355.

6. This Court has supplemental jurisdiction over the State law claims alleged herein pursuant to 28 U.S.C. § 1367(a), because the State claims are related to the federal claims and form part of the same case or controversy.

7. This Court has personal jurisdiction over the Defendant, and venue is proper in the Southern District of Texas pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because this is the district where the Defendant is located and where the alleged violations occurred.

8. The Attorney General of the United States is authorized to appear and represent the United States in this action pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

9. The Texas Attorney General has authority to bring this action on behalf of the TCEQ in accordance with Section 7.105 of the Tex. Water Code.

10. Pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), the United States has notified Texas of the filing of this action.

PARTIES

11. Plaintiff, the United States, is acting at the request and on behalf of the EPA.

12. Plaintiff, the State of Texas, is acting at the request and on behalf of the TCEQ and joins this action as a plaintiff, pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

13. The State of Texas is a “State” and a “person” within the meaning of Section 502(3) and (5) of the CWA, 33 U.S.C. § 1362(3) and (5).

14. Defendant Corpus Christi is a city and a political subdivision of the State of Texas, created pursuant to the laws of the State of Texas. Corpus Christi is also a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

15. Defendant Corpus Christi is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), the regulations promulgated thereunder at 40 C.F.R. § 122.2, and Tex. Water Code § 26.001(25).

STATUTES AND REGULATIONS

A. The Clean Water Act’s and Texas Water Code’s Prohibition of Unpermitted Discharges

16. The CWA establishes a national goal of eliminating the discharge of pollutants into navigable waters. 33 U.S.C. § 1251(a)(1).

17. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the waters of the United States, including the territorial seas.

18. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with that section, and, where applicable, the requirements of a national pollutant discharge elimination system (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. The Texas Water Code includes a similar prohibition and provides that “[e]xcept as authorized by the [TCEQ], no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.” Tex. Water Code § 26.121(d); *see also id.* at § 26.121(a)(1).

20. Under Tex. Water Code § 26.001(5), “water in the state” includes “groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, canals, the Gulf of Mexico . . . and all other bodies of surface water . . . navigable or non-navigable.”

21. Tex. Water Code § 26.001(20) defines the term “discharge” to include depositing, conducting, draining, emitting, throwing, running, allowing to seep, or otherwise releasing or disposing of.”

22. Tex. Water Code § 26.001(13) defines the term “pollutant” to include sewage, sewage sludge, biological materials, and municipal waste discharged into any water in the state.

23. Tex. Water Code § 26.001(21) defines the term “point source” as “any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, or conduit” from which pollutants or wastes are or may be discharged.

B. Federally Issued NPDES and Texas-Issued “TPDES” CWA Permits

24. Section 402 of the CWA, 33 U.S.C. § 1342, provides that the permit-issuing authority may issue an NPDES permit (or state equivalent) authorizing the discharge of pollutants in compliance with Section 301 of the Act, 33 U.S.C. § 1311, subject to such conditions that the EPA determines are necessary to carry out the provisions of the CWA.

25. Under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), the EPA may approve a state to administer its own permit program. Pursuant to Section 402(b), the State of Texas was granted NPDES permitting authority within the jurisdictional boundaries of the State on September 14, 1998. Accordingly, by and through the TCEQ, the State of Texas issues TPDES

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