

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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| POTOMAC RIVERKEEPER, INC., |) |) | |
| 3070 M Street NW |) |) | |
| WASHINGTON, DC 20007, |) | Civil No. <u>1:22-cv-506</u> | |
| |) |) | |
| Plaintiff, |) |) | |
| |) |) | COMPLAINT FOR DECLARATORY |
| v. |) |) | AND INJUNCTIVE RELIEF AND |
| |) |) | CIVIL PENALTIES |
| CITY OF ALEXANDRIA, VIRGINIA, |) |) | |
| |) |) | |
| Defendant. |) |) | |
| <hr/> |) |) | |

I. INTRODUCTION

1. This action is a citizen suit brought under section 505 of the Clean Water Act (“CWA”) and section 7002 of the Resource Conservation and Recovery Act (“RCRA”) as amended. 33 U.S.C. § 1365; 42 U.S.C. § 6972. Plaintiff Potomac Riverkeeper, Inc. (“Plaintiff” or “Potomac Riverkeeper”) seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs and attorney’s fees for the City of Alexandria’s (“Defendant” or the “City”) repeated and ongoing violations of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by unlawfully discharging pollutants from a point source, a stormwater outfall located at the eastern end of Oronoco Street in Alexandria, Virginia (the “Outfall”), into the Potomac River, a water of the United States, without a permit and for the generation and disposal of solid waste contributing to an imminent and substantial endangerment to human health and the environment in violation of Section 7002(a)(1)(B) of the RCRA, 42 U.S.C. § 6972(a)(1)(B).

II. JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 33 U.S.C. § 1365(a) (CWA jurisdiction), and 42 U.S.C. § 6872(a) (RCRA jurisdiction). The relief requested is authorized pursuant to 33 U.S.C. §§ 1319(d) and 1365(a), 42 U.S.C. § 6972(a), and 28 U.S.C. §§ 2201 and 2202.

3. Pursuant to section 501(b)(1)(A) of the CWA, 33 U.S.C. §1365(b)(1)(A), and section 7002(c) of RCRA, 42 U.S.C. § 6972(c), on March 13, 2019, Potomac Riverkeeper notified the Defendant of its intent to file suit against the Defendant for its violations of the CWA and the RCRA (“Notice Letter”). Potomac Riverkeeper served this notice on Justin Wilson, the Mayor of the City, and Joanna Anderson, the Deputy City Attorney for the City. Potomac Riverkeeper also provided such notice to Andrew Wheeler, then Acting Administrator of the U.S. Environmental Protection Agency (“EPA”); Cosmo Servidio, then Region III Administrator for the U.S. EPA Region 3; Yon Lambert, AICP, Director, Department of Transportation & Environmental Services of the City of Alexandria; and David K. Paylor, Director, Virginia Department of Environmental Quality (“VDEQ”). A copy of the Notice Letter is attached as Exhibit A.

4. More than sixty days have passed since the Notice Letter was served and neither EPA nor the Commonwealth of Virginia has commenced and diligently prosecuted a civil or criminal action in a court to require Defendant’s compliance with the CWA and the RCRA. The CWA and the RCRA violations identified in the Notice Letter are of a continuing nature, are ongoing, or are reasonably likely to re-occur. Defendant thus remains in violation of the CWA and the RCRA.

5. Venue in this District is proper pursuant to 33 U.S.C. §§ 1365(c)(1), 1391 and 42 U.S.C. § 6972(a), because Defendant is located in this District, the CWA violations originated in this District, and the RCRA disposal of solid waste and resulting imminent and substantial endangerment originated in this District.

III. PARTIES

6. Plaintiff Potomac Riverkeeper is a nonprofit, membership-based environmental advocacy organization founded in 2000 for the purpose of ensuring stronger enforcement of federal, state, and local clean water protections in the Potomac River. Since 2015, Potomac Riverkeeper has been a member of the Potomac Riverkeeper Network, an organization with more than 2,000 members that includes three Riverkeepers, one each for the Upper Potomac and Lower Potomac (where the Outfall is located), and a third for the Shenandoah River. Potomac Riverkeeper and its members work to protect and restore the water quality of the Potomac River and its tributaries, which is critical to the almost six million people whose drinking water comes from that river, as well as those who use the River and its tributaries for recreation. Potomac Riverkeeper's office is located at 3070 M Street NW, Washington, DC 20007.

7. Defendant City of Alexandria is a municipality organized and existing pursuant to Title 15.2 of the Code of Virginia.

8. At all relevant times, Potomac Riverkeeper and the City are and were "persons" as that term is defined by the CWA, 33 U.S.C. § 1362(5), and by the RCRA, 42 U.S.C. § 6903(15).

IV. BACKGROUND ON THE POTOMAC RIVER

9. The Potomac River (the "River"), a navigable water of the United States, originates at the Fairfax Stone in West Virginia and forms the boundaries of Virginia, Maryland,

and the District of Columbia before entering into the Chesapeake Bay. The River is an important waterway for public drinking water, for recreational use by people who travel in interstate commerce, and for its support of recreational fishing.

V. STANDING

10. To achieve its goals, Potomac Riverkeeper implements educational programs, river cleanups, a volunteer water quality monitoring program, environmental initiatives, recreational activities, and environmental law enforcement efforts throughout the Potomac River watershed. Potomac Riverkeeper's work has helped communities in Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia. Its successes range from compelling a Virginia sewage treatment plant to reduce its annual nutrient pollution by 60,000 pounds to co-authoring a U.S. Geological Survey report on intersex fish and fish kills.

11. Potomac Riverkeeper's members include individuals concerned about the protection and restoration of the Potomac River, its tributaries, habitats, and resources, who are dedicated to preserving and improving the cultural, historic and environmental resources of the Potomac River. Potomac Riverkeeper's members fish, kayak, bird, walk and participate in other recreational activities throughout the Potomac River watershed, including in the area of the Outfall, and drink water from the Potomac River.

12. Potomac Riverkeeper's members use, enjoyment, and appreciation of the River has been and will be harmed, reduced, and degraded by the ongoing discharges from the Outfall and the resulting environmental impacts.

VI. LEGAL BACKGROUND

13. Congress passed the Clean Water Act in 1972 to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." 33 U.S.C. § 1251(a). The

CWA further declared that “it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.” 33 U.S.C. § 1251(a)(1).

14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into waters of the United States, except in compliance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit, issued by the EPA or an authorized State pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342.

15. The NPDES permit program in Virginia is administered by the Virginia Department of Environmental Quality (“VDEQ”) pursuant to EPA authorization under Section 402(b) of the CWA.

16. “Discharge of a pollutant” is defined as “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

17. “Navigable waters” is defined as “waters of the United States, including the territorial seas,” 33 U.S.C. § 1362(7), where “waters of the United States” is defined to include “[t]he territorial seas, and waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide. . . .” 40 C.F.R. § 120.2(1).

18. “Pollutant” includes a wide range of items, such as “solid waste, . . . sewage, garbage, sewage sludge . . . chemical wastes, biological materials . . . [and] industrial waste.” 33 U.S.C. § 1362(6).

19. “Point source” is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, or channel . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

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