

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CHATTAHOOCHEE RIVERKEEPER,)
INC.,)

Plaintiff,)

v.)

PHENIX CITY, ALABAMA,)

Defendant.)

Civil Action File No.

JURY TRIAL DEMANDED

COMPLAINT AND PETITION FOR INJUNCTIVE RELIEF

Chattahoochee Riverkeeper, Inc. (“CRK”), by and through the undersigned counsel, files this Complaint against Phenix City, Alabama (“Defendant”), and shows the Court as follows:

Nature of Action

1.

This is a civil action brought pursuant to the citizen enforcement provisions of the Clean Water Act (“CWA”), 33 U.S.C. § 1365(a), which provides a private right of action against any person, entity, or governmental instrumentality or agency violating the CWA.

2.

CRK seeks a declaratory judgment, injunctive relief, the imposition of civil penalties of up to \$66,712.00 per day for each of Defendant's violations of the CWA, and the award of attorneys' fees and expenses of litigation for the repeated violations by the Defendant of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, relating to unlawful discharge of pollutants into Walter F. George Lake and the Chattahoochee River.

Jurisdiction and Venue

3.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 33 U.S.C. § 1365(a).

4.

On July 16, 2024, CRK provided notice (the "Notice Letter"), as required by the CWA, 33 U.S.C. § 1365(b)(1)(A), to Defendant of its violations of the CWA, and CRK's intention to file suit against the Defendant. A true and correct copy of the Notice Letter is attached as Exhibit 1. CRK also sent the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region IV; the Director of the Alabama Department of Environmental Management ("ADEM"); and the Branch Chief of ADEM's Water Division.

5.

The CWA violations alleged herein occurred and will continue to occur in this district and venue is proper in this Court pursuant to 33 U.S.C. § 1365(c)(1) and 28 U.S.C. § 1391.

6.

Defendant's unlawful discharges of various pollutants are ongoing violations of sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and 1342. The violations will continue absent intervention by the Court.

The Parties

7.

CRK is a nonprofit corporation organized under the laws of the State of Georgia with approximately ten thousand (10,000) members, and offices in LaGrange, Gainesville, and Atlanta, Georgia. CRK's mission is to advocate and secure the protection and stewardship of the Chattahoochee River and its tributaries and watershed, including Walter F. George Lake, in order to restore and conserve their ecological health for the people, fish, and wildlife that depend on the river system.

8.

Defendant is a municipal corporation organized under the laws of the State of Alabama with its Clerk located at Municipal Building, 601 12th Street, Third Floor,

Phenix City, Alabama 36867, and is a “person” subject to suit under the CWA as defined by 33 U.S.C. §§ 1362(5) and 1365(a)(1). Defendant may be served with process by delivering a copy of the complaint and summons to its Clerk, Shannon Davis, or the City Manager, Wallace Hunter, each located at Municipal Building, 601 12th Street, Third Floor, Phenix City, Alabama 36867.

9.

Defendant owns and operates the Phenix City Wastewater Treatment Plant (the “Plant”) located at 1600 E. State Docks Road, Phenix City, Russell County, Alabama. The Plant is permitted to discharge to the Chattahoochee River (Walter F. George Lake) through a National Pollutant Discharge Elimination System Permit #AL0022209 (the “Permit”). A true and correct copy of the Permit is attached as Exhibit 2.

Standing

10.

Defendant has unlawfully and repeatedly discharged pollutants in excess of the limits as provided by the Permit and discharged untreated sewage in the form of sanitary sewer overflows, and said discharges have negatively impacted Walter F. George Lake and the Chattahoochee River and its tributaries.

11.

Walter F. George Lake and the tributaries to the Chattahoochee River are a significant part of the Chattahoochee River system. CRK members recreate and fish in, on, and near Walter F. George Lake, the tributaries of the Chattahoochee River, and the Chattahoochee River proper downstream of the discharge of the Defendant. The quality of Walter F. George Lake and the Chattahoochee River and its tributaries affects the recreational, aesthetic, and environmental interests of CRK's members.

12.

CRK members have suffered injuries to their recreational, aesthetic, and environmental interests due to Defendant's continued discharges of pollutants in excess of pollutant limits contained in the Permit. Specifically, the ability of CRK members to utilize Walter F. George and the Chattahoochee River for recreational activities has been adversely affected (and at times rendered unsafe) due to the pollutant levels, degradation of the water quality, and the destruction of aquatic life caused by the Defendant's CWA violations.

13.

The injuries of CRK's members are directly traceable to Defendant's acts and omissions alleged herein.

14.

CRK members have been and continue to be injured as a result of Defendant's actions and omissions and these injuries are likely to be addressed by the requested relief. CRK's interest in this proceeding falls squarely within the zone of interests protected by the CWA.

Facts and Law Common to All Counts

15.

In 1972, Congress passed the CWA, "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

16.

The CWA provides that any citizen may commence a civil action on his own behalf against any person who is alleged to be in violation of an effluent standard or limitation under the CWA. 33 U.S.C. § 1365(a)(1)(A).

17.

Walter F. George Lake and the Chattahoochee River and its tributaries constitute waters of the United States for the purposes of the CWA.

18.

Defendant operates the Plant at which it conducts stormwater and wastewater treatment activities and the Plant's discharges are regulated under the Permit.

19.

Under the Permit, the Plant is allowed to discharge certain pollutants within the limitations described therein. Defendant has regularly discharged pollutants in amounts that exceed the limitations of Permit since at least January 1, 2020 and continuing through the present.

20.

Due to Defendant's failure to properly maintain the Plant's sewer infrastructure, unpermitted discharges of raw sewage in the form of sanitary sewer overflows ("SSOs") have been regularly occurring since at least 2021, have occurred no fewer than ninety (90) times since December 2021 with a discharge of approximately two million (2,000,000) gallons of raw sewage on a single occasion in February 2024, and continue to occur as described herein.

21.

The Plant's SSOs and other Permit violations are ongoing and will continue to occur until the Plant's infrastructure and related equipment is improved, updated, and properly maintained, or until Defendant takes other action to cure its violations of the CWA.

Regulatory Context and Defendant's Permit

22.

Section 301 of the CWA prohibits the discharge of pollutants from point sources into “waters of the United States” except in accordance with standards promulgated and permits issued under other sections of the CWA. 33 U.S.C. § 1311(a).

23.

The CWA makes it unlawful for any person to discharge a pollutant from a point source in violation of a National Pollution Discharge Elimination System (“NPDES”) permit. *See* 33 U.S.C. § 1342.

24.

The CWA defines “[d]ischarge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

25.

The CWA defines “pollutant” to include, *inter alia*, “sewage,” “sewage sludge,” “chemical wastes,” and “biological materials.” 33 U.S.C. § 1362(6).

26.

Under the NPDES, the EPA issues permits for the discharge of pollutants into waters of the United States where certain conditions are met. *See* 33 U.S.C. 1342.

The Environmental Protection Agency has delegated permitting authority in the State of Alabama to ADEM pursuant to 33 U.S.C. § 1342.

27.

NPDES Permits include “effluent limitations,” which restrict how much of a pollutant may be discharged from a point source and may include other requirements if necessary to achieve applicable water quality standards. *See* 33 U.S.C. § 1362(11); *see also* 40 C.F.R. § 122.44(d).

28.

ADEM issues NPDES permits to qualifying entities pursuant to the permitting requirements of section 402 of the CWA, 33 U.S.C § 1342, and Alabama law. *See* Ala. Stat. § 22-22-9; *see also* Ala. Admin. R. & Reg. 335-6-6-.01, *et seq.*

29.

ADEM issued the Permit to Defendant on July 29, 2021.¹

30.

The Permit places limitations and restrictions on the Defendant’s discharge of pollutants, *inter alia*, total suspended solids, chlorine, ammonia, and *Escherichia coli* (“*e. coli*”). *See* Exhibit 2.

¹ Before the Permit was issued on July 29, 2021, Defendant operated the Plant under a prior permit (with the same permit number) issued on February 25, 2015, which contained similar effluent limitations. Violations described herein that occurred prior to July 29, 2021 were violations of the prior permit.

**Defendant's Continuing Violations of the Permit Shown by
Defendant's Monthly Discharge Monitoring Reports**

31.

To ensure compliance with the Permit, Defendant is responsible for monitoring its discharges of pollutants into waters of the United States and the State of Alabama.

32.

The Defendant issues Discharge Monitoring Reports (“DMRs”) regarding the pollutant levels in its discharge each month and certifies under penalty of law that the results reported in the DMRs are true, accurate, and complete.

33.

CRK has reviewed each publicly accessible DMR issued by the Defendant for the Plant since January 1, 2020. The DMRs document that Defendant has regularly and repeatedly violated the Permit from January 1, 2020 to the present (the “Relevant Period”).²

² As of the date of this pleading, the most recent DMR that Defendant has made publicly available is its DMR for the July 1, 2024 through July 31, 2024 period.

34.

Based upon Defendant's own publicly accessible DMRs, Defendant has regularly discharged, and continues to discharge, Total Suspended Solids in excess of the Permit's limits during the Relevant Period.

35.

Based upon Defendant's own publicly accessible DMRs, Defendant has regularly discharged, and continues to discharge, Ammonia in excess of the Permit's limits during the Relevant Period.

36.

Based upon Defendant's own publicly accessible DMRs, Defendant has regularly discharged, and continues to discharge, *E. Coli* in excess of the Permit's limits during the Relevant Period.

37.

Based upon Defendant's own publicly accessible DMRs, Defendant has regularly discharged, and continues to discharge, Chlorine in excess of the Permit's limits during the Relevant Period.

38.

Based upon Defendant's own publicly accessible DMRs, Defendant has regularly exceeded the limits for Carbonaceous Biological Oxygen Demand in the Permit during the Relevant Period.

39.

In addition to the Defendant's repeated and continuing violations of the pollutant limits in the Permit, Defendant has also documented repeated and continuing discharges of raw sewage in the form of SSOs which the Permit does not authorize, and which constitute a violation of the Permit.

40.

The Permit requires Defendant to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Defendant to comply with the Permit's conditions. *See* Exhibit 2, Page 17 of 36, Part II(A)(1). As defined by the Permit, "proper operation and maintenance," includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. *Id.*

42.

Defendant has failed to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by Defendant to achieve compliance with the Permit's conditions. Indeed, Defendant has failed to properly operate the Plant in compliance with the Permit.

43.

Defendant has a duty under the Permit to promptly take all reasonable steps to mitigate and minimize or prevent any adverse impact on human health or the environment resulting from any discharge limitation. *See* Exhibit 2, Page 17 of 36, Part II(B)(1).

44.

Defendant has failed to promptly take reasonable steps to mitigate or minimize the discharges effects on human health or the environment as required by the Permit. Indeed, Defendant's violations have been ongoing for at least four years.

45.

CRK advised Defendant of its violations of the CWA on multiple occasions, most recently through the Notice Letter sent pursuant to 33 U.S.C. § 1365(b)(1)(A). Despite CRK's warnings, Defendant has continued the ongoing and unlawful discharges described herein.

46.

In response to CRK's requests for Defendant to cease and correct the unlawful discharges, Defendant has asserted it does not have adequate funding to properly maintain the Plant infrastructure and avoid exceedances of the limits in the Permit and avoid discharges of raw sewage in the form of SSOs. Failure to obtain adequate

funding to remain in compliance with the Permit's limitations is a violation of the Permit. *See* Exhibit 2, Page 17 of 36, Part II(A)(1).

Count I – Violations of the Permit's Numeric Effluent Limitations

47.

CRK repeats and realleges the allegations contained in the foregoing paragraphs of the Complaint as if fully set forth herein.

48.

Defendant is responsible for the violations of the CWA alleged herein that have occurred during the Relevant Period.

49.

Prior to filing this action, CRK notified Defendant that its pollutant discharges, discharge of raw sewage as SSOs, and Permit noncompliance violate the CWA and interfere with CRK and its members' interests.

50.

Defendant failed to correct the violations cited in the Notice Letter, and as a result, CRK and its members, along with the general public, continue to suffer irreparable injury as a result of the discharges of pollutants from the Plant into the Chattahoochee River (Walter F. George Lake) and its tributaries.

51.

Defendant's ongoing discharges into the Chattahoochee River and its tributaries contain pollutants greatly exceeding the limitations in Defendant's Permit.

52.

Defendant's ongoing discharges flow from the Plant's outfalls, which are point sources under the CWA. *See* 33 U.S.C. § 1362(14).

53.

The Plant discharges to the Chattahoochee River (Walter F. George Lake), which is a water of the United States under the CWA. *See* 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

54.

Each of the Defendant's discharges from the Plant into the Chattahoochee River (Walter F. George Lake) that exceeds the Permit's effluent limitations are a separate and distinct violation of the CWA. *See* 33 U.S.C. §§ 1311, 1319(d), 1342.

55.

As set forth below, since January 2020, Defendant has exceeded the numeric permit limitations for the Plant at least 169 times, not including the unpermitted discharges of raw sewage in the form of SSOs.

56.

Defendant has exceeded the Permit's effluent limitation for Ammonia at least 60 times since January 2020, as follows:

Ammonia Total (as N) Violations

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
1	N	7/31/2020	MO AVG	mg/L	4	6.19
2	N	7/31/2020	MO AVG	lbs/day	200	236.835
3	N	11/30/2020	MO AVG	mg/L	4	4.16
4	N	5/31/2021	MO AVG	mg/L	4	12.86
5	N	5/31/2021	MO AVG	lbs/day	200	555.197
6	N	5/31/2021	WKLY AVG	lbs/day	300	789.83
7	N	5/31/2021	WKLY AVG	mg/L	6	20.9
8	N	7/31/2021	WKLY AVG	lbs/day	300	304.95
9	N	7/31/2021	MO AVG	lbs/day	200	237.99
10	N	7/31/2021	MO AVG	mg/L	4	6.32
11	N	7/31/2021	WKLY AVG	mg/L	6	7.99
12	N	8/31/2021	WKLY AVG	lbs/day	300	432.09
13	N	8/31/2021	WKLY AVG	mg/L	6	8.75
14	N	8/31/2021	MO AVG	mg/L	4	5.53
15	N	8/31/2021	MO AVG	lbs/day	200	227.43

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
16	N	7/31/2022	WKLY AVG	mg/L	6	13.781
17	N	7/31/2022	MO AVG	mg/L	4	7.471
18	N	7/31/2022	WKLY AVG	lbs/day	300	759.00
19	N	7/31/2022	MO AVG	lbs/day	200	429.04
20	N	5/31/2023	WKLY AVG	mg/L	6	25.28
21	N	5/31/2023	MO AVG	mg/L	4	17.67
22	N	5/31/2023	MO AVG	lbs/day	200	609.98
23	N	5/31/2023	WKLY AVG	lbs/day	300	791.58
24	N	6/30/2023	WKLY AVG	lbs/day	300	2071.11
25	N	6/30/2023	MO AVG	lbs/day	200	1327.78
26	N	6/30/2023	WKLY AVG	mg/L	6	28.75
27	N	6/30/2023	MO AVG	mg/L	4	24.36
28	N	7/31/2023	WKLY AVG	mg/L	6	29.48
29	N	7/31/2023	MO AVG	lbs/day	200	1105.24
30	N	7/31/2023	WKLY AVG	lbs/day	300	1212.52
31	N	7/31/2023	MO AVG	mg/L	4	24.97
32	N	8/31/2023	MO AVG	lbs/day	200	1111.29
33	N	8/31/2023	WKLY AVG	lbs/day	300	1269.30
34	N	8/31/2023	WKLY AVG	mg/L	6	31.93

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
35	N	8/31/2023	MO AVG	mg/L	4	29.1
36	N	9/30/2023	WKLY AVG	mg/L	6	33.08
37	N	9/30/2023	WKLY AVG	lbs/day	300	973.76
38	N	9/30/2023	MO AVG	mg/L	4	29.957
39	N	9/30/2023	MO AVG	lbs/day	200	863.10
40	N	10/31/2023	MO AVG	lbs/day	200	793.25
41	N	10/31/2023	WKLY AVG	lbs/day	300	956.54
42	N	10/31/2023	WKLY AVG	mg/L	6	28.88
43	N	10/31/2023	MO AVG	mg/L	4	27.58
44	N	11/30/2023	WKLY AVG	lbs/day	300	854.79
45	N	11/30/2023	MO AVG	lbs/day	200	802.07
46	N	11/30/2023	MO AVG	mg/L	4	26.55
47	N	11/30/2023	WKLY AVG	mg/L	6	31.3
48	N	12/31/2023	MO AVG	mg/L	20	23.3
49	N	5/31/2024	WKLY AVG	lbs/day	300	782.90
50	N	5/31/2024	WKLY AVG	mg/L	6	24
51	N	5/31/2024	MO AVG	mg/L	4	16.934
52	N	5/31/2024	MO AVG	lbs/day	200	639.78
53	N	6/30/2024	MO AVG	mg/L	4	25.075

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
54	N	6/30/2024	WKLY AVG	lbs/day	300	829.80
55	N	6/30/2024	MO AVG	lbs/day	200	754.04
56	N	6/30/2024	WKLY AVG	mg/L	6	28.52
57	N	7/31/2024	MO AVG	mg/L	4	15.027
58	N	7/31/2024	WKLY AVG	mg/L	6	27.12
59	N	7/31/2024	MO AVG	lbs/day	200	424.93
60	N	7/31/2024	WKLY AVG	lbs/day	300	726.81

These unlawful discharges are continuing and will continue absent action by this Court.

57.

Defendant has exceeded the Permit's effluent limitation for Total Suspended Solids at least 55 times since January 2020, as follows:

Total Suspended Solids Violations

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
1	Total Suspended Solids	2/29/2020	MO AVG	lbs/day	1501	2351.50
2	Total Suspended Solids	2/29/2020	WKLY AVG	lbs/day	2251	2351.50

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
3	Total Suspended Solids	2/28/2021	WKLY AVG	lbs/day	2251	2390.32
4	Total Suspended Solids	2/28/2021	MO AVG	lbs/day	15001	1581.57
5	Total Suspended Solids	8/31/2021	MO AVG	mg/L	30	48.86
6	Total Suspended Solids	8/31/2021	MO AVG	lbs/day	1501	1864.19
7	Total Suspended Solids	8/31/2021	WKLY AVG	mg/L	45	64.25
8	Total Suspended Solids	8/31/2021	WKLY AVG	lbs/day	2251	2799.68
9	Total Suspended Solids	10/31/2021	MO AVG	mg/L	30	43.74
10	Total Suspended Solids	10/31/2021	WKLY AVG	mg/L	45	98.6
11	Total Suspended Solids	10/31/2021	MO AVG	lbs/day	1501	3344.52
12	Total Suspended Solids	10/31/2021	WKLY AVG	lbs/day	2251	11018.32

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
13	Total Suspended Solids	12/31/2022	WKLY AVG	lbs/day	2251	2285.42
14	Total Suspended Solids	2/28/2023	WKLY AVG	lbs/day	2251	3692.76
15	Total Suspended Solids	2/28/2023	MO AVG	lbs/day	1501	1503.52
16	Total Suspended Solids	3/31/2023	WKLY AVG	lbs/day	2251	3223.79
17	Total Suspended Solids	9/30/2023	MO AVG	lbs/day	1501	2700.58
18	Total Suspended Solids	9/30/2023	MO AVG	mg/L	30	92.71
19	Total Suspended Solids	9/30/2023	WKLY AVG	mg/L	45	118.4
20	Total Suspended Solids	9/30/2023	WKLY AVG	lbs/day	2251	3313.09
21	Total Suspended Solids	10/31/2023	WKLY AVG	lbs/day	2251	3016.58
22	Total Suspended Solids	10/31/2023	WKLY AVG	mg/L	45	111.1

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
23	Total Suspended Solids	10/31/2023	MO AVG	mg/L	30	58.95
24	Total Suspended Solids	10/31/2023	MO AVG	lbs/day	1501	1663.28
25	Total Suspended Solids	11/30/2023	MO AVG	lbs/day	1501	5949.92
26	Total Suspended Solids	11/30/2023	MO AVG	mg/L	30	103.61
27	Total Suspended Solids	11/30/2023	WKLY AVG	mg/L	45	294.6
28	Total Suspended Solids	11/30/2023	WKLY AVG	lbs/day	2251	16844.13
29	Total Suspended Solids	12/31/2023	MO AVG	mg/L	30	41.51
30	Total Suspended Solids	12/31/2023	WKLY AVG	mg/L	45	54.63
31	Total Suspended Solids	1/31/2024	MO AVG	mg/L	30	86.45
32	Total Suspended Solids	1/31/2024	WKLY AVG	mg/L	45	161.8

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
33	Total Suspended Solids	1/31/2024	WKLY AVG	lbs/day	2251	9678.21
34	Total Suspended Solids	1/31/2024	MO AVG	lbs/day	1501	4373.51
35	Total Suspended Solids	2/29/2024	MO AVG	mg/L	30	115.38
36	Total Suspended Solids	2/29/2024	WKLY AVG	mg/L	45	152.5
37	Total Suspended Solids	2/29/2024	WKLY AVG	lbs/day	2251	9134.22
38	Total Suspended Solids	2/29/2024	MO AVG	lbs/day	1501	5688.07
39	Total Suspended Solids	3/31/2024	WKLY AVG	mg/L	45	156.5
40	Total Suspended Solids	3/31/2024	MO AVG	lbs/day	1501	5482.42
41	Total Suspended Solids	3/31/2024	WKLY AVG	lbs/day	2251	8415.31
42	Total Suspended Solids	3/31/2024	MO AVG	mg/L	30	103.08

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
43	Total Suspended Solids	4/30/2024	MO AVG	lbs/day	1501	4995.79
44	Total Suspended Solids	4/30/2024	WKLY AVG	lbs/day	2251	7269.69
45	Total Suspended Solids	4/30/2024	WKLY AVG	mg/L	45	134.2
46	Total Suspended Solids	4/30/2024	MO AVG	mg/L	30	110.14
47	Total Suspended Solids	5/31/2024	MO AVG	lbs/day	1501	3772.61
48	Total Suspended Solids	5/31/2024	WKLY AVG	lbs/day	2251	5963.74
49	Total Suspended Solids	5/31/2024	WKLY AVG	mg/L	45	144.8
50	Total Suspended Solids	5/31/2024	MO AVG	mg/L	30	97.09
51	Total Suspended Solids	6/30/2024	WKLY AVG	lbs/day	2251	2632.99
52	Total Suspended Solids	6/30/2024	WKLY AVG	mg/L	45	94.67

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
53	Total Suspended Solids	6/30/2024	MO AVG	mg/L	30	43.97
54	Total Suspended Solids	7/31/2024	MO AVG	mg/L	30	41.04
55	Total Suspended Solids	7/31/2024	WKLY AVG	mg/L	45	57.50

These unlawful discharges are continuing and will continue absent action by this Court.

58.

Defendant has exceeded the Permit's effluent limitation for carbonaceous five-day biochemical oxygen demand ("BOD") at least 21 since January 2020, as follows:

BOD, Carbonaceous, 05 Days, 20 C Violations

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
1	BOD, Carbonaceous, 05 day, 20 C	2/29/2020	MO AVG	lbs/day	1251	1344.62
2	BOD, Carbonaceous, 05 day, 20 C	3/31/2023	WKLY AVG	lbs/day	1876	1887.42

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
3	BOD, Carbonaceous, 05 day, 20 C	8/31/2023	MO AVG	mg/L	19	19.43
4	BOD, Carbonaceous, 05 day, 20 C	9/30/2023	WKLY AVG	mg/L	28.5	33.42
5	BOD, Carbonaceous, 05 day, 20 C	9/30/2023	MO AVG	mg/L	19	26.6
6	BOD, Carbonaceous, 05 day, 20 C	10/31/2023	WKLY AVG	mg/L	28.5	38.38
7	BOD, Carbonaceous, 05 day, 20 C	10/31/2023	MO AVG	mg/L	19	31.55
8	BOD, Carbonaceous, 05 day, 20 C	11/30/2023	MO AVG	mg/L	19	28.55
9	BOD, Carbonaceous, 05 day, 20 C	11/30/2023	WKLY AVG	mg/L	28.5	30.27
10	BOD, Carbonaceous, 05 day, 20 C	1/31/2024	MO AVG	mg/L	25	28.36
11	BOD, Carbonaceous, 05 day, 20 C	2/29/2024	WKLY AVG	lbs/day	1876	2090.28
12	BOD, Carbonaceous, 05 day, 20 C	2/29/2024	MO AVG	mg/L	25	34.52
13	BOD, Carbonaceous, 05 day, 20 C	2/29/2024	MO AVG	lbs/day	1251	1632.16
14	BOD, Carbonaceous, 05 day, 20 C	3/31/2024	MO AVG	mg/L	25	31.49

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
15	BOD, Carbonaceous, 05 day, 20 C	3/31/2024	MO AVG	lbs/day	1251	1721.41
16	BOD, Carbonaceous, 05 day, 20 C	4/30/2024	MO AVG	mg/L	25	34.91
17	BOD, Carbonaceous, 05 day, 20 C	4/30/2024	MO AVG	lbs/day	1251	1527.18
18	BOD, Carbonaceous, 05 day, 20 C	5/31/2024	WKLY AVG	mg/L	28.5	37.29
19	BOD, Carbonaceous, 05 day, 20 C	5/31/2024	MO AVG	mg/L	19	37.93
20	BOD, Carbonaceous, 05 day, 20 C	5/31/2024	MO AVG	lbs/day	950	1479.90
21	BOD, Carbonaceous, 05 day, 20 C	5/31/2024	WKLY AVG	lbs/day	1426	1426.69

These unlawful discharges are continuing and will continue absent action by this Court.

59.

Defendant has exceeded the Permit's effluent limitation for Total Suspended Solids Removal at least 13 times since January 2020, as follows:

Total Suspended Solids Percent Removal Violations

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
1	Solids, suspended percent removal	10/31/2021	MO AV MN	%	≥ 85	80
2	Solids, suspended percent removal	5/31/2023	MO AV MN	%	≥ 85	77.4
3	Solids, suspended percent removal	9/30/2023	MO AV MN	%	≥ 85	48.5
4	Solids, suspended percent removal	10/31/2023	MO AV MN	%	≥ 85	56.3
5	Solids, suspended percent removal	11/30/2023	MO AV MN	%	≥ 85	72
6	Solids, suspended percent removal	12/31/2023	MO AV MN	%	≥ 85	39
7	Solids, suspended percent removal	1/31/2024	MO AV MN	%	≥ 85	17.32
8	Solids, suspended percent removal	2/29/2024	MO AV MN	%	≥ 85	28.44
9	Solids, suspended	3/31/2024	MO AV MN	%	≥ 85	21.02

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
	percent removal					
10	Solids, suspended percent removal	4/30/2024	MO AV MN	%	>=85	9.35
11	Solids, suspended percent removal	5/31/2024	MO AV MN	%	>=85	12.74
12	Solids, suspended percent removal	6/30/2024	MO AV MN	%	>=85	50.81
13	Solids, suspended percent removal	7/31/2024	MO AV MN	%	>=85	52.24

These unlawful discharges are continuing and will continue absent action by this Court.

60.

Defendant has exceeded the Permit's effluent limitation for BOD Removal at least 6 times since January 2020, as follows:

BOD, Carbonaceous, 05 Day, 20C Percent Removal Violations

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
1	BOD, percent removal	10/31/2023	MO AV MN	%	>=85	82.1

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
2	BOD, percent removal	1/31/2024	MO AV MN	%	>=85	83.84
3	BOD, percent removal	2/29/2024	MO AV MN	%	>=85	69.89
4	BOD, percent removal	3/31/2024	MO AV MN	%	>=85	76.99
5	BOD, percent removal	4/30/2024	MO AV MN	%	>=85	62.24
6	BOD, percent removal	5/31/2024	MO AV MN	%	>=85	71.87

These unlawful discharges are continuing and will continue absent action by this Court.

61.

Defendant has exceeded the Permit's effluent limitation for *e. coli* at least 11 times since January 2020, as follows:

***E. coli* Violations**

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
1	<i>E. coli</i>	10/31/2023	MO AVG	col/100 ml	<=126	298.45
2	<i>E. coli</i>	10/31/2023	DAILY MX	col/100 ml	<=298	2419.6
3	<i>E. coli</i>	2/29/2024	MO AVG	col/100 ml	<=548	713.35
4	<i>E. coli</i>	5/31/2024	DAILY MX	col/100 ml	<=298	2419.6
5	<i>E. coli</i>	5/31/2024	MO AVG	col/100 ml	<=126	983.9

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
6	E. coli	6/30/2024	DAILY MX	col/100 ml	<=298	2419.6
7	E. coli	6/30/2024	MO AVG	col/100 ml	<=126	410.28
8	E. coli	7/31/2024	DAILY MX	col/100 ml	<=298	2419.6
9	E. coli	7/31/2024	MO AVG	col/100 ml	<=126	499
10	E. coli	10/31/2023	MO AVG	col/100 ml	<=126	298.45
11	E. coli	10/31/2023	DAILY MX	col/100 ml	<=298	2419.6

These unlawful discharges are continuing and will continue absent action by this Court.

62.

Defendant has exceeded the Permit's effluent limitation for Total Residual Chlorine at least 3 times since January 2020, as follows:

Total Residual Chlorine Violations

#	Parameter	Monitoring Period	Sample Frequency	Unit	Permit Limit	Reported Value
1	Chlorine, total residual	3/31/2024	DAILY MX	mg/L	1	1.09
2	Chlorine, total residual	4/30/2024	DAILY MX	mg/L	1	1.22
3	Chlorine, total residual	5/31/2024	DAILY MX	mg/L	1	1.3

These unlawful discharges are continuing and will continue absent action by this Court.

63.

Defendant's continuing unpermitted discharges alleged herein harm the waters of the United State and CRK and its members, for which harm CRK nor its members have a plain, speedy, or adequate remedy at law.

64.

The Court should issue an enforcement order and injunction order to Defendant to cease Defendant's unlawful discharges of pollutants from the Plant into the Chattahoochee River (Walter F. George Lake).

65.

The Court should assess civil penalties against Defendant for violations of Count I of this Complaint under Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1391(d) and 1365, for each day on which illegal and unpermitted discharges have occurred or will occur after the date of this Complaint.

**Count II –Violations by Discharging
Untreated Sewage in the Form of SSOs**

66.

CRK repeats and realleges the allegations contained in the foregoing paragraphs of the Complaint as if fully set forth herein.

67.

Defendant has regularly discharged raw or untreated sewage in the form of SSOs into the Chattahoochee River (Walter F. George Lake) and its tributaries.

68.

The Defendant's discharges of raw sewage in the form of SSOs have occurred no fewer than ninety (90) times since December 2021 with a discharge of approximately two million (2,000,000) gallons of raw sewage on a single occasion in February 2024.

69.

These SSOs are ongoing, occur regularly, and are unlawful under the CWA, 33 U.S.C. §§ 1311 and 1342 and other federal regulations.

70.

The Defendant's discharges of raw sewage in the form of SSOs violate Part II(D)(1)(c) of the Permit which prohibits "[t]he discharge of a pollutant from a source not specifically identified in the permit application for this permit and not specifically included in the description of an outfall in this permit is not authorized and shall constitute noncompliance with this permit." *See* Exhibit 2, p. 18 of 36, Part II(D)(1)(c). As such, each SSO from the Plant is a violation of the Permit.

71.

Alternatively, the Defendant's discharges of raw sewage in the form of SSOs constitute discharges of pollutants without a permit in violation of the CWA, 33 U.S.C. §§ 1311 and 1342, and federal regulations.

72.

The Court should issue an enforcement order and injunction order to Defendant to cease its unlawful discharges of raw sewage in the form of SSOs.

73.

The Court should assess civil penalties against Defendant for violations of Count II of this Complaint under Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1391(d) and 1365, for each day on which illegal and unpermitted discharges have occurred or will occur after the date of this Complaint.

Count III – Request for Injunctive Relief

74.

CRK repeats and realleges the allegations contained in the foregoing paragraphs of the Complaint as if fully set forth herein.

75.

CRK, its members, and the Chattahoochee River (Walter F. George Lake) and its tributaries have suffered and will continue to suffer substantial and irreparable

harm from Defendant's unlawful discharge of pollutants and discharges of raw sewage in the form of SSOs from the Plant.

76.

CRK and its members have no other adequate remedies at law to compensate for the harm caused by Defendant's unlawful discharge of pollutants and discharges of raw sewage in the form of SSOs from the Plant.

77.

The continuing injury to CRK, its members, and the Chattahoochee River (Walter F. George Lake) and its tributaries outweighs the injury to Defendant in being enjoined from discharging pollutants and raw sewage to occur.

78.

An injunction prohibiting Defendant from unlawfully discharging pollutants and raw sewage will serve the public interest.

Prayer for Relief

WHEREFORE, CRK demands a jury trial on all issues triable to a jury, and respectfully requests this Court grant the following relief:

(a) Enter a declaratory judgment finding that Defendant Phenix City has violated and is in violation of the Clean Water Act, 33 U.S.C. §§ 1311 and 1319(d).

(b) Enter an enforcement order and injunction under the Clean Water Act enjoining Defendant Phenix City from continuing to violate the Clean Water Act

and the terms and conditions imposed by the Permit, as well as ordering Defendant to take corrective action to restore the portions of the Chattahoochee River harmed by Defendant's unlawful discharges;

(c) Issue a permanent injunction requiring Defendant to upgrade and maintain the Plant's infrastructure to prevent future discharges of pollutants in excess of the Permit's limits, as well as prevent discharges of raw sewage in the form of SSOs;

(d) Enter a judgment assessing civil penalties against Defendant in the amount of \$66,712.00 per day for each and every violation of the CWA;

(e) Award CRK its costs and expenses of litigation including its reasonable attorneys' fees and expert witness fees pursuant to 33 U.S.C. § 1365(d); and

(f) Award such additional relief as this Court deems just and proper.

This 16th day of September, 2024.

Respectfully submitted:

/s/ Peter M. Crofton

Peter M. Crofton, Esq.

ASB-4856-R67P

Andrew M. Thompson

Georgia Bar No. 707319

Pro Hac Vice Application Forthcoming

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