

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

TENNESSEE RIVERKEEPER, INC.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 3:18-cv-374-HSM-HBG
)	
CITY of OAK RIDGE, TENNESSEE,)	
)	
Defendant.)	

ANSWER TO AMENDED COMPLAINT

For its answer to the Amended Complaint filed by plaintiff Tennessee Riverkeeper, Inc. (“Riverkeeper” or “Plaintiff”), defendant City of Oak Ridge, Tennessee (the “City” or “Defendant”) respectfully states as follows:

INTRODUCTORY STATEMENT

The City owns and operates a wastewater treatment plant and associated wastewater collection and transmission system (“WCTS”) that provides sewer services to approximately 29,330 citizens and discharges pollutants to East Fork Poplar Creek in accordance with a National Pollutant Discharge Elimination System (“NPDES”) permit. On September 10, 2010, the U.S. Environmental Protection Agency (“EPA”) issued an Administrative Order that required the City to take measures to bring itself into compliance with its NPDES permit. The City has worked diligently with the EPA and has spent approximately \$28 million to comply with the directives of that order. The City not only satisfied all the requirements of the order, but in 2017 commissioned the development and implementation of a post-mediation plan that went well beyond the requirements of the administrative order. Riverkeeper’s citizen suit comes on the heels of this extensive remedial action and multiphase post-remediation work, which continues to the present. Citizen suits under the Clean Water Act, 33 U.S.C. § 1311, et seq. (“CWA”) are designed to

supplement, not supplant, regulatory action, and are appropriate only when there are ongoing violations as a result of government *inaction*. This is not such a case. Accordingly, Riverkeeper's claims should be denied in their entirety.

For its answer to specific allegations contained in numbered paragraphs of the Amended Complaint, the City states as follows:

NATURE OF THE CASE

1. Paragraph 1 of the Amended Complaint characterizes the claims asserted therein and contains no factual allegations that require a response. To the extent a response is required, the City denies the allegations of Paragraph 1.

2. Paragraph 2 of the Amended Complaint characterizes various sections of the CWA and regulations promulgated thereunder. Those statutes and regulations speak for themselves. The City admits that its WCTS experienced Sanitary Sewer Overflows ("SSOs"), during the period of time addressed by the EPA Administrative Order and prior to April 27, 2015, when the EPA issued a letter ("Closure Letter") advising the City that it had satisfied the requirements of the Administrative Order and closed its file. More recent SSO's that have occurred are addressed in accordance with its approved plan and are reported to appropriate regulatory authorities in accordance with the law. The City denies any remaining allegations of Paragraph 2.

3. The allegations of Paragraph 3 that describe the relief sought in the Amended Complaint state no allegations of fact to which a response is required. The City denies the remaining allegations of Paragraph 3.

JURISDICTION AND VENUE

4. The City admits that this court has subject matter jurisdiction over this matter.

5. The City admits that venue is appropriate in this district.

NOTICE

6. The City admits that on or about April 27, 2017, it received the April Notice from Riverkeeper. The City lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6. The City would show that the alleged violations were more than two years old when suit was filed and the overflows listed in the April Notice are no longer occurring.

7. The City denies the allegations of Paragraph 7 as stated. On September 27, 2010, the EPA issued Administrative Order No. CWA-04-2010-4772 (“Administrative Order”) that required the City to take measures to bring itself into compliance with the Permit. The City has undertaken all of the remedial action required by the Administrative Order and taken additional remedial action not required by the Administrative Order. The City continues to work cooperatively with the Tennessee Department of Environment and Conservation (“TDEC”) in its effort to continue reduction of SSOs to the extent possible by repairing, replacing and upsizing selected existing sanitary sewer interceptor and collecting lines, by repairing and replacing selected existing manholes, by removing constructed overflows, and by constructing equalization basins to reduce peak flows in the main interceptor lines.

8. The City denies the allegations of Paragraph 8 as stated and affirmatively avers that the EPA did issue a final order not subject to judicial review and the City did pay a civil penalty to EPA. In addition to implementing the requirements of the Administrative Order, the City paid a civil penalty in the amount of \$171,000 for SSOs occurring prior to the assessment of the penalty.

9. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9.

PARTIES

10. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10.

11. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11.

12. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12. The City is aware that the East Fork Poplar Creek is posted by the Tennessee Department of Environment and Conservation to not consume fish because of mercury contamination from sources other than the City.

13. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13.

14. The City admits the allegations of Paragraph 14.

15. The City admits the allegations of Paragraph 15.

16. The City admits the allegations of Paragraph 16.

STATUTORY BACKGROUND

17. The City admits that the statutes cited in Paragraph 17 were in full force and effect at all times relevant to this action. The statutes are written documents that speak for themselves. The City admits the allegations of Paragraph 17 only to the extent that they properly summarize and characterize the cited statutes.

18. The City admits the allegations of Paragraph 18.

19. The City admits that the cited statute was in full force and effect at all times relevant to this action. The City further admits that citizen suits are allowed by the statute, but only to the extent and under the conditions allowed by law.

GENERAL ALLEGATIONS

20. Paragraph 20 of the Amended Complaint summarizes and characterizes the relief sought therein and contains no allegations of fact that require a response. To the extent a response is required, the City denies the allegations of Paragraph 20.

21. The City denies the allegations in Paragraph 21 of the Amended Complaint. The City admits that its WCTS has experienced SSOs which are identified in the April Notice, which were those that the City duly reported to the TDEC pursuant to various Discharge Monitoring Reports (“DMRs”) as required by law. The City notes that many of the stated alleged SSO’s were during pendency of the Administrative Order and prior to the April 27, 2015 Closure Letter. The City otherwise denies the allegations of Paragraph 21.

22. The City admits that it was issued the NPDES Permit, which is a written document that speaks for itself. The City denies any allegations of Paragraph 22 that misstate or mischaracterize the terms of the NPDES Permit. The City denies any further allegations of Paragraph 22.

23. The City denies the allegations of paragraph 23.

24. Paragraph 22 does not identify specific violations that have occurred and the City has denied that Paragraph. To the extent this Paragraph refers to the April Notice, those violations are not continuing or ongoing as of the date of the Amended Complaint. The City acknowledges that SSOs may occur even under the best of circumstances from time to time, but the City has control mechanisms to repair and report such few instances. The City otherwise denies the allegations of Paragraph 24.

COUNT ONE
FAILURE TO AVOID OVERFLOWS IN VIOLATION OF AN NPDES PERMIT AND
THE CLEAN WATER ACT

25. For its response to the allegations of Paragraph 25 of the Amended Complaint, the City incorporates by reference its responses to the preceding allegations of the Complaint.

26. The City admits that the NPDES Permit is in place and avers that the NPDES Permit is a written document that speaks for itself. The City denies any allegations of Paragraph 26 that misstate or mischaracterize the terms of the NPDES Permit. The City admits that it has reported the SSOs enumerated in Paragraph 26 of the Amended Complaint on DMRs filed with TDEC.

27. The City denies the allegations of Paragraph 27 as stated. The SSO's identified in this Count are not continuing and ongoing.

28. The City denies the allegations of paragraph 28.

29. The City admits that portions of East Fork Poplar Creek are listed on Tennessee's 303(d) list for collection system failure [overflows] for the year 2016, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29. The City would further show that the 2016 303(d) list is not the most current EPA approved 303(d) list. The most current 2018 303(d) list shows only river mile 9.7 as impaired as a result of collection system failures. Other sources named are not within the scope of the subject NPDES permit.

30. The City denies that entry of enforcement order or injunction is necessary or appropriate in this action.

31. The City denies that the assessment of civil penalties is appropriate in this action.

COUNT TWO
INJUNCTIVE RELIEF

32. In response to the allegations of Paragraph 32, the City repeats and incorporates its responses to the preceding allegations of the Complaint.

33. The City denies the allegations of Paragraph 33.

34. The City denies the allegations of Paragraph 34.

35. The City denies the allegations of Paragraph 35.

36. The City denies the allegations of Paragraph 36.

37. The City denies any and all allegations of the Amended Complaint not expressly admitted above.

AFFIRMATIVE DEFENSES

1. The Amended Complaint fails to state a claim upon which relief can be granted.

2. Riverkeeper cannot establish constitutional standing or the presence of ongoing violations necessary to establish standing under the citizen suit provisions of the CWA.

3. Riverkeeper's claims based on alleged violations occurring before July 11, 2013 are barred by the five-year statute of limitations found in 28 U.S.C. § 2462.

4. Riverkeeper's claims for alleged violations occurring before August 27, 2015 are barred by the diligent prosecution bar of the CWA, 33 U.S.C. § 1319(g)(6), because such violations were the subject of a final order issued by the EPA and the payment of a civil penalty by the City.

5. To the extent that many of the alleged violations were known by Riverkeeper and not timely brought to the City's attention, and that the notice itself is more than two years from the date that the Complaint or Amended Complaint was filed, the Plaintiff is estopped to assert such claims under the doctrine of laches.

WHEREFORE, having fully answered the allegations of the Amended Complaint, the City respectfully requests the following relief:

1. That Riverkeeper's claims be dismissed in their entirety; and
2. That the Court grant such other and further relief as may be necessary or appropriate.

Dated: September 6, 2019.

Respectfully submitted,

/s/ Garry K. Grooms

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CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of September, 2019, a true and correct copy of the foregoing was served by the Court's Electronic Filing System on the following individuals:

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