

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Martinsburg Division**

POTOMAC RIVERKEEPER	)	
NETWORK, INC.,	)	
	)	
<i>Plaintiff,</i>	)	Civil Action No. _____
v.	)	
	)	COMPLAINT FOR DECLARATORY
BERKELEY COUNTY PUBLIC SERVICE	)	AND INJUNCTIVE RELIEF, AND
SEWER DISTRICT,	)	CIVIL PENALTIES
	)	
<i>Defendant.</i>	)	
_____	)	

**PLAINTIFF FILES CLAIM IN SUPPORT OF A CITIZEN SUIT**

Plaintiff Potomac Riverkeeper Network, Inc. (“Plaintiff” or “Potomac Riverkeeper”) hereby complain of Defendant, Berkeley County Public Service Sewer District (“Defendant” or “Berkeley County PSSD”) as follows:

**Nature of this Action**

- This is a citizen’s suit under § 505 of the Clean Water Act, 33 U.S.C. § 1365, seeking declaratory relief, injunctive relief and the imposition of civil penalties under the Clean Water Act against Berkeley County PSSD. Defendant has violated and continues to violate sections 301 and 402 of the Clean Water Act, 33 USC §§ 1311 and 1342, with respect to discharges of pollutants from its Marlowe Towne Center facility located at Williamsport Pike, Falling Waters, West Virginia, 25419. Defendant’s discharges of pollutants, including Fecal Coliform, Total Kjeldahl Nitrogen (TKN), Total Recoverable Zinc (Zinc) and Total Suspended Solids (TSS), are in excess of the conditions and effluent limitations set forth in its National Pollutant Discharge Elimination System (“NPDES”) Permit WV0105791. These discharges adversely affect and cause environmental harm to the Potomac River, a navigable water of the United States, which is part of the Potomac River watershed, and harm the interests of the members of Potomac Riverkeeper Network, Inc.

**Jurisdiction and Venue**

- This court has subject matter jurisdiction over the claims enumerated in this Complaint pursuant to 33 U.S.C. §1365 (a)(1)(A) (Clean Water Act) and 28 U.S.C. §1331 (federal question). The relief requested is authorized pursuant to the Clean Water Act, 33 U.S.C. §1319 and §1365 and 28 U.S.C. §2201 and §2202.

3. In compliance with section 505(b) of the Clean Water Act, 33 U.S.C. §1365(b), Plaintiff provided the Administrator of the United States Environmental Protection Agency (“USEPA”), the Regional Administrator for USEPA, the West Virginia Department of Environmental Protection, and the Defendant with notice of intent to sue by letter dated May 20, 2015 (“the Notice”), sent by certified mail return receipt requested. A copy of the Notice is attached to this Complaint as Exhibit A.
4. As of July 20, 2015, sixty days have passed since the Notice was served, and the violations addressed in the Notice are ongoing. Defendant’s discharge causes environmental harm to the receiving waters on an ongoing basis. Neither the USEPA nor the State of West Virginia has commenced a court action to redress these violations.
5. The source of Defendant’s discharge and violations is located in this District. Therefore, venue in the Northern District Court of West Virginia is proper according to 33 U.S.C. §1365(c) and 28 U.S.C. §1391 (b) & (c).

#### **Identification of Parties and Standing**

6. The Potomac Riverkeeper Network, Inc. is a non-profit conservation organization with three regional branches, including the Upper Potomac Riverkeeper. The Upper Potomac Riverkeeper Branch is responsible for protecting the Potomac River and all of its feeder streams in the region from the confluence of the Potomac and Shenandoah Rivers all the way upstream to Fairfax Stone and beyond. It represents nearly 2,000 members who use the river for recreation and drinking water, and who actively support our collective efforts to protect the Potomac. Its mission is to protect the public’s right to clean water in our rivers and streams. The organization works to stop pollution to promote safe drinking water, protect healthy river habitats, and enhance public use and enjoyment. Specifically, its members have and continue to use and enjoy the Potomac River for recreational fishing and boating. Plaintiff is a citizen under the Clean Water Act.
7. Defendant’s discharges have degraded and continue to degrade the quality of the Potomac River, and thereby adversely affect the recreational, aesthetic, environmental, property, and other interests of the members of the Potomac Riverkeeper Network, Inc. The interests of the members the Potomac Riverkeeper, have been, and will continue to be, affected by the Defendant’s failure to comply with the Clean Water Act.
8. The interests that Plaintiff seeks to protect are germane to the organizational purposes of Potomac Riverkeeper Network, Inc.
9. Defendant owns and operates a publically owned treatment works (POTW) located at Williamsport Pike, Falling Waters, West Virginia, 25419. Defendant continues to discharge pollutants, including Fecal Coliform, Total Kjeldahl Nitrogen (TKN), Total Recoverable Zinc (Zinc) and Total Suspended Solids (TSS), in excess of the conditions and effluent limitations set forth in their National Pollution Discharge Elimination System (“NPDES”) permit WV0105791. Berkeley County PSSD is a person under the Clean Water Act.

10. Defendant's violations of the Clean Water Act allow this court to impose declaratory relief, injunctive relief and assess civil penalties pursuant to sections Clean Water Act § 309(d), 33 USC § 1319(d), and 40 C.F.R. 19, 28 U.S.C. §2201 and §2202.
11. Without the issuance of declaratory relief, injunctive relief and the assessment of civil penalties, Defendant will continue to degrade the quality of the Potomac River to the further injury of the plaintiff, plaintiff's members and the environment.
12. The issuance of declaratory relief, injunctive relief and the imposition of civil penalties will cause Defendant to discontinue its current violations and deter it from committing future ones and thereby redress the injuries to Plaintiff and the members of Potomac Riverkeeper caused by Defendant's violations.

### **Factual and Legal Background**

13. In 1972, Congress enacted the Clean Water Act to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). The Clean Water Act's goal is to attain water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." 33 U.S.C. §1251(a)(2). Except as in compliance with a NPDES permit "the discharge of any pollutant by any person shall be unlawful." 33 U.S.C. §1311(a).
14. Under Section 402 of the Act, 33 U.S.C. § 1342, the West Virginia Department of Environmental Protection issued to Defendant NPDES Permit No. WV0105791 for the discharge of pollutants from Defendant's facility. Defendant's facility has violated and is now in violation of that permit.
15. Fecal Coliform, Total Kjeldahl Nitrogen (TKN), Total Recoverable Zinc (Zinc) and Total Suspended Solids (TSS) are pollutants under the Clean Water Act.
16. Defendant's facility constitutes a point source under the Clean Water Act.
17. The Potomac River is a water of the United States under the Clean Water Act.
18. Defendant's excess discharge of Fecal Coliform, Total Kjeldahl Nitrogen (TKN), Total Recoverable Zinc (Zinc) and Total Suspended Solids (TSS) from its facility into the Potomac River constitutes a discharge of pollutants from a point source into a navigable waterway of the United States.

### **COUNT I – VIOLATIONS OF THE CLEAN WATER ACT FOR DISCHARGES OF POLLUTANTS IN EXCESS OF EFFLUENT LIMITATIONS**

19. Plaintiff re-alleges and incorporates by reference paragraphs 1 -18 above as if fully set forth herein.

20. Defendant has violated the terms of their NPDES permit, WV0105791, and violations continue to occur at the Defendant's facility. The monthly Discharge Monitoring Reports ("DMR") filed by Defendant Berkeley County PSSD and available to Plaintiff demonstrates that Berkeley County PSSD has violated its NPDES permit on a continuous basis with respect to several parameters.

21. NPDES Permit WV0105791 contains effluent limitations on the discharge of the pollutants Fecal Coliform, Total Kjeldahl Nitrogen (TKN), Total Recoverable Zinc (Zinc) and Total Suspended Solids (TSS). Berkeley County PSSD has violated these effluent limitations on at least the following occasions:

A. Fecal Coliform Violations

<i>Dates of Violation</i>	<i>Limit in Permit</i>	<i>Type of Permit Limit</i>	<i>Amount Discharged</i>	<i>Estimated Days in Violation</i>
April 2015	200 cnts/100ml	Monthly Geometric Mean Concentration	541.1 cnts/100ml	30
April 2015	400 cnts/100ml	Daily Maximum Concentration	>6000 cnts/100ml	30
March 2015	200 cnts/100ml	Monthly Geometric Mean Concentration	865.3 cnts/100ml	31
March 2015	400 cnts/100ml	Daily Maximum Concentration	>6000 cnts/100ml	31
February 2015	200 cnts/100ml	Monthly Geometric Mean Concentration	1101.4 cnts/100ml	28
February 2015	400 cnts/100ml	Daily Maximum Concentration	>6000 cnts/100ml	28
January 2015	200 cnts/100ml	Monthly Geometric Mean Concentration	235.5 cnts/100ml	31
December 2014	200 cnts/100ml	Monthly Geometric Mean Concentration	2892.3 cnts/100ml	31
December 2014	400 cnts/100ml	Daily Maximum Concentration	28000 cnts/100ml	31
November 2014	200 cnts/100ml	Monthly Geometric Mean Concentration	1341.6 cnts/100ml	30
November 2014	400 cnts/100ml	Daily Maximum Concentration	3600 cnts/100ml	30
October	200 cnts/100ml	Monthly	980.1 cnts/100ml	31

2014		Geometric Mean Concentration		
October 2014	400 cnts/100ml	Daily Maximum Concentration	3200 cnts/100ml	31
September 2014	200 cnts/100ml	Monthly Geometric Mean Concentration	415.5 cnts/100ml	30
September 2014	400 cnts/100ml	Daily Maximum Concentration	2800 cnts/100ml	30
August 2014	400 cnts/100ml	Daily Maximum Concentration	>600 cnts/100ml	31
July 2014	200 cnts/100ml	Monthly Geometric Mean Concentration	295 cnts/100ml	31
July 2014	400 cnts/100ml	Daily Maximum Concentration	>600 cnts/100ml	31
January 2014	200 cnts/100ml	Monthly Geometric Mean Concentration	430 cnts/100ml	31
January 2014	400 cnts/100ml	Daily Maximum Concentration	430 cnts/100ml	31
June 2010	200 cnts/100ml	Monthly Geometric Mean Concentration	4743 cnts/100ml	30

B. Total Kjeldahl Nitrogen (TKN)

<i>Dates of Violation</i>	<i>Limit in Permit</i>	<i>Type of Permit Limit</i>	<i>Actual Discharge</i>	<i>Estimated Days in Violation</i>
April 2015	2.1 lb/day	Average Monthly Loading	7.32 lb/day	30
April 2015	5 mg/l	Average Monthly Concentration	25.80 mg/l	30
April 2015	5 mg/l	Daily Maximum Concentration	25.80 mg/l	30
March 2015	2.1 lb/day	Average Monthly Loading	3.05 lb/day	31
March 2015	5 mg/l	Average Monthly Concentration	12.80 mg/l	31
March 2015	10 mg/l	Daily Maximum Concentration	12.80 mg/l	31

February 2015	2.1 lb/day	Average Monthly Loading	5.23 lb/day	28
February 2015	4.2 lb/day	Daily Maximum Loading	6.40 lb/day	28
February 2015	5 mg/l	Average Monthly Concentration	16.5 mg/l	28
February 2015	10 mg/l	Daily Maximum Concentration	20.20 mg/l	28
April 2015	2.1 lb/day	Daily Maximum Loading	7.32 lb/day	30
August 2014	18 mg/l	Average Monthly Concentration	23.8 mg/l	31
June 2014	18 mg/l	Average Monthly Concentration	27.0 mg/l	30
March 2014	18 mg/l	Average Monthly Concentration	23.7 mg/l	31
January 2014	18 mg/l	Average Monthly Concentration	21.0 mg/l	31
July 2011	18 mg/l	Average Monthly Concentration	22 mg/l	31

C. Total Recoverable Zinc (Zinc) Violations

<i>Dates of Violation</i>	<i>Limit in Permit</i>	<i>Type of Permit Limit</i>	<i>Actual Discharge</i>	<i>Estimated Days in Violation</i>
March 2015	0.06 mg/l	Average Monthly Concentration	0.133 mg/l	31
March 2015	0.12 mg/l	Daily Maximum Concentration	0.137 mg/l	31
December 2014	0.06 mg/l	Average Monthly Concentration	0.154 mg/l	31
June 2014	0.06 mg/l	Average Monthly Concentration	0.082 mg/l	30
March 2014	0.06 mg/l	Average Monthly	0.097 mg/l	31

		Concentration		
December 2013	0.06 mg/l	Average Monthly Concentration	0.073 mg/l	31
September 2013	0.06 mg/l	Average Monthly Concentration	0.062 mg/l	30
June 2013	0.06 mg/l	Average Monthly Concentration	0.109 mg/l	30
March 2013	0.06 mg/l	Average Monthly Concentration	0.105 mg/l	31
December 2012	0.06 mg/l	Average Monthly Concentration	0.125 mg/l	31
June 2012	0.06 mg/l	Average Monthly Concentration	0.114 mg/l	30
March 2012	0.06 mg/l	Average Monthly Concentration	0.168 mg/l	31
June 2011	0.06 mg/l	Average Monthly Concentration	0.081 mg/l	30
March 2011	0.06 mg/l	Average Monthly Concentration	0.076 mg/l	31
December 2010	0.06 mg/l	Average Monthly Concentration	0.116 mg/l	31
September 2010	0.06 mg/l	Average Monthly Concentration	0.063 mg/l	30

A. Total Suspended Solids (TSS) Violations

<i>Dates of Violation</i>	<i>Limit in Permit</i>	<i>Type of Permit Limit</i>	<i>Actual Discharge</i>	<i>Estimated Days in Violation</i>
January 2015	12.5 lb/day	Average Monthly Loading	57.6 lb/day	31
January 2015	25 lb/day	Daily Maximum Loading	57.6 lb/day	31

January 2015	30 mg/l	Average Monthly Concentration	192.0 mg/l	31
January 2015	60 mg/l	Daily Maximum Concentration	192.0 mg/l	

22. These exceedances as set forth in paragraph 21 each constitute separate violations of the Clean Water Act and, in the case of violations of the monthly average, constitute a separate violation on each day of the month in which the violation occurred.
23. The Clean Water Act authorizes civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) for each violation of the Act.
24. Given the pattern of these exceedances, the violations of the Clean Water Act are likely to continue into the future.

Prayer for Relief

THEREFORE, Potomac Riverkeeper Network, Inc., pray that this Court issue the following relief:

- (1) Declare that Defendant Berkeley County PSSD has violated and continues to violate the Clean Water Act;
- (2) Enjoin Defendant Berkeley County PSSD from committing further violations of the Clean Water Act;
- (3) Order Defendant Berkeley County PSSD to pay civil penalties in an amount equal to the number of violations proven at trial times the statutory maximum penalty of \$37,500 per violation;
- (4) Award Plaintiff its costs for prosecuting this citizens suit, including the costs of experts and Plaintiffs' reasonable attorney's fees; and
- (5) For such other relief as the Court deems just and proper.

Respectfully submitted,

POTOMAC RIVERKEEPER NETWORK, INC.,



By: /s/Christopher P. Stroeck

Christopher P. Stroeck, Esq. (WVSB #9387)  
Arnold & Bailey, PLLC  
208 N. George Street  
Charles Town, WV 25414  
304-725-2002  
304-725-0282 (Fax)  
*Attorney for Plaintiff*

Kenneth T. Kristl, Esq.  
Environmental and Natural Resources Law Clinic  
Widener University Delaware Law School  
4601 Concord Pike  
Wilmington, DE 19803  
(302) 477-2053  
*Attorney for Plaintiff*

Hannah G. Leone, Esq.  
Mid-Atlantic Environmental Law Center  
4601 Concord Pike  
Wilmington, DE 19803  
(302) 477-2072  
*Attorney for Plaintiff*