

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHATTAHOOCHEE RIVERKEEPER,)
INC.,)
)
Plaintiff,)
)
v.)
)
CITY OF ATLANTA, GEORGIA,)
)
Defendant.)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Chattahoochee Riverkeeper, Inc. files this Complaint against Defendant City of Atlanta, Georgia, as follows:

STATEMENT OF THE CASE

1. This is a civil action brought under the citizen suit enforcement provisions of the Clean Water Act, 33 U.S.C. § 1365(a)(1).
2. Since at least January 2023, the City of Atlanta has unlawfully discharged pollutants including ammonia, phosphorus, suspended solids, and harmful levels of bacteria to the Chattahoochee River from the RM Clayton Water Reclamation Center, one of the City’s wastewater treatment plants, in violation of the City’s wastewater discharge permit and the Clean Water Act.
3. The City has also failed to maintain and operate the RM Clayton facility in accordance with the terms of its wastewater discharge permit. The

facility is in a serious state of disrepair due to poor management, a lack of routine maintenance, and a failure to repair or replace critical equipment, which has caused and/or exacerbated the unlawful discharges of pollutants into the river.

4. The City has known about the unlawful discharges and the poor condition of the RM Clayton facility for over a year and a half, but it has failed to take appropriate steps to mitigate the harm to the river in violation of its permit.

5. The City's past and continuing unpermitted discharges and permit violations have had and will continue to have a significant impact on water quality, threaten both aquatic life and human health, and have harmed and will continue to harm the interests of Chattahoochee Riverkeeper and its members.

6. Chattahoochee Riverkeeper seeks a declaratory judgment, injunctive relief, civil penalties, and any other relief the Court deems proper under the Clean Water Act to correct ongoing, unpermitted discharges of pollutants into the Chattahoochee River and other permit violations by the City of Atlanta.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the claims set forth in this Complaint by virtue of Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1).

8. The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1335.

9. This Court has personal jurisdiction over the parties.

10. Venue is proper in this Court pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. §1365(c)(1), because the discharges occurred and continue to occur within this judicial district.

11. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to the claims alleged in this Complaint occurred and continue to occur in and around the RM Clayton Water Reclamation Center, located at 2440 Bolton Road NW, Atlanta, GA 30318, which is within this judicial district.

12. In compliance with Section 505 of the Clean Water Act, 33 U.S.C. § 1365(b)(1), Chattahoochee Riverkeeper provided Defendant with notice of the violations specified in this Complaint and of its intent to file suit after 60 days, should those violations continue.

13. Specifically, on July 1, 2024, the Riverkeeper sent by certified mail a 60-day Notice of Intent to Sue Letter (“Notice Letter”) to Mayor Andre Dickens and Al Wiggins, Jr., the Commissioner for the City of Atlanta Department of Watershed Management. A true and correct copy of the Notice Letter with documentation of its receipt is attached as Exhibit 1.

14. The Riverkeeper also sent a copy of the Notice Letter to the U.S. Attorney General, the Administrator of the United States Environmental Protection

Agency (“EPA”), the Acting Regional Administrator of EPA Region 4, and the Director of the Georgia Environmental Protection Division.

15. More than 60 days have passed since the Notice Letter was sent to Defendant and the state and federal agencies.

16. Despite receiving this letter, the City has failed to cease the violations of the Clean Water Act alleged in the Notice Letter.

17. Upon information and belief, neither the EPA nor the State of Georgia has commenced or is diligently prosecuting any court action or administrative proceeding to address the violations described in the Notice Letter and alleged in this Complaint.

18. The violations identified in the Notice Letter that are the subject of this action are continuing at this time and are reasonably likely to continue in the future.

PARTIES

19. Plaintiff Chattahoochee Riverkeeper is a non-profit corporation organized under the State of Georgia that seeks to educate, advocate, and secure the protection and stewardship of the Chattahoochee River, including its lakes, tributaries, and watershed, in order to restore and conserve its ecological health for the people and wildlife that depend on the river system and in recognition of the important ecosystem functions provided throughout the region and planet. The

Riverkeeper pursues these objectives through education, advocacy, water quality monitoring and sampling, public engagement, and seeking redress in the courts when necessary.

20. Chattahoochee Riverkeeper is a member organization with approximately 10,000 members, including individuals, families, and businesses—many of whom live and work, swim, fish, boat, recreate, and engage in social events in, near, and on the Chattahoochee River and connected waters, including the stretch of the river downstream from the RM Clayton Water Reclamation Center and its pollutant discharges.

21. Members of Chattahoochee Riverkeeper are concerned about contamination of river water and drinking water by the pollutants in the City of Atlanta's unpermitted discharges, as well as the potential effects of those discharges on aquatic animals and wildlife. The City's unpermitted discharges, and the pollutants contained in them, are reducing the use and enjoyment of the Chattahoochee River by the Riverkeeper and its members.

22. As set forth above, the Riverkeeper and its members have aesthetic, recreational, conservational, scientific, and health-related interests that have been, are being, and will continue to be adversely affected and irreparably harmed by the City's ongoing violations of the Clean Water Act. These actual and potential injuries have been, are being, and will continue to be caused by the illegal

discharges from the RM Clayton Water Reclamation Center into waters of the United States.

23. The relief sought herein will redress the harms to Chattahoochee Riverkeeper and its members caused by the City's discharges. Their injuries will not be redressed except by an order from this Court requiring the City to take immediate and substantial action to stop the unpermitted discharges and flow of pollutants into the Chattahoochee River and to comply with such other relief as this Court deems necessary.

24. Chattahoochee Riverkeeper is a "citizen" within the meaning of the Clean Water Act and may bring a citizen suit under the citizen suit provisions of the Clean Water Act, 33 U.S.C. §§ 1365(a) and 1365(g).

25. Defendant City of Atlanta is a municipal corporation organized under the laws of the State of Georgia. The City owns and operates the RM Clayton Water Reclamation Center, one of the City's wastewater treatment facilities that discharges treated wastewater directly to the Chattahoochee River. The City also owns and operates the Utoy Creek Water Reclamation Center and the South River Water Reclamation Center, which are authorized to discharge treated wastewater to the Chattahoochee River under the same wastewater discharge permit as the RM Clayton facility.

26. Defendant City of Atlanta is a “person” within the meaning of 33 U.S.C. §§ 1362(5) and 1365(a)(1).

LEGAL BACKGROUND

27. The objective of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To accomplish that objective, Congress set the national goal that “the discharge of pollutants into the navigable waters be eliminated” *Id.*

28. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of a pollutant from a point source to waters of the United States except in compliance with, among other conditions, a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the EPA or an authorized state pursuant to section 402 of the Clean Water Act, 33 U.S.C. § 1342.

29. The Clean Water Act defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from a point source.” 33 U.S.C. § 1362(12).

30. The Clean Water Act defines “pollutant” to include “sewage,” “sewage sludge,” “chemical wastes,” and “biological materials.” 33 U.S.C. § 1362(6).

31. The Clean Water Act defines “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any

pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

32. The Clean Water Act defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

33. 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. 33 U.S.C. § 1362(11); 40 C.F.R. § 122.44(d); Ga. Comp. R. & Regs. 391-3-6-.06(4)(a)(10).

34. The Georgia Environmental Protection Division (“EPD”) has an approved NPDES permitting program and implements Georgia’s obligations under the Clean Water Act, including establishing the state’s water quality standards. O.C.G.A. §§ 12-2-24, 12-5-23.

35. NPDES permits are issued with fixed terms not to exceed five years. 33 U.S.C. § 1342(b)(1)(B); Ga. Comp. R. & Regs. 391-3-6-.06(15)(a).

36. Each violation of an NPDES permit, and each discharge of a pollutant that is not authorized by a permit, is a violation of the Clean Water Act. 33 U.S.C. §§ 1311(a), 1342(a), 1365(f); 40 C.F.R. § 122.41(a).

37. Under Section 505(a)(1) of the Clean Water Act, any citizen may commence a civil action in federal court on their own behalf against any “person” who is alleged to be in violation of an “effluent standard or limitation” under the

Act. 33 U.S.C. § 1365(a)(1). The Clean Water Act defines “person” to include “an individual, corporation, partnership, association, State, [or] municipality” 33 U.S.C. § 1362(5).

38. Such enforcement action under Clean Water Act Section 505, 33 U.S.C. § 1365, includes an action seeking remedies for an unpermitted discharge in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, as well as an action seeking remedies for violation of “a permit or condition thereof issued under section 1342 of this title,” that is, under Section 402 of the Clean Water Act. 33 U.S.C. § 1365(f).

39. Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), authorizes actions for injunctive relief.

40. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$66,712 per day per violation for all violations occurring after November 2, 2015, where penalties are assessed after December 27, 2023. 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. § 19.4 (updating statutory penalties to adjust for inflation).

41. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing or substantially prevailing parties to recover litigation costs, including attorneys’ fees and expenses.

FACTUAL BACKGROUND

The Chattahoochee River and Water Quality Standards

42. The Chattahoochee River comprises an area of 8,770 square miles and is an essential surface water resource for the State of Georgia, used by millions of people for drinking water, electricity generation, and recreation.

43. Despite water quality improvements over the past several decades, over 1,000 miles of waterways in the Chattahoochee River Basin do not meet water quality standards, posing a risk to both humans and wildlife that rely on the river.

44. The river segment that receives wastewater from the RM Clayton Water Reclamation Center, which is 9.31 miles long and runs from Peachtree Creek to Utoy Creek, is not supporting its designated use of fishing and appears on Georgia's list of waterways that do not meet water quality standards under the Clean Water Act. 33 U.S.C. § 1313; 40 C.F.R. § 130.10 ("the § 303(d) list"). This stretch of the river is impaired for its designated use of fishing because of excess quantities of PCBs and fecal coliform bacteria.

45. Before 2022, the water quality standard for fecal coliform bacteria in waters with a designated use of fishing was as follows:

For the months of May through October, when water contact recreation activities are expected to occur, fecal coliform not to exceed a geometric mean of 200 counts per 100 mL based on at least four samples collected from a given sampling site over a 30-day period at intervals no less than 24 hours. . . . For the months of November through

April, fecal coliform not to exceed a geometric mean of 1,000 counts per 100 mL based on at least four samples collected from a given sampling site over a 30-day period at intervals not less than 24 hours and not to exceed a maximum of 4,000 counts per 100 mL for any sample.

Ga. Comp. R. & Regs. 391-3-6-.03(6)(c)(iii)(1) (2018).

46. In 2022, EPD replaced its fecal coliform water quality standards with *E. coli* standards, finding that *E. coli* bacteria are a better indicator of fecal contamination and gastrointestinal illness. Facilities with fecal coliform effluent limitations in their NPDES permits do not have to ensure compliance with the new *E. coli* standards until their NPDES permits are reissued. In the meantime, they are required to ensure compliance with any fecal coliform limits in their permits.

47. The *E. coli* water quality standards currently in effect are as follows:

For the months of May through October, when primary water contact recreation activities are expected to occur, culturable *E. coli* not to exceed a geometric mean of 126 counts per 100 mL based on at least four samples collected from a given sampling site over a 30-day period at intervals not less than 24 hours. . . . For the months of November through April, culturable *E. coli* not to exceed a geometric mean of 265 counts per 100 mL based on at least four samples collected from a given sampling site over a 30-day period at intervals not less than 24 hours.
...

Ga. Comp. R. & Regs. r. 391-3-6-.03(6)(c)(i)(2) (2022).

The RM Clayton Facility and the City's NPDES Permit

48. The RM Clayton Water Reclamation Center was built in 1935 and serves Fulton County and DeKalb County. It is the largest wastewater treatment center in the state of Georgia, and it is designed to treat an average of 122 million gallons per day of wastewater, with peak flows often exceeding 320 million gallons per day.

49. Generally, the wastewater treatment process at the RM Clayton facility consists of bar screens, grit removal, and fine screens to remove large objects and sand; eight primary clarifiers to settle out sludge and remove scum; biological treatment and aeration; ten secondary clarifiers; chemical precipitation, filtration, ultraviolet (“UV”) disinfection, and post-aeration. Treated wastewater is discharged directly to the Chattahoochee River via a pipe.

50. The RM Clayton facility is permitted to discharge wastewater to the Chattahoochee River under NPDES Permit No. GA0039012, issued by Georgia EPD pursuant to the permitting requirements of Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

51. Two versions of NPDES Permit No. GA 0039012 are relevant to this case: (1) the permit originally issued on June 7, 2017, and administratively extended through December 31, 2023 (“the 2017 NPDES Permit”), and (2) the

permit issued on January 1, 2024 (“the 2024 NPDES Permit”), which is currently in effect.

52. The 2017 NPDES Permit and the 2024 NPDES Permit prescribe effluent limitations and monitoring requirements for the RM Clayton, South River, and Utoy Creek Water Reclamation Centers for various pollutants and parameters, including but not limited to chemical oxygen demand, total suspended solids, ammonia, phosphorus, and bacteria. The permits include effluent limitations for each facility individually, as well as combined effluent limitations that apply to the facilities collectively.

53. So that EPD can determine compliance with these effluent limitations, the City’s NPDES Permit¹ requires the City to submit monthly discharge monitoring reports via the web-based electronic NetDMR reporting system to EPD.

54. In addition, the NPDES Permit imposes numerous management requirements on the City. For instance, the City must “maintain and operate efficiently all treatment or control facilities and related equipment installed or used by the permittee to achieve compliance with this permit,” including “effective performance, adequate funding, adequate operator staffing and training, and

¹ When the 2017 NPDES Permit and the 2024 NPDES Permit have identical or nearly identical terms, this Complaint will simply refer to the NPDES Permit for brevity.

adequate laboratory and process controls, including appropriate quality assurance procedures.”

55. In addition, the City must “take all reasonable steps to minimize or prevent any discharge or sludge disposal which might adversely affect human health or the environment.”

56. The NPDES Permit also requires the City to “immediately take all reasonable and necessary steps to prevent injury to property and downstream user” whenever a substance which would endanger downstream users of the waters of the State is discharged.

57. Based on its own publicly accessible discharge monitoring reports, the City has a longstanding and continuing history of exceeding the effluent limits set forth in its NPDES Permit. Between January 2023 and July 2024, the City exceeded combined effluent limits for the three water reclamation centers at least 62 times. Between July 2023 and July 2024, the City exceeded effluent limitations specific to the RM Clayton facility at least 79 times.

Chattahoochee Riverkeeper’s Investigation

58. Chattahoochee Riverkeeper routinely patrols the segment of the river into which the RM Clayton facility discharges and routinely samples the river for E. coli to ensure that the river is safe for all river users.

59. Samples that Chattahoochee Riverkeeper collected directly from the RM Clayton outfall, between March 4 and March 15, 2024, showed E. coli concentrations ranging from 6,000 to over 120,000 counts per 100 mL, with an average concentration that is 340 times higher than the monthly average allowed to be discharged under the 2024 NPDES Permit (126 counts per 100 mL).

60. The Riverkeeper contacted the Commissioner of the City of Atlanta Department of Watershed Management on March 5, 2024, to report these high concentrations of E. coli bacteria. The Commissioner responded that, at that time, only two of ten secondary clarifiers at the plant were operational.

61. On March 5, 2024, the Riverkeeper also alerted EPD about the high E. coli concentrations discharged from the RM Clayton facility. EPD conducted an inspection of the facility on March 7, 2024, which revealed significant operational issues and general disrepair at the site. On March 22, 2024, EPD issued a Notice of Violation to the Department of Watershed Management.

62. Upon information and belief, the City of Atlanta Department of Watershed Management did not begin repairs on the RM Clayton facility until after Chattahoochee Riverkeeper alerted the City and the press about the operational failures and high concentrations of E. coli in the facility's wastewater discharges.

63. On April 19, 2024, the City submitted a Response to EPD's Notice of Violation, stating that three of eight primary clarifiers were operational and that the remaining repairs would be conducted pursuant to a proposed schedule. The City's corrective action plan called for seven of the ten secondary clarifiers to be back online by June 1, 2024, all primary clarifiers to be operational by June 30, 2024, and all facility repairs to be completed by December 31, 2025.²

64. On June 17, 2024, Chattahoochee Riverkeeper attended a site visit at the RM Clayton facility. During the site visit, the Riverkeeper was allowed to access and view only certain limited areas of the facility, and no photos or videos were permitted. During the visit, all primary clarifiers were out of service, and the secondary clarifiers were not fully operational. Neither the aeration basins nor the incinerators were operational during the site visit. Additionally, multiple alarms were sounding on the UV disinfection system, indicating that the wastewater was not being properly disinfected. The facility was in a clear state of disrepair and neglect, and the City did not appear to be working on the needed repairs as outlined in its corrective action plan.

65. Following the site visit, Chattahoochee Riverkeeper asked the City for more data about the RM Clayton facility, requested a more comprehensive site

² The City's correspondence includes conflicting information for the final date of all repairs.

visit, and offered to work collaboratively with the City to address the pollution problems. The Riverkeeper and the City have been unable to reach an agreement, prompting the Riverkeeper to send the Notice Letter and file the instant Complaint.

CLAIMS FOR RELIEF

COUNT I: VIOLATIONS OF NUMERIC EFFLUENT LIMITATIONS

66. Plaintiff incorporates by reference the allegations set forth in all prior paragraphs as if rewritten in their entirety.

67. As owner and operator of the RM Clayton Water Reclamation Center, the City of Atlanta is responsible for the violations of the Clean Water Act alleged herein that have occurred from January 2023 to the present.

68. Prior to filing this lawsuit, Chattahoochee Riverkeeper notified the City of Atlanta that the City's pollutant discharges and permit noncompliance violate the Clean Water Act and interfere with Chattahoochee Riverkeeper's interests. The purpose of providing defendants with notice of intent to sue is to provide an opportunity to attain compliance without the need for litigation.

69. The City failed to correct the violations cited in the Notice Letter, and as a result, Chattahoochee Riverkeeper and its members, along with the general public, continue to suffer irreparable injury as a result of the discharges of pollutants from the City's RM Clayton facility into the Chattahoochee River.

Chattahoochee Riverkeeper's remedies at law are inadequate to stop the continuing discharges by the City.

70. The City's RM Clayton facility discharges pollutants including but not limited to sewage, municipal wastewater, and stormwater containing ammonia, phosphorus, suspended solids, bacteria, and other parameters. *See* 33 U.S.C. § 1362(6)

71. The RM Clayton facility discharges these pollutants from a pipe, which is a point source under the Clean Water Act. *See* 33 U.S.C. § 1362(14).

72. The RM Clayton facility discharges to the Chattahoochee River, which is a navigable-in-fact water, a water of the State of Georgia, and a water of the United States under the Clean Water Act. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2; O.C.G.A. § 12-5-22(13).

73. Each of the City's discharges from the RM Clayton outfall into the Chattahoochee River that exceeds the effluent limitations established in its NPDES Permit is a separate and distinct violation of the Clean Water Act. 33 U.S.C. §§ 1311, 1319(d), 1342.

74. As described above, since January 2023, the City of Atlanta has exceeded the numeric permit limitations for its RM Clayton Water Reclamation Center at least 141 times, including both combined effluent limitations that apply to all three of the City's water reclamation centers and individual effluent

limitations that apply only to the RM Clayton facility. These discharges are unpermitted point source discharges in violation of the Clean Water Act.

75. The City has exceeded its combined effluent limitations for carbonaceous five-day biochemical oxygen demand (“BOD”), ammonia, and phosphorus, which apply to the RM Clayton, South River, and Utoy Creek Water Reclamation Centers, at least 62 times since January 2023, as follows:

Number	Month	Parameter	Reported	Permitted
2017 NPDES Permit				
1	Jan. 2023	Ammonia Weekly Avg. Conc.	1,127 kg/day	888 kg/day
2	Mar. 2023	Ammonia Monthly Avg. Conc.	1,165 kg/day	530 kg/day
3	Mar. 2023	Ammonia Weekly Avg. Conc.	982 kg/day	663 kg/day
4	Mar. 2023	Total Phosphorus Monthly Avg. Conc.	607 kg/day	214 kg/day
5	Apr. 2023	BOD Weekly Avg. Conc.	4,723 kg/day	3,638 kg/day
6	Apr. 2023	Ammonia Monthly Avg. Conc.	3,083 kg/day	530 kg/day
7	Apr. 2023	Ammonia Weekly Avg. Conc.	6,002 kg/day	663 kg/day
8	Apr. 2023	Total Phosphorus Monthly Avg. Conc.	324 kg/day	214 kg/day

9	Apr. 2023	Total Phosphorus Weekly Avg. Conc.	2,777 kg/day	268 kg/day
10	May 2023	BOD Monthly Avg. Conc.	61,849 kg/day	2,910 kg/day
11	May 2023	BOD Weekly Avg. Conc.	85,943 kg/day	3,638 kg/day
12	May 2023	Ammonia Monthly Avg. Conc.	4,313 kg/day	530 kg/day
13	May 2023	Ammonia Weekly Avg. Conc.	5,848 kg/day	663 kg/day
14	May 2023	Total Phosphorus Monthly Avg. Conc.	1,178 kg/day	214 kg/day
15	May 2023	Total Phosphorus Weekly Avg. Conc.	1,951 kg/day	268 kg/day
16	June 2023	BOD Monthly Avg. Conc.	3,489 kg/day	2,490 kg/day
17	June 2023	BOD Weekly Avg. Conc.	7,618 kg/day	3,113 kg/day
18	June 2023	Ammonia Monthly Avg. Conc.	3,957 kg/day	350 kg/day
19	June 2023	Ammonia Weekly Avg. Conc.	6,383 kg/day	438 kg/day
20	June 2023	Total Phosphorus Monthly Avg. Conc.	680 kg/day	214 kg/day
21	June 2023	Total Phosphorus Weekly Avg. Conc.	1,864 kg/day	268 kg/day

22	July 2023	Ammonia Monthly Avg. Conc.	2,367 kg/day	350 kg/day
23	July 2023	Ammonia Weekly Avg. Conc.	3,566 kg/day	438 kg/day
24	July 2023	Total Phosphorus Monthly Avg. Conc.	330 kg/day	214 kg/day
25	July 2023	Total Phosphorus Weekly Avg. Conc.	490 kg/day	268 kg/day
26	Aug. 2023	Ammonia Monthly Avg. Conc.	2,158 kg/day	350 kg/day
27	Aug. 2023	Ammonia Weekly Avg. Conc.	3,298 kg/day	438 kg/day
28	Aug. 2023	Total Phosphorus Monthly Avg. Conc.	248 kg/day	214 kg/day
29	Aug. 2023	Total Phosphorus Weekly Avg. Conc.	287 kg/day	268 kg/day
30	Sept. 2023	Ammonia Monthly Avg. Conc.	2,529 kg/day	450 kg/day
31	Sept. 2023	Ammonia Weekly Avg. Conc.	4,401 kg/day	563 kg/day
32	Sept. 2023	Total Phosphorus Weekly Avg. Conc.	448 kg/day	268 kg/day
33	Oct. 2023	Ammonia Monthly Avg. Conc.	639 kg/day	450 kg/day
34	Oct. 2023	Ammonia Weekly Avg. Conc.	1,427 kg/day	530 kg/day

35	Dec. 2023	Ammonia Weekly Avg. Conc.	1,288 kg/day	888 kg/day
36	Dec. 2023	Total Phosphorus Weekly Avg. Conc.	534 kg/day	268 kg/day
2024 NPDES Permit				
37	Jan. 2024	BOD Weekly Avg. Conc.	11,711 mg/L (lb/day)	8,623 mg/L (lb/day)
38	Jan. 2024	Ammonia Monthly Avg. Conc.	8,015 mg/L (lb/day)	1,565 mg/L (lb/day)
39	Jan. 2024	Ammonia Weekly Avg. Conc.	10,747 mg/L (lb/day)	1,956 mg/L (lb/day)
40	Jan. 2024	Total Phosphorus Monthly Avg. Conc.	1,426 mg/L (lb/day)	472 mg/L (lb/day)
41	Jan. 2024	Total Phosphorus Weekly Avg. Conc.	2,527 mg/L (lb/day)	590 mg/L (lb/day)
42	Feb. 2024	Ammonia Monthly Avg. Conc.	9,410 mg/L (lb/day)	1,565 mg/L (lb/day)
43	Feb. 2024	Ammonia Weekly Avg. Conc.	11,621 mg/L (lb/day)	1,956 mg/L (lb/day)
44	Feb. 2024	Total Phosphorus Monthly Avg. Conc.	1,202 mg/L (lb/day)	472 mg/L (lb/day)
45	Feb. 2024	Total Phosphorus Weekly Avg. Conc.	1,528 mg/L (lb/day)	590 mg/L (lb/day)

46	Mar. 2024	BOD Weekly Avg. Conc.	9,958 mg/L (lb/day)	8,017 mg/L (lb/day)
47	Mar. 2024	Ammonia Monthly Avg. Conc.	10,106 mg/L (lb/day)	1,168 mg/L (lb/day)
48	Mar. 2024	Ammonia Weekly Avg. Conc.	16,127 mg/L (lb/day)	1,460 mg/L (lb/day)
49	Mar. 2024	Total Phosphorus Monthly Avg. Conc.	1,861 mg/L (lb/day)	472 mg/L (lb/day)
50	Mar. 2024	Total Phosphorus Weekly Avg. Conc.	4,801 mg/L (lb/day)	590 mg/L (lb/day)
51	Apr. 2024	Ammonia Monthly Avg. Conc.	4,852 mg/L (lb/day)	1,168 mg/L (lb/day)
52	Apr. 2024	Ammonia Weekly Avg. Conc.	9,079 mg/L (lb/day)	1,460 mg/L (lb/day)
53	Apr. 2024	Total Phosphorus Monthly Avg. Conc.	576 mg/L (lb/day)	472 mg/L (lb/day)
54	Apr. 2024	Total Phosphorus Weekly Avg. Conc.	737 mg/L (lb/day)	590 mg/L (lb/day)
55	May 2024	Ammonia Monthly Avg. Conc.	5,658 mg/L (lb/day)	1,168 mg/L (lb/day)
56	May 2024	Ammonia Weekly Avg. Conc.	1,460 mg/L (lb/day)	1,460 mg/L (lb/day)
57	June 2024	Ammonia Monthly Avg. Conc.	6,881 mg/L (lb/day)	771 mg/L (lb/day)

58	June 2024	Ammonia Weekly Avg. Conc.	9,279 mg/L (lb/day)	964 mg/L (lb/day)
59	July 2024	Ammonia Monthly Avg. Conc.	4,847 mg/L (lb/day)	771 mg/L (lb/day)
60	July 2024	Ammonia Weekly Avg. Conc.	6,680 mg/L (lb/day)	964 mg/L (lb/day)
61	July 2024	Total Phosphorus Monthly Avg. Conc.	598 mg/L (lb/day)	472 mg/L (lb/day)
62	July 2024	Total Phosphorus Weekly Avg. Conc.	926 mg/L (lb/day)	590 mg/L (lb/day)

These unlawful discharges are continuing.

76. The City has exceeded its effluent limitations for ammonia, total phosphorus, fecal coliform, E. coli, total suspended solids, and chemical oxygen demand for the RM Clayton Water Reclamation Center at least 79 times since July 2023, as follows:

Number	Month	Parameter	Reported	Permitted
2017 NPDES Permit				
1	July 2023	Ammonia Monthly Avg. Conc.	7.97 mg/L	1.8 mg/L
2	July 2023	Ammonia Weekly Avg. Conc.	13.05 mg/L	2.7 mg/L
3	July 2023	Total Phosphorus Monthly Avg. Conc.	0.92 mg/L	0.5 mg/L

4	July 2023	Total Phosphorus Weekly Avg. Conc.	1.55 mg/L	0.75 mg/L
5	July 2023	Fecal Coliform Weekly Geo Mean	417.0 cfu/100mL	400.0 cfu/100mL
6	Aug. 2023	Ammonia Monthly Avg. Conc.	7.35 mg/L	1.8 mg/L
7	Aug. 2023	Ammonia Weekly Avg. Conc.	12.37 mg/L	2.7 mg/L
8	Aug. 2023	Total Phosphorus Monthly Avg. Conc.	0.59 mg/L	0.5 mg/L
9	Aug. 2023	Total Phosphorus Weekly Avg. Conc.	0.77 mg/L	0.75 mg/L
10	Sept. 2023	Ammonia Monthly Avg. Conc.	9.08 mg/L	1.8 mg/L
11	Sept. 2023	Ammonia Weekly Avg. Conc.	11.14 mg/L	2.7 mg/L
12	Sept. 2023	Total Phosphorus Monthly Avg. Conc.	0.56 mg/L	0.5 mg/L
13	Sept. 2023	Total Phosphorus Weekly Avg. Conc.	1.14 mg/L	0.75 mg/L
14	Oct. 2023	Ammonia Monthly Avg. Conc.	2.44 mg/L	1.8 mg/L
15	Oct. 2023	Ammonia Weekly Avg. Conc.	5.51 mg/L	2.7 mg/L
16	Dec. 2023	TSS Weekly Avg. Load	6,820.0 kg/d	4,739.0 kg/d

17	Dec. 2023	TSS Weekly Avg. Conc.	24.0 mg/L	15.0 mg/L
18	Dec. 2023	Ammonia Monthly Avg. Conc.	2.28 mg/L	1.8 mg/L
19	Dec. 2023	Ammonia Weekly Avg. Conc.	4.47 mg/L	2.7 mg/L
20	Dec. 2023	Total Phosphorus Weekly Avg. Conc.	1.58 mg/L	0.75 mg/L
2024 NPDES Permit				
21	Jan. 2024	TSS Monthly Avg. Load	25,600.0 lb/d	8,340.0 lb/d
22	Jan. 2024	TSS Weekly Avg. Load	62,290.0 lb/d	10,425.0 lb/d
23	Jan. 2024	TSS Monthly Avg. Conc.	32.9 mg/L	10.0 mg/L
24	Jan. 2024	TSS Weekly Avg. Conc.	69.4 mg/L	15.0 mg/L
25	Jan. 2024	Ammonia Monthly Avg. Conc.	11.79 mg/L	1.8 mg/L
26	Jan. 2024	Ammonia Weekly Avg. Conc.	15.64 mg/L	2.7 mg/L
27	Jan. 2024	Total Phosphorus Monthly Avg. Conc.	1.83 mg/L	0.5 mg/L
28	Jan. 2024	Total Phosphorus Weekly Avg. Conc.	2.55 mg/L	0.75 mg/L
29	Jan. 2024	E. Coli Monthly Geo Mean	313.0 MPN/100mL	126.0 MPN/100mL

30	Jan. 2024	E. Coli Weekly Geo Mean	1,481.0 MPN/100mL	410.0 MPN/100mL
31	Jan. 2024	COD Monthly Avg. Load	57,970.0 lb/d	37,530.0 lb/d
32	Jan. 2024	COD Weekly Avg. Load	151,097.0 lb/d	46,913.0 lb/d
33	Jan. 2024	COD Monthly Avg. Conc.	53.0 mg/L	45.0 mg/L
34	Jan. 2024	COD Weekly Avg. Conc.	112.0 mg/L	67.5 mg/L
35	Feb. 2024	TSS Monthly Avg. Load	257,511.0 lb/d	8,340.0 lb/d
36	Feb. 2024	TSS Weekly Avg. Load	49,145.0 lb/d	10,425.0 lb/d
37	Feb. 2024	TSS Monthly Avg. Conc.	35.5 mg/L	10.0 mg/L
38	Feb. 2024	TSS Weekly Avg. Conc.	45.3 mg/L	15.0 mg/L
39	Feb. 2024	Ammonia Monthly Avg. Conc.	14.41 mg/L	1.8 mg/L
40	Feb. 2024	Ammonia Weekly Avg. Conc.	17.23 mg/L	2.7 mg/L
41	Feb. 2024	Total Phosphorus Monthly Avg. Conc.	1.63 mg/L	0.5 mg/L
42	Feb. 2024	Total Phosphorus Weekly Avg. Conc.	2.33 mg/L	0.75 mg/L
43	Feb. 2024	E. Coli Monthly Geo Mean	981.0 MPN/100mL	126.0 MPN/100mL

44	Feb. 2024	E. Coli Weekly Geo Mean	1,189.0 MPN/100mL	410.0 MPN/100mL
45	Feb. 2024	TSS Percent Removal	84.7%	>=85.0%
46	Feb. 2024	COD Weekly Avg. Load	91,786.0 lb/d	46,913.0 lb/d
47	Feb. 2024	COD Monthly Avg. Conc.	52.3 mg/L	45.0 mg/L
48	Feb. 2024	COD Weekly Avg. Conc.	94.0 mg/L	67.5 mg/L
49	Mar. 2024	TSS Monthly Avg. Load	55,772.0 lb/d	8,340.0 lb/d
50	Mar. 2024	TSS Weekly Avg. Load	168,393.0 lb/d	10,425.0 lb/d
51	Mar. 2024	TSS Monthly Avg. Conc.	59.0 mg/L	10.0 mg/L
52	Mar. 2024	TSS Weekly Avg. Conc.	146.1 mg/L	15.0 mg/L
53	Mar. 2024	Ammonia Monthly Avg. Conc.	13.69 mg/L	1.8 mg/L
54	Mar. 2024	Ammonia Weekly Avg. Conc.	16.6 mg/L	2.7 mg/L
55	Mar. 2024	Total Phosphorus Monthly Avg. Conc.	2.04 mg/L	0.5 mg/L
56	Mar. 2024	Total Phosphorus Weekly Avg. Conc.	4.14 mg/L	0.75 mg/L
57	Mar. 2024	E. Coli Monthly Geo Mean	1,178.0 MPN/100mL	126.0 MPN/100mL

58	Mar. 2024	E. Coli Weekly Geo Mean	7,956.0 MPN/100mL	410.0 MPN/100mL
59	Mar. 2024	COD Weekly Avg. Load	56,853 lb/d	46,913.0 lb/d
60	Mar. 2024	COD Monthly Avg. Conc.	57.5 mg/L	45.0 mg/L
61	Mar. 2024	COD Weekly Avg. Conc.	83.0 mg/L	67.5 mg/L
62	Apr. 2024	Ammonia Monthly Avg. Conc.	7.53 mg/L	1.8 mg/L
63	Apr. 2024	Ammonia Weekly Avg. Conc.	13.81 mg/L	2.7 mg/L
64	Apr. 2024	Total Phosphorus Monthly Avg. Conc.	0.84 mg/L	0.5 mg/L
65	Apr. 2024	Total Phosphorus Weekly Avg. Conc.	1.01 mg/L	0.75 mg/L
66	May 2024	Ammonia Monthly Avg. Conc.	5.1 mg/L	1.8 mg/L
67	May 2024	Ammonia Weekly Avg. Conc.	9.7 mg/L	2.7 mg/L
68	May 2024	Total Phosphorus Monthly Avg. Conc.	0.79 mg/L	0.5 mg/L
69	May 2024	Total Phosphorus Weekly Avg. Conc.	0.97 mg/L	0.75 mg/L
70	June 2024	TSS Monthly Avg. conc.	12.6 mg/L	10 mg/L
71	June 2024	TSS Weekly	17.6 mg/L	15 mg/L

		Avg. Conc.		
72	June 2024	Ammonia Monthly Avg. Conc.	13.29 mg/L	1.8 mg/L
73	June 2024	Ammonia Weekly	17.94 mg/L	2.7 mg/L
74	June 2024	Total Phosphorus Monthly Avg. Conc.	0.68 mg/L	0.5 mg/L
75	June 2024	Total Phosphorus Weekly Avg. Conc.	0.79 mg/L	0.75 mg/L
75	July 2024	TSS Monthly Avg. Conc.	10.2 mg/L	10 mg/L
76	July 2024	TSS Weekly Avg. Conc.	16 mg/L	15 mg/L
77	July 2024	Ammonia Monthly Avg. Conc.	7.74 mg/L	1.8 mg/L
78	July 2024	Ammonia Weekly Avg. Conc.	10.36 mg/L	2.7 mg/L
79	July 2024	Total Phosphorus Monthly Avg. Conc.	0.83 mg/L	0.5 mg/L

These unlawful discharges are continuing.

77. The City's unlawful discharges into the Chattahoochee River have harmed members of the Chattahoochee Riverkeeper by impairing their use and enjoyment of the waters downstream of these discharges.

78. The City's continuing unpermitted discharges alleged herein harm the waters of Georgia, waters of the United States, and the Chattahoochee Riverkeeper and its members, for which harm Chattahoochee Riverkeeper has no plain, speedy, or adequate remedy at law.

79. The Court should issue an enforcement order and injunction order to Defendant City of Atlanta to cease its unlawful discharges of pollutants from its RM Clayton Water Reclamation Center to the Chattahoochee River.

80. The Court should assess civil penalties against the City of Atlanta for violations of Count I of this Complaint under Sections 309(d) and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(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: FAILURE TO MEET MANAGEMENT REQUIREMENTS

81. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if rewritten in their entirety.

82. As set forth above, the City of Atlanta's RM Clayton facility must comply with NPDES Permit No. GA0039012. The City of Atlanta is in violation of its NPDES permit, and each instance constitutes a separate violation of the Clean Water Act. 33 U.S.C. § 1319(d).

83. The City’s NPDES Permit at Part II.A imposes numerous management requirements on the City of Atlanta.

84. Part II.A.1 of the NPDES Permit requires proper operation and maintenance:

1. PROPER OPERATION AND MAINTENANCE

The permittee shall properly³ maintain and operate efficiently all treatment or control facilities and related equipment installed or used by the permittee to achieve compliance with this permit. Efficient operation and maintenance include effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. Back-up or auxiliary facilities or similar systems shall be operated only when necessary to achieve permit compliance.

85. The City of Atlanta is in violation of Part II.A.1 of its NPDES Permit by failing to properly maintain and operate its RM Clayton Water Reclamation Center.

86. EPD’s March 7, 2024, site visit and investigation demonstrate the extent to which the City has allowed the RM Clayton facility to fall into disrepair. The site visit showed that the City has failed to maintain its preliminary treatment equipment, as its drum screens and one of its bar screens were non-operational during the site visit. Similarly, the City has not properly maintained its primary or

³ The 2017 NPDES Permit omits the word “properly” from this management requirement.

secondary clarification systems, with six of the eight primary clarifiers non-operational and nine out of ten secondary clarifiers non-operational during the site visit. Additionally, multiple of the facility's biological nutrient reduction basins had broken diffusers during the site visit. Each of the facility's twenty-two sand filters for tertiary treatment showed issues during EPD's inspection, with three filters offline, one filter backwashing, and the remaining filters ponding so high that the filters were not visible. Finally, there were visible solids in the UV disinfection system and in the treated effluent that is discharged from the outfall directly into the Chattahoochee River.

87. Chattahoochee Riverkeeper's June 17, 2024, site visit showed that these operational problems persist. During the visit, all eight primary clarifiers were non-operational, and many of the secondary clarifiers were offline. The aeration basins, digesters, incinerators, dryer, and UV disinfection system all showed signs of operational issues resulting from years of neglected maintenance. During the site visit, Chattahoochee Riverkeeper did not observe any effort by the City to repair these equipment failures.

88. Part II.A.10 of the NPDES Permit imposes a duty to mitigate:

10. DUTY TO MITIGATE

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge disposal which might adversely affect human health or the environment.

89. The City is in violation of Part II.A.10 of its NPDES Permit because it has not taken reasonable steps to minimize or prevent its discharge of pollutants such as bacteria from the RM Clayton Water Reclamation Center into the Chattahoochee River, which poses health risks to both humans and the environment. Both the March 7, 2024, and the June 17, 2024, site visits, combined with the longstanding and continuing violations of the facility's numeric effluent limitations, make clear that the City has not ensured proper maintenance of its equipment and has thus failed its duty to mitigate these harms.

90. Part II.A.11 of the NPDES Permit imposes a duty to prevent injury to property and downstream users:

11. NOTICE CONCERNING ENDANGERING WATERS OF THE STATE

Whenever, because of an accident or otherwise, any toxic or taste and color producing substance, or any other substance which would endanger downstream users of the waters of the State or would damage property, is discharged into such waters, or is so placed that it might flow, be washed, or fall into them, it shall be the duty of the person in charge of such substances at the time to forthwith notify EPD in person or by telephone of the location and nature of the danger, and it shall be such person's further duty to immediately take all reasonable and necessary steps to prevent injury to property and downstream users of said water.

91. Untreated and inadequately treated sewage is a substance that could endanger and injure downstream users of waters of the State of Georgia and waters

of the United States, including the Chattahoochee River, as bacteria in sewage poses health risks to humans who recreate on the river.

92. The City is in violation of Part II.A.11 of its NPDES permit by failing to take all reasonable and necessary steps to prevent injury to property and downstream users of the waters of the Chattahoochee River resulting from inadequately treated sewage discharged into the Chattahoochee River.

93. Reasonable and necessary steps to prevent injury to property and downstream users include (i) conducting regular and routine maintenance on all equipment in the facility to minimize operational failures; (ii) repairing, in a reasonable time frame, all primary and secondary clarifiers and other non-operational equipment; and (iii) maintaining sufficient staffing to ensure the facility remains operational. Given the risks that untreated and inadequately treated sewage poses to human health and the environment, these steps are reasonable and necessary to protect property and the people who use and enjoy the Chattahoochee River, its tributaries, and downstream waters.

94. The Clean Water Act provides that citizen suits may be brought for violations of “an effluent standard or limitation,” defined to include “a permit or condition” thereof. 33 U.S.C. § 1365(f). “Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action.” 40 C.F.R. § 122.41(a). By violating express conditions of its NPDES Permit No.

GA0039012, including management requirements set forth in Part II.A, the City of Atlanta is in continuing violation of the Clean Water Act.

95. Each of the foregoing acts and failures to act is a separate violation of the Clean Water Act. 33 U.S.C. §§ 1311, 1319(d), 1342.

96. The City of Atlanta's violations of its NPDES Permit commenced at least as of January 2023, when the City's own discharge monitoring reports confirmed that the City failed to meet the effluent limitations imposed by its NPDES Permit, thereby contaminating the Chattahoochee River with elevated levels of ammonia, phosphorus, and other pollutants.

97. The City's violations of its NPDES Permit and the Clean Water Act have harmed members of the Chattahoochee Riverkeeper. The City's violations have impaired members' use and enjoyment of the waters downstream of the unlawful discharges, including the Chattahoochee River and downstream waters.

98. The City's violations of its NPDES Permit and the Clean Water Act harm the waters of State of Georgia, waters of the United States, and the Chattahoochee Riverkeeper and its members, for which harm the Riverkeeper has no plain, speedy, or adequate remedy at law.

99. The Court should issue an enforcement order and injunction order to Defendant City of Atlanta to cease its violations of its NPDES Permit.

100. The Court should assess civil penalties against Defendant City of Atlanta for each of its violations set forth in Count II of this Complaint under Section 309(d) and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365.

REQUEST FOR RELIEF

Wherefore, Plaintiff Chattahoochee Riverkeeper respectfully requests that this Court:

A. Enter a declaratory judgment finding that Defendant City of Atlanta 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 City of Atlanta from continuing to violate the Clean Water Act and the terms and conditions imposed by its NPDES Permit.

C. Order Defendants to pay civil penalties in an amount not to exceed \$66,712 per day per violation for all violations of the Clean Water Act. 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4; 40 C.F.R. § 122.

D. Award Chattahoochee Riverkeeper its reasonable fees, costs, and expenses, including attorneys' fees and expert fees, associated with this litigation; and

E. Grant Chattahoochee Riverkeeper any such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 6th day of September, 2024.

/s/ R. Hutton Brown

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