

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY

STATE OF MARYLAND *
DEPARTMENT OF THE *
ENVIRONMENT, *

Plaintiff, *

SHORERIVERS, INC., DORCHESTER *
CITIZENS FOR PLANNED GROWTH, *
INC., and CHESAPEAKE BAY *
FOUNDATION, INC., *

Plaintiff-Intervenors, *

Civil Action No. C-09-CV-22-000022

v. *

VALLEY PROTEINS, INC. *

Defendant. *

* * * * *

UNOPPOSED MOTION TO INTERVENE AS PLAINTIFFS
BY SHORERIVERS, DORCHESTER CITIZENS FOR PLANNED GROWTH,
AND CHESAPEAKE BAY FOUNDATION

Pursuant to Maryland Rule 2-214 and Maryland Environmental Article § 9-344.1, ShoreRivers, Inc. (ShoreRivers), Dorchester Citizens for Planned Growth (DCPG), and the Chesapeake Bay Foundation, Inc. (CBF), (collectively “Movants”) hereby move to intervene as party plaintiffs in the above-captioned matter filed by Maryland Department of the Environment (“MDE” or “Department”) against Valley Proteins, Inc. ShoreRivers, DCPG, and CBF move to intervene as a matter of right under Maryland Environment Article § 9-344.1. Movants have conferred with counsel for the parties and MDE and Valley Proteins consent to Movants’ motion to intervene.

INTRODUCTION

The Department has filed a complaint against Valley Proteins to enforce violations of the Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit and corresponding state law, as well as violations of the state air permitting laws. MD. CODE ANN., ENVIR. §§ 2-401; 9-322. These violations occurred and are occurring at the processing facility owned and operated by Valley Proteins, which is located at 5420 Linkwood Road, Linkwood, Maryland 21835 within Dorchester County (“Facility”). The Facility is a chicken rendering plant that processes poultry waste products, such as offal, blood, and feathers, into products for sale. The Facility generates industrial wastewater and waste sludge. The wastewater is treated on site and then discharged to the Transquaking River (“River”).

Valley Proteins currently operates its facility under NPDES Permit No. MD0003247/State Discharge Permit No. 99-DP-0024 (“Permit”), pursuant to Section 402 of the CWA. 33 U.S.C. § 1342(b). The Permit was effective March 1, 2001 to February 28, 2006, and has been administratively continued by MDE since 2006. The Permit authorizes Valley Proteins to discharge water pollution from its poultry rendering facility to the Transquaking River in accordance with certain effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

The Permit contains effluent limitations and monitoring requirements for the following pollutants: Fecal Coliform, Total Residual Chlorine, Dissolved Oxygen, Total Nitrogen, Total Phosphorus, pH, Biochemical Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Ammonia (as N), and Oil and Grease. The Permit requires monitoring and reporting on compliance with these effluent limitations via quarterly Discharge Monitoring Reports (“DMRs”), which must be certified, signed, and submitted by the Permittee under penalty of law.

Valley Proteins has continuously and significantly violated the effluent limits in its NPDES Permit. From April 2019 to October 2021, there have been 40 exceedances of the effluent limits set in the NPDES Permit. In addition, inspection reports from the facility reveal over 370 violations of the total residual chlorine (“TRC”) limit from February 2019 to July 2021. Valley Proteins also repeatedly failed to file complete DMRs, and failed to report the TRC violations, among other reporting issues.

PROCEDURAL BACKGROUND

Movants issued a notice of intent to sue letter (“NOI”) to Valley Proteins for violations of the Clean Water Act and state law on April 13, 2021. *See* 33 U.S.C. § 1365(b) (requiring plaintiffs to provide notice sixty days prior to commencing a citizen suit under the Clean Water Act); Notice of Intent to File Citizen Suit for Violations of the federal Clean Water Act, the federal Resource Conservation and Recovery Act, and the Maryland Water Pollution Control Act at Valley Proteins, Inc. - Linkwood Facility NPDES Permit MD0003247 (State Permit 99-DP-0024) [hereinafter “NOI”]. The NOI alleged violations of Valley Proteins’ NPDES Permit, including 24 violations of effluent limits from July 2018 to November 2020, reporting requirements, and other Permit conditions. The NOI also raised concerns with groundwater pollution at the facility.

On February 2, 2022, Movants filed a complaint in federal district court in the District of Maryland under the Clean Water Act citizen suit provision. *ShoreRivers, et al., v. Valley Proteins, Inc.*, No. 1:22-00278 (D.Md. Feb. 2, 2022). The federal complaint alleges violations of Valley Proteins’ NPDES Permit, unpermitted discharges to the Transquaking River, and violations of the Resource Conservation and Recovery Act. The federal complaint seeks declaratory and injunctive relief of the Clean Water Act and the Resource Conservation and Recovery Act, civil penalties, and costs of litigation.

On February 2, 2022, the Department filed a complaint in Dorchester County Circuit Court, alleging violations of the Maryland Environment Article for effluent limit violations of Valley Proteins' water pollution discharge Permit ("State action"). Civil Action No. C-09-CV-22-000022. The State action also alleged violations of Valley Protein's air pollution permit. The State action seeks to enjoin Valley Proteins from further operations that violate Permit conditions and require Valley Proteins to remediate the environmental harm caused by the illegal discharges. The State action also seeks civil penalties.

On February 10, 2022, Movants issued a second notice of intent to sue letter to Valley Proteins for continued violations of the facility's NPDES Permit, as well as additional violations that came to light from citizen observations and during follow-up inspections by the Department.

Movants now timely file this motion to intervene as plaintiffs in this State action in the claims pertaining to violations of the wastewater discharge permit. Movants do not seek intervention in the claims pertaining to violations of the air quality permit. MDE and Valley Proteins consent to this motion.

STATEMENT OF INTEREST

ShoreRivers, Inc. is a 501(c)(3) nonprofit organization established in 2008 dedicated to protecting clean water on the Eastern Shore of Maryland. ShoreRivers is headquartered in Easton, Maryland with field offices in Chestertown, MD and Galena, MD. ShoreRivers' mission is to protect and restore Eastern Shore waterways through science-based advocacy, restoration, and education. ShoreRivers has over 2000 members, over 1000 of whom live on the Eastern Shore of Maryland. ShoreRivers supports its members by utilizing the CWA and other environmental laws to stop pollution that threatens public health, impairs water quality, damages ecosystems, and negatively impacts the ability of its members to use and enjoy the waterways on

the Eastern Shore. ShoreRivers' members include individuals who enjoy many recreational activities in and around the Transquaking River and its watershed including fishing, boating, birdwatching, canoeing, kayaking, and enjoyment of its aesthetic quality

Dorchester Citizens for Planned Growth, Inc., (DCPG) is a 501(c)(3) nonprofit organization founded in 2007 focused on ensuring sustainability and quality of life within the lands and waters of Dorchester County, Maryland. DCPG advocates for the promotion, maintenance, and conservation of the natural resources, farmland, and open spaces of Dorchester County. DCPG is headquartered in Cambridge, MD. DCPG's mission is to provide a public voice on land and water uses. DCPG has over 90 members including volunteers who monitor the Transquaking River and other waterways in Dorchester County. DCPG's members use the water and shoreline in and around the Transquaking River and Higgins Mill Pond for recreation including boating, paddling, fishing, wildlife watching, and enjoying aesthetic value.

CBF is a nonprofit corporation based in Annapolis, Maryland, with offices in Easton, Maryland; Harrisburg, Pennsylvania; and Richmond and Virginia Beach, Virginia. CBF operates education centers on the shores of the Chesapeake Bay in Maryland and Virginia. CBF is the only independent 501(c)(3) organization dedicated solely to restoring and protecting the Chesapeake Bay and its tributary rivers and streams by improving water quality and reducing pollution. CBF has over 200,000 members, volunteers, and electronic subscribers, including 71,900 members in the State of Maryland. CBF's members participate in resource restoration activities throughout the Chesapeake Bay and Transquaking River watersheds including shoreline protection projects, tree planting, and oyster cultivation and dispersal. In addition, CBF members use the waters of the Chesapeake Bay and Transquaking River for bird watching, boating, kayaking, sailing, fishing, swimming, and other aesthetic and recreational pursuits. CBF

has spent over 50 years working to reduce and mitigate pollution in the Chesapeake Bay region. Those efforts include advocacy, litigation, student and teacher education, lobbying, and restoration.

GROUNDNS FOR INTERVENTION

I. MOVANTS HAVE AN UNCONDITIONAL RIGHT TO INTERVENE AS A MATTER OF LAW UNDER MARYLAND ENVIRONMENT ARTICLE § 9-344.1.

Maryland Rule 2-214 provides that “[u]pon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law[.]” Md. Rule 2-214(a)(1). The Maryland Environment Article provides Movants with an unconditional right to intervene as a matter of law, stating that:

a person who meets the threshold standing requirements under the federal Clean Water Act has an unconditional right and the authority to intervene in a civil action that the State initiates in State court to require compliance with ... [a]ny discharge permit, effluent limitation, or order issued by the Department in accordance with this subtitle.

MD. CODE ANN., ENVIR. § 9-344.1(a)(3). Movants meet the standing requirements under the federal Clean Water Act, and therefore have the right to intervene in this matter.

The citizen suit provision of the Clean Water Act broadly provides that “any citizen may commence a civil action on his own behalf” against “any person” alleged to be in violation of “an effluent standard or limitation” under the Act. 33 U.S.C. § 1365(a)(1). Citizen suits under the Clean Water Act are also subject to Article III standing requirements of the Constitution. “Thus, so long as a citizen plaintiff satisfies the constitutional standing requirements, there is standing to bring a suit under the Clean Water Act.” *See Ohio Valley Envtl. Coal., Inc. v. Maple Coal Co.*, 808 F. Supp. 2d 868, 879 (S.D. W.Va. 2011) (citing *Friends of the Earth v. Gaston Copper Recycling Corp.*, 629 F.3d 387, 396 (4th Cir. 2011) (noting the Clean Water Act “confers standing on any person or persons having an interest which is or may be adversely affected.”)).

To show Article III standing, a plaintiff must have suffered an “injury-in-fact” that is fairly traceable to the challenged action of the defendant and that can likely be redressed by a favorable decision by the court. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). To show injury-in-fact under the citizen suit provision of the Clean Water Act, a plaintiff may claim recreational or aesthetic injury. *See Friends of the Earth v. Laidlaw Envtl. Servs., Inc.* 528 U.S. 167, 183 (2000). When the suit involves a defendant discharging pollutants into a body of water, plaintiffs can establish standing by demonstrating that they “use the affected area and are persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity.” *Id.* (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)).

An organization has Article III standing to sue on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1997); *Am. Canoe Ass’n, Inc. v. Murphy Farms, Inc.*, 326 F.3d 505, 517 (4th Cir. 2003).

Movant intervenors meet the standing requirements under the Clean Water Act, as established by Article III of the Constitution. Movants represent the interests of their members who live, recreate, and use the Transquaking River, and whose interests are harmed and/or threatened by the pollution discharged by the Facility. The interests of Movants’ members are germane to the purpose of the respective organizations—to protect local water quality and natural resources. *See* Affidavit of Alison Prost, ¶ 6; Affidavit of Matthew Pluta, ¶ 4; Affidavit of Fred Pomeroy, ¶ 3. Exhibit A. Additionally, CBF’s organizational interests in its education and restoration programming on the Transquaking River and the Chesapeake Bay is harmed by Valley

Proteins' illegal discharges. Prost Aff. ¶ 7. The harm to Movant' interests can be redressed by a favorable ruling from this court requiring Valley Proteins to comply with the Maryland Environment Article.

A. ShoreRivers has standing to sue on behalf of its members.

ShoreRivers, Inc. is a 501(c)(3) nonprofit organization established in 2017 dedicated to protecting clean water on the Eastern Shore of Maryland. ShoreRivers is headquartered in Easton, Maryland with field offices in Chestertown, MD and Galena, MD. ShoreRivers' mission is to protect and restore Eastern Shore waterways through science-based advocacy, restoration, and education.

ShoreRivers has over 2000 members, over 1000 of whom live on the Eastern Shore of Maryland. ShoreRivers supports its members by utilizing the CWA and other environmental laws to stop pollution that threatens public health, impairs water quality, damages ecosystems, and negatively impacts the ability of its members to use and enjoy the waterways on the Eastern Shore. ShoreRivers' members include individuals who enjoy many recreational activities in and around the Transquaking River and its watershed including fishing, boating, birdwatching, canoeing, kayaking, and enjoyment of its aesthetic quality. *See* Affidavits of Matt Pluta, Jake Shaner, Barbara Hale, and Franco Primavesi. Exh. A. ShoreRivers' member Jake Shaner regularly fishes and canoes on the Transquaking River and is concerned that "Valley Proteins is polluting a very nice tributary with good fishing." Shaner Aff. ¶¶ 4, 9. Although he enjoys swimming, Mr. Shaner does not swim in the Transquaking River because he is concerned about the poor water quality harming his health. Shaner Aff. ¶ 10. ShoreRivers' member Barbara Hale regularly boats on the Transquaking River with her family to birdwatch and enjoy the wildlife along the River. Hale Aff. ¶¶ 8, 10–11. Ms. Hale and her family do not swim in the Transquaking River for "fear that they

would get sick from the polluted water.” Hale Aff. ¶ 11. ShoreRivers’ member Franco Primavesi does not swim in the Transquaking or allow his family to swim there because “the water quality is so poor that it poses a health risk if we were to swim in it.” Primavesi Aff. ¶ 15.

ShoreRivers members who live near the Facility get drinking water from wells and are concerned about groundwater contamination that could impact their health. Shaner Aff. ¶ 6; Hale Aff. ¶¶ 2, 5. Mr. Shaner lives close to the facility, and often smells “a very pungent, terrible odor” outside his home. Shaner Aff. ¶ 6. Mr. Primavesi also lives nearby and for years has routinely smelled noxious odors at his properties that blow onto his property from a southwest direction. Primavesi Aff. ¶ 6–7. Mr. Primavesi has driven by the Facility and smelled “the exact same odor” that is routinely blown onto his properties from the southeast. Primavesi Aff. ¶ 7. The odors are so strong that at certain times Mr. Primavesi cannot leave his house and cannot go outside. Primavesi Aff. ¶ 9. Mr. Primavesi is concerned about impacts to his property value from the oppressive odors and impacts to the Transquaking ecosystem from the pollution coming from the Facility. Primavesi Aff. ¶ 9, 11, 14.

ShoreRivers’ members are harmed by the violations alleged in the state’s complaint. Pollution in the Transquaking River, its tributaries, and Higgins Mill Pond—including pollution from the Facility—impairs water quality, threatens public health, and harms river habitats and aquatic ecosystems. Valley Proteins violations of the Maryland state law have resulted in excess pollution, which impairs the water quality and contributes to algae blooms, fish kills, and unsafe swimming conditions in the Transquaking River and its tributaries. This pollution has diminished ShoreRivers’ members’ use and enjoyment of these waters by making it less likely that they will continue to enjoy recreating on and around them in the future. Pluta Aff. ¶¶ 13–14; Shaner Aff. ¶¶ 9, 11; Hale Aff. ¶¶ 16, 19; Primavesi Aff. ¶¶ 15, 17–18.

B. DCPG has standing to sue on behalf of its members.

Dorchester Citizens for Planned Growth, Inc., (DCPG) is a 501(c)(3) nonprofit organization founded in 2007 focused on ensuring sustainability and quality of life within the lands and waters of Dorchester County, Maryland. DCPG advocates for the promotion, maintenance, and conservation of the natural resources, farmland, and open spaces of Dorchester County. DCPG is headquartered in Cambridge, MD. DCPG's mission is to provide a public voice on land and water uses. DCPG has over 90 members including volunteers who monitor the Transquaking River and other waterways in Dorchester County.

DCPG's members use the water and shoreline in and around the Transquaking River and Higgins Mill Pond for recreation including boating, paddling, fishing, wildlife watching, and enjoying aesthetic value. *See* Affidavit of Barbara Hale, ¶ 10; Affidavit of Frederick Pomeroy, ¶¶ 11, 14; Affidavit of Richard Ball, ¶¶ 8–9. Exh. A. DCPG members have conducted water quality sampling on the Transquaking River for more than ten years and have documented high nutrient levels in the River. *See* Pomeroy Aff. ¶¶ 6, 13; Ball Aff. ¶ 4. DCPG member Frederick Pomeroy would regularly fish and kayak on the Transquaking River, but no longer does so because of the pollution from the facility. Pomeroy Aff. ¶¶ 11, 14–15. DCPG member Richard Ball no longer fishes or comes into contact with the Transquaking River because of poor water quality and potential threats to the environment and human health. Ball Aff. ¶ 10.

DCPG's members are harmed by the actions of Valley Proteins, Inc. and the violations raised by MDE in the underlying complaint. Excess nitrogen, phosphorus, fecal coliform, total residual chlorine, and biological oxygen demand—such as exceedances documented from the Facility—cause algae blooms, fish kills, and unsafe water quality. The interests of DCPG's members are negatively impacted by poor water quality in the Transquaking River and Higgins

Mill Pond because it has diminished their ability to recreate on and enjoy the aesthetic value in and around these waters. *See* Hale Aff. ¶ 19; Pomeroy Aff. ¶ 18; Ball Aff. ¶ 13.

C. CBF has standing on behalf of the organization and its members.

Chesapeake Bay Foundation, Inc. (CBF), founded in 1967, is a 501(c)(3) non-profit organization dedicated to protecting the Chesapeake Bay and its rivers and streams by improving water quality and reducing pollution. CBF is headquartered in Annapolis, Maryland, with offices in Easton, Maryland; Richmond and Virginia Beach, Virginia; and Harrisburg, Pennsylvania. CBF represents more than 200,000 members across the country, including more than 71,900 in Maryland. CBF's mission is to "Save the Bay" and keep it saved, as defined by reaching a 70 on CBF's Health Index. For over 50 years, CBF has worked to restore and protect the Chesapeake Bay through education, advocacy, restoration, and litigation.

CBF's programs, resources, and interests are harmed by the current operation of the Facility, including permit violations polluting surface water, groundwater contamination, and other activities at the Facility. CBF has spent millions of dollars restoring waterways; advocating at the local, state, and federal level for clean water protections; educating students and teachers about the value of the Chesapeake Bay and its tributaries. Prost Aff. ¶ 7. These efforts are harmed by the continuing pollution violations at the Valley Proteins Facility – a large, industrial polluter on the Eastern Shore of Maryland.

CBF's restoration efforts are threatened by the pollution discharged from the Facility to the Transquaking River. CBF conducts extensive restoration projects throughout the Bay watershed, including the installation of best management practices ("BMPs") such as tree plantings to create streamside buffers and wetlands restoration projects. Prost Aff. ¶¶ 12–13. One such project occurred in Dorchester County, Maryland along the Chicamacomico River, a

tributary of the Transquaking River. Over the course of two planting events in the fall of 2015 and the spring of 2016 with over 70 volunteers at each event, CBF planted over 1,800 trees and shrubs across ten acres of the banks of the Chicamacomico River to create a riparian buffer.

Prost Aff. ¶ 12. One of the purposes of the tree plantings is to reduce stormwater runoff and the pollution it carries to the River. CBF's restoration projects, which represent significant financial and staff resources, are undermined and potentially offset by continued pollution from the Facility.

CBF's education programming is harmed by the pollution discharged from the Facility. CBF operates its education programs in Maryland, Virginia, Pennsylvania, and the District of Columbia, taking students and teachers on trips to learn about Bay ecology and the threats facing the Bay's recovery. Prost Aff. ¶ 14. CBF spends over \$4 million a year on education programming. *Id.* CBF owns and operates the Karen Noonan Education Center in Crocheron, Maryland, located at the mouth of Fishing Bay, where the Transquaking River drains before entering the Chesapeake Bay. Prost Aff. ¶ 15. In fiscal year 2019, CBF's educators took approximately 2,000 students and teachers out on expeditions from the Karen Noonan Center. *Id.* These trips include boat trips in Fishing Bay and kayaking excursions on the Transquaking River. Prost Aff. ¶¶ 16–17.

Polluted waters significantly impact the efficacy of CBF's education trips. When waters are polluted, educators and students must limit contact with the water, thereby hampering the ability of students to investigate a given waterbody. Prost Aff. ¶ 18. Pollution from the Facility contributes to harmful algae blooms and high levels of bacteria in the Transquaking River, which in addition to harming water quality can pose a threat to human health. This pollution directly

impacts the CBF education program's use of the Transquaking River and the surrounding watershed. Thus, CBF has standing in its own right.

CBF's members are harmed by the operations at the Valley Proteins Linkwood Facility. CBF members engage in a wide array of activities around the Bay watershed's Eastern Shore, including fishing, crabbing, boating, swimming, hiking, bird watching, and oyster-gardening (growing oysters in baskets attached to a dock: <https://www.cbf.org/how-we-save-the-bay/programs-initiatives/frequently-asked-questions-about-oyster-gardening.html>). Prost Aff. ¶ 21. In this way, CBF members rely on a healthy Bay watershed for economic, recreational, and aesthetic interests.

CBF members who recreate in the Transquaking River are harmed by the operations at the Facility. Excess nutrient pollution in the surface water and the groundwater causes algal blooms in the River, leading to fish kills and unsafe water for human contact. Members are no longer able to use the Transquaking River in the way they desire. CBF member Richard Ball has fished the Transquaking River since 1966 but has "watched the River die over the last 30 years." Ball Aff. ¶ 9. Mr. Ball regularly takes water quality samples of the Transquaking River, and is "afraid to touch the water" and wears "vinyl gloves and high boots to avoid contact with the water." Ball Aff. ¶ 10. The nutrient and sediment pollution from Valley Proteins contributes to poor water quality in the Transquaking River watershed and downstream waterbodies, which threatens and/or harms CBF members' health, livelihoods, and interests in the Bay watershed. Thus, CBF has standing to represent its members.

ShoreRivers, DCPG, and CBF meet the requirements for Article III standing to bring a citizen suit under the Clean Water Act, and therefore meet the requirements of Maryland Environment Article § 9-344.1, which provides an "unconditional right to intervene as a matter of

law” as required by Maryland Rule 2-214(a)(1). Movants members’ recreational and aesthetic interests in the Transquaking River are harmed by Valley Proteins’ violations of its NPDES Permit. These interests may be redressed by a favorable ruling by this court requiring Valley Proteins to comply with the Maryland Environment Article.

CONCLUSION

Movants meet the requirements under Maryland Rule 2-214(a) to intervene as a matter of right. Therefore, the Movant intervenors respectfully ask this court to grant this unopposed motion to intervene as plaintiffs in the above-captioned case.

Dated: February 11, 2022

Respectfully submitted,

/s/ Patrick DeArmey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11th day of February, 2022, a copy of the forgoing Motion to Intervene was served by electronic means on all counsel of record by the Court's filing system. A copy was sent via first class mail to counsel for the Defendant.

/s/ Brittany Wright
Brittany Wright