

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SUNCOAST WATERKEEPER, TAMPA
BAY WATERKEEPER, and OUR
CHILDREN’S EARTH FOUNDATION,

Civil Case No.: 8:20-cv-1160

Plaintiffs,

vs.

TRADEMARK METALS RECYCLING
LLC,

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

SUNCOAST WATERKEEPER (“SCWK”), TAMPA BAY WATERKEEPER (“TBWK”), and OUR CHILDREN’S EARTH FOUNDATION (“OCE”) (collectively, “Plaintiffs”), by and through their counsel, hereby allege:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

2. On March 10, 2020, Plaintiffs provided notice of Defendant’s violations of the Act, and of Plaintiffs’ intention to file suit against Defendant (“notice letter”), to the

Administrator of the United States Environmental Protection Agency (“EPA”); the Regional Administrator of EPA Region 4; the Secretary of the Florida Department of Environmental Protection (“DEP”); the Director of the Southwest District of the DEP; and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of Plaintiffs’ notice letter is attached as Exhibit A, and is incorporated by reference.

3. More than sixty days have passed since notice was served on Defendant and the State and federal agencies. Plaintiffs are informed and believe, and thereupon allege, that neither the EPA nor the State of Florida has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action’s claim for civil penalties is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

4. Venue is proper in the Middle District of Florida pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

II. INTRODUCTION

5. Defendant, a scrap metal recycler, discharges polluted stormwater from six metal recycling yards in the Tampa Bay and Sarasota Bay area. These discharges are in violation of the Clean Water Act and the State of Florida’s Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity.

6. Florida’s Multi-Sector Generic Permit is a National Pollution Discharge Elimination System (“NPDES”) permit required under the Act that is issued by the DEP under the authority of Florida Statute Section 403.0885, which authorizes Florida to implement the NPDES program pursuant to authority delegated to the State of Florida by the EPA. Pursuant to Florida Administrative Code (“F.A.C.”) Rule 62-621.300(5)(a), Florida adopted the EPA’s original Multi-Sector General Permit issued on September 29, 1995 (60 Fed. Reg. 50804) and subsequent corrections and modifications as amended on February 9, 1996 (61 Fed. Reg. 5248), February 20, 1996 (61 Fed. Reg. 6412), August 7, 1998 (63 Fed. Reg. 42534), September 30, 1998 (63 Fed. Reg. 52430), and January 19, 1999 (64 Fed. Reg. 2898) (hereinafter collectively

referred to as the “MSGP”). Defendant’s violations of the substantive and procedural requirements of the MSGP and the Act are ongoing and continuous.

7. With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations, such as those conducted by Defendant, pour into storm drains and local waterways. In most of the Sarasota Bay and Tampa Bay area, storm water flows untreated either directly, or through municipal storm drain systems into Sarasota Bay, Tampa Bay, and other receiving waters. Stormwater pollution accounts for the majority of the pollution entering the Sarasota Bay and Tampa Bay environment each year. The effects of nonpoint source pollutants on specific waters vary and may not always be fully assessed. Stormwater pollution poses a health risk to humans, harms marine life, closes beaches, contaminates the ocean, and harms the environment. These contaminated storm water discharges can and must be controlled for the Sarasota Bay and Tampa Bay ecosystems to regain their health.

8. Tampa and Sarasota Bay area waters are ecologically sensitive estuarine systems with special aesthetic, economic and recreational significance for people living in the surrounding communities. Included amongst these resources are specially recognized and protected Aquatic Preserves and designated Outstanding Florida Waters, pursuant to 62-302.400 F.A.C., as worthy of special water quality protections because of their natural attributes. Portions of the Tampa and Sarasota Bay estuaries, which receive toxic metals and other contaminants in storm water discharges from Defendant’s industrial activities are listed on the State of Florida’s Clean Water Act Section 303(d) list of impaired water bodies. A water body that is listed as impaired cannot support its designated beneficial uses. The beneficial uses of the waters that receive pollutants from Defendant’s industrial stormwater discharges include habitat support for commercial fishing and sport fishing, estuarine habitat, wildlife habitat, fish migration, fish spawning, preservation of rare and endangered species, shellfish propagation and harvesting, contact and non-contact water recreation, industrial service and agricultural water supply, and navigation. DEP Water Quality Standards 62-302 (2010).

9. Tampa Bay and Sarasota Bay area waters provide essential habitat for dozens of

fish and bird species as well as macro-invertebrate and invertebrate species. Storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that Tampa Bay and Sarasota Bay area waters have for people in the surrounding communities. The public's use of Tampa Bay and Sarasota Bay area waters for recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation exposes many people to toxic metals and other contaminants in storm water discharges and impairs those activities.

III. PARTIES

10. Plaintiff Suncoast Waterkeeper is a non-profit public benefit corporation with members throughout Southwest Florida, including Pinellas, Hillsborough, Sarasota, Manatee, and Charlotte Counties. SCWK is dedicated to protecting and restoring the Florida Suncoast's waterways on behalf of its members through enforcement, fieldwork, advocacy, and environmental education for the benefit of the communities and SCWK's members that rely upon these precious coastal resources. To further its mission, SCWK actively seeks federal and state implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members. SCWK has been registered as a non-profit corporation in Florida since 2012 and has maintained its good and current standing in Florida since that time. SCWK is a licensed member of Waterkeeper Alliance, Inc., an international non-profit environmental organization, made up of over 300 separate Waterkeeper programs, such as SCWK. SCWK's office is located in Sarasota, Florida.

11. Members of SCWK use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. Members of SCWK use those waters for fishing, boating, body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation. Defendant's discharges of pollutants threaten or impair each of those uses or contribute to such threats and impairments. Thus, the interests of SCWK's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Act and the MSGP. The relief

sought herein will redress the harms to SCWK caused by Defendant's activities.

12. Plaintiff Tampa Bay Waterkeeper is a non-profit public benefit corporation organized under the laws of the State of Florida with members throughout the Tampa Bay watershed. TBWK is dedicated to protecting and improving the Tampa Bay watershed while ensuring swimmable, drinkable and fishable water for all. TBWK's approach combines sound science, policy advocacy, grassroots community engagement and education to stand up for clean water together as a community, ensuring a clean and vibrant future for the Tampa Bay watershed. To further its mission, TBWK actively seeks federal and state implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members. TBWK has been registered as a non-profit corporation in Florida since 2017 and, like SCWK, is a licensed member of Waterkeeper Alliance, Inc. TBWK's office is located in St. Petersburg, Florida.

13. Members of TBWK use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. Members of TBWK use those waters for fishing, boating, body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation. Defendant's discharges of pollutants threaten or impair each of those uses or contribute to such threats and impairments. Thus, the interests of TBWK's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Act and the MSGP. The relief sought herein will redress the harms to TBWK caused by Defendant's activities.

14. Plaintiff Our Children's Earth Foundation is a non-profit environmental organization with members living throughout western Florida, including members that live in close proximity to Tampa and Sarasota Bays. OCE's mission is to promote public awareness of domestic and international human rights issues and environmental impacts through education, art, and private enforcement actions for the benefit of children and other populations who are the most vulnerable to pollution. OCE seeks to prevent environmental damage wherever possible and ensure that appropriate environmental protection statutes are being followed. Throughout its

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