

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SUNCOAST WATERKEEPER,

Plaintiff,

vs.

ATLANTIC TNG, LLC,

Defendant.

Civil Case No.: 8:21-cv-02168

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

SUNCOAST WATERKEEPER (“SCWK” or “Plaintiff”), by and through its counsel, hereby alleges:

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 June 24, 2021, Plaintiff provided notice of Defendant’s violations of the Act, and of Plaintiff’s 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 Plaintiff's 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. Plaintiff is informed and believes, and thereupon alleges, 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 concrete manufacturer, discharges polluted stormwater from its manufacturing facility located in Sarasota. 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 area, storm water flows untreated either directly, or through municipal storm drain systems into Sarasota Bay and other receiving waters. Stormwater pollution accounts for the majority of the pollution entering the Sarasota 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 ecosystem to regain its health.

8. High concentrations of total suspended solids (“TSS”) degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator-prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons (“PAHs”), are absorbed onto TSS. Thus, higher concentrations of TSS result in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

9. 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 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 Whitaker Bayou, 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 aquatic life (estuarine and freshwater habitat, fish migration, fish spawning, preservation of rare and endangered aquatic species, shellfish propagation,) primary contact and recreation, navigation, and fish consumption.

10. 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 Sarasota Bay area waters have for people in the surrounding communities. The public's use of 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

11. 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 350 separate Waterkeeper programs, such as SCWK. SCWK's office is located in Sarasota, Florida.

12. 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.

13. Plaintiff brings this action on behalf of its members, respectively. Plaintiff's interest in reducing Defendant's discharges of pollutants into Sarasota Bay and its tributaries and requiring Defendant to comply with the requirements of the MSGP are germane to SCWK's purposes. Litigation of the claims asserted and relief requested in this Complaint does not require the participation in this lawsuit of individual members of any of SCWK.

14. Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and one or more of each of its members, for which harm it has no plain, speedy or adequate remedy at law.

15. Defendant ATLANTIC TNG LLC ("Atlantic TNG") is a limited liability corporation that owns and/or operates an industrial facility located at 1701 Myrtle Street, Sarasota, FL 34234 (the "Facility").

IV. STATUTORY BACKGROUND

Clean Water Act

16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

17. Section 402(p) of the Act establishes a framework for regulating municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). It authorizes the EPA to issue NPDES permits directly and also to delegate the authority to issue NPDES

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