

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

UAVE LLC,

Defendant.

Case No.

COMPLAINT

INTRODUCTION

1. Defendant UAVE LLC (“UAVE”) operates a sand and gravel mining and processing facility at 973 University Ave in Norwood, Massachusetts (the “Facility”). The Facility is operated on approximately 15 acres of mostly deforested land on a steep slope covered by exposed sediment such as sand and gravel.

2. UAVE discharges polluted stormwater from its Facility into a wetland system connected to Purgatory Brook (“Purgatory Brook Wetlands”). Purgatory Brook is a tributary of the Neponset River. UAVE never applied for and never received a federal industrial stormwater discharge permit for these discharges, as is required by the federal Clean Water Act. 33 U.S.C. § 1251 et seq. (the “Clean Water Act” or “the Act”). UAVE does not properly monitor or control its stormwater discharges, as is required by the Act.

3. Wetlands play an essential role in the ecology and hydrology of watersheds. Among other things, wetlands provide habitat for important species, protect downstream water quality, and prevent flooding. UAVE’s stormwater contains pollutants including sediment, the

most significant cause of water quality degradation in the Nation's waters. Excessive sediment discharged to wetlands destroys habitat, harms aquatic organisms, and can contribute to flooding.

4. UAVE's discharges of stormwater to the Purgatory Brook Wetlands are in violation of the Clean Water Act. The Commonwealth of Massachusetts (the "Commonwealth") brings this civil suit to enforce the requirements of the Act. The Commonwealth seeks injunctive relief, civil penalties, and other relief the Court deems appropriate to redress UAVE's illegal discharges of pollution.

JURISDICTION AND VENUE

5. 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).

6. On February 19, 2020, the Commonwealth provided notice of UAVE's violations of the Clean Water Act, and of its intention to file suit against UAVE (the "Notice Letter"), to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region 1; the Commissioner of the Massachusetts Department of Environmental Protection ("MassDEP"); and to UAVE, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

7. More than sixty days have passed since notice was served.

8. This action is not barred by any prior state or federal enforcement action addressing the violations alleged in this complaint.

9. The Commonwealth has an interest in protecting for its residents the integrity of Massachusetts waters, and the related health, safety, economic, recreational, aesthetic, and environmental benefits those waters provide. The interests of the Commonwealth have been, are being, and will continue to be adversely affected by UAVE's failure to comply with environmental

laws, as alleged in this Complaint. The requested relief will redress the harms to the Commonwealth caused by UAVE's activities. UAVE's continuing commission of the acts and omissions alleged in this Complaint will irreparably harm the Commonwealth, for which harm it has no plain, speedy, or adequate remedy at law.

10. Venue is proper in this Court 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.

PARTIES

11. Plaintiff is the Commonwealth, appearing by and through the Attorney General.

12. The Attorney General is the chief law officer of the Commonwealth, with offices at One Ashburton Place, Boston, Massachusetts. She is authorized to bring this action and to seek the requested relief under G.L. c. 12, §§ 3 and 11D.

13. Defendant UAVE is a domestic limited liability corporation that operates a mineral mining and dressing facility at 973 University Ave, Norwood, Massachusetts and lists its location where records are maintained as 1039 East Street, Dedham, Massachusetts.

STATUTORY BACKGROUND

Federal Clean Water Act Requirements

Prohibition on Unauthorized Discharges of Pollutants

14. The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by EPA under the National Pollutant Discharge Elimination System ("NPDES"). *See* Sections 301(a), 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

15. Industrial stormwater is runoff from precipitation (rain or snow) that lands on industrial sites such as mineral mining and dressing facilities. This runoff is often polluted by materials that are handled or stored at such sites.

16. Stormwater is the leading cause of water quality impairment in Massachusetts. During every rain or snowmelt event, runoff flows over the land surface, picking up potential pollutants such as sediment, nutrients, metals and petroleum by-products. Polluted stormwater runoff can be harmful to plants, animals, and people. Excess sediment clouds the water, makes it difficult or impossible for aquatic plants to grow, and destroys aquatic habitats. Excess nutrients cause algae blooms that reduce dissolved oxygen in the water column, harming fish and other aquatic organisms. Bacteria and other pathogens can wash into swimming areas and create health hazards. Toxic pollutants can poison aquatic life. Land animals and people can become sick from eating diseased fish or ingesting polluted water.

17. Impacts from stormwater pollution, including sediment and other pollutants, pose particular risks to wetlands. Wetlands are among the most productive ecosystems in the world, comparable to rain forests and coral reefs. Wetlands play an integral role in the ecology and hydrology of the watershed. The combination of shallow water, high levels of nutrients, and high primary productivity is ideal for the growth of organisms that form the base of the food web and feed many species of fish, amphibians, shellfish, and insects. Many species of birds and mammals rely on wetlands for food, water, and shelter, especially during migration and breeding. The holding capacity of wetlands also prevents floods and erosion. Wetlands function as natural sponges that trap and slowly release surface water, rain, snowmelt, groundwater, and flood waters. Trees, root mats, and other wetland vegetation also slow the speed of flood waters and distribute them more slowly over the floodplain. Wetlands store carbon within their plant communities and

soil instead of releasing it to the atmosphere as carbon dioxide. Thus, wetlands help to moderate global climate conditions. Stormwater contaminated with sediment can harm wetlands by, among other things, suffocating the native species and allowing noxious and invasive species to come in and dominate the area. Sedimentation can also decrease wetland volume, decrease the duration that wetlands retain water, and change plant community structure. This can severely harm vegetation, soils, and downstream water quality and significantly increase the risk of flooding.

18. To minimize polluted stormwater discharges from industrial facilities, EPA has issued a general industrial stormwater permit (“Stormwater Permit”) under the NPDES program. EPA first issued the Stormwater Permit in 1995 and reissued the permit in 2000, 2008, and 2015. *See* 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 80 Fed. Reg. 34403 (June 4, 2015).

19. Mineral mining and dressing facilities are subject to the requirements of the Stormwater Permit. Stormwater Permit, Appendix D, pg. D-3. Therefore, mineral mining and dressing facilities must obtain coverage under the Stormwater Permit and stormwater discharges without such permit coverage are unlawful. *See* Sections 301(a), 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

20. The Stormwater Permit requires these facilities to, among other things:
- a. prepare a stormwater pollution prevention plan (“SWPPP”) that, among other things, describes the facility and identifies all stormwater outfalls, Stormwater Permit, pg. 31;
 - b. submit to EPA a “Notice of Intent” to be covered by the Stormwater Permit that lists all stormwater outfalls by a unique 3-digit code and corresponding latitude and longitude coordinates, Stormwater Permit, Appendix G;

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