

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF  
MASSACHUSETTS,

Plaintiff,

v.

KANE SCRAP IRON & METAL, INC.,

Defendant.

Case No.

**COMPLAINT**

**INTRODUCTION**

1. Kane Scrap Iron & Metal, Inc. (“Kane”) discharges industrial stormwater contaminated with lead and other pollutants from its scrap metal facility at 184 East Meadow Street, Chicopee, Massachusetts (the “Facility”) into the City of Chicopee’s municipal storm drain system, where it flows untreated to the Chicopee River. Kane’s stormwater contains excessive amounts of lead, zinc, aluminum, iron, copper, chemical oxygen demand (“COD”), and total suspended solids (“TSS”). Kane has not properly monitored its stormwater discharges because it has failed to sample from at least two discharge locations or “outfalls.” But, even its own incomplete sampling results show concentrations of contaminants many times higher than benchmark standards established by the United States Environmental Protection Agency (“EPA”). For example, as recently as the second quarter of 2019 (April -June), Kane’s stormwater discharges from its outfall #1 exceeded the benchmarks for lead by 609% (more than seven times the limit), aluminum by 241% (more than three times the limit), COD by 369% (almost five times

the limit), iron by 386% (almost five times the limit), and zinc by 1020% (more than eleven times the limit).

2. Kane's failure to take adequate corrective action to eliminate these excessive pollutant discharges and to otherwise properly control and monitor the quality of its stormwater discharges violate the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act" or "the Act") and the terms of a stormwater permit issued to Kane by the United States Environmental Protection Agency ("EPA").

3. Kane stores and processes scrap materials outdoors at its Facility. The Facility spans approximately 4-5 acres. Kane moves raw material, final processed material, and waste material ("Industrial Materials") around and off the Facility with heavy equipment and vehicles. Kane and persons that visit the Kane Facility in the ordinary course of business scatter these Industrial Materials around the Facility, including on its ground surface. As illustrated in the photograph below, much of the surface of the Facility is strewn with Industrial Materials. There are large uncovered piles of Industrial Materials throughout the Facility. See also Exhibit A (photos of the Facility).



4. Rain and snow melt (jointly “stormwater”) land on Industrial Material piles, equipment, the ground surface, and Industrial Materials that are present throughout the Facility. Stormwater on the Facility picks up pollutants, including heavy metals, and then flows untreated to the Chicopee River via at least four municipal catch basins on East Meadow Street.

5. Excessive heavy metals in runoff pose a long-term threat to aquatic ecosystems, the food chain, and human health. Once introduced into the aquatic environment, lead and other heavy metals such as zinc, aluminum, iron, and copper will mix in the water column, settle into sediments, or be consumed by biota. Heavy metals are readily dissolved in water, making them easily absorbed by aquatic organisms such as fish and invertebrates. Lead is particularly toxic to organisms even at very low concentrations. Excessive levels of heavy metals in the aquatic environment can disturb organisms’ growth, metabolism, and reproduction. The presence of heavy metals in bottom-sediment is a long-term source of aquatic contamination because the metals will be slowly released into the environment over time and will become re-mobilized in times of

flooding or other disruptive events. Heavy metals tend to bioaccumulate, posing a threat to species higher up on the food chain, such as humans.

6. The Facility's stormwater is discharged untreated via the municipal storm drain system to the Chicopee River within an area designated "Core Habitat" for state-listed endangered species. The confluence of the Chicopee and Connecticut Rivers, downstream from the Facility, has been designated as estimated and priority habitat for several state-listed endangered species. Endangered species in the area include the Shortnose Sturgeon, the Bald Eagle, the Riverine Clubtail (dragonfly), the Yellow Lampmussel (mussel), and the Arrow Clubtail (dragonfly). These species' habitats may be impacted by Kane's unlawful stormwater discharges.

7. 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 Kane's illegal discharges of pollution.

### **JURISDICTION AND VENUE**

8. 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).

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

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

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

12. 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 Kane's failure to comply with the Clean Water Act, as alleged in this Complaint. The requested relief will redress the harms to the Commonwealth caused by Kane's activities. Kane's continuing acts and omissions, as alleged in this Complaint, will irreparably harm the Commonwealth, for which harm it has no plain, speedy, or adequate remedy at law.

13. Venue is proper in the District Court of Massachusetts 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**

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

15. 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.

16. Defendant Kane, Inc. is a domestic corporation with its principle address listed as 148 Croyden Terrace, Springfield, Massachusetts.

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