

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

v.

JOSEPH FREEDMAN CO., INC.,

Defendant.

Case No. 3:22-cv-30047

COMPLAINT

INTRODUCTION

1. Defendant Joseph Freedman Co., Inc. (“Freedman”) operates a scrap metal processing facility at 115 Stevens Street, Springfield, Massachusetts (the “Facility”). Freedman discharges polluted industrial stormwater from the Facility through the City of Springfield’s municipal separate storm sewer system (“Springfield MS4”) into Poor Brook, a tributary of the Chicopee River. The Facility and Poor Brook are located in areas that have been designated by the Commonwealth of Massachusetts (“Commonwealth”) as environmental justice communities. The Facility’s stormwater contains excessive amounts of lead, zinc, aluminum, iron, copper, chemical oxygen demand (“COD”), and total suspended solids (“TSS”). Excessive heavy metals in runoff pose a long-term threat to aquatic ecosystems, the food chain, and human health. Freedman has not properly controlled and monitored pollution in its stormwater discharges, as is required by 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 (“Stormwater Permit”) issued to Freedman by the United States Environmental Protection Agency (“EPA”).

2. Freedman's own sampling results show that for many years it has been discharging stormwater with levels of pollutants, including heavy metals, many times higher than benchmark standards established by EPA.

3. Freedman'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 violates the Clean Water Act and the Stormwater Permit.

4. Freedman has not consistently monitored stormwater discharges. Freedman's failure to monitor violates the Clean Water Act and the Stormwater Permit.

5. 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 Freedman's illegal discharges of pollution.

JURISDICTION AND VENUE

6. 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).

7. On February 16, 2022, the Commonwealth provided notice of Freedman's violations of the Clean Water Act, and of its intention to file suit against Freedman (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 Joseph Freedman Co., Inc. as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

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

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

10. 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 Freedman'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 Freedman's activities. Freedman'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.

11. 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

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

13. 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.

14. Defendant Joseph Freedman Co., Inc. is a domestic corporation with its principal address listed as 115 Stevens Street, Springfield, MA 01104.

STATUTORY BACKGROUND

Federal Clean Water Act Requirements

15. 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).

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, organic matter, nutrients, metals and petroleum by-products. Polluted stormwater runoff can be harmful to plants, animals, and people.

17. 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, 2015, and 2021. *See* 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 86 Fed. Reg. 10269 (Feb. 19, 2021).¹

18. Companies that acquire, stockpile, and process scrap metals and that discharge industrial stormwater to waters of the United States directly or through separate storm sewer systems are subject to the requirements of this Stormwater Permit. Stormwater Permit, Appendix D-4 (Sector N).

19. The Stormwater Permit requires these facilities to, among other things:

- a. select, design, install, and implement pollutant control measures that minimize pollutants in stormwater discharges in accordance with the requirements of Section 2 of the Stormwater Permit and any additional

¹ The February 2021 revision of the Stormwater Permit (“2021 Stormwater Permit”) is substantially similar to the 2015 version (“2015 Stormwater Permit”). Where there is a difference in citations due to numbering, this Complaint provides citations to each of the revisions. Where there is no difference in Section numbering, this Complaint refers to the two versions jointly as “Stormwater Permit.”

- pollutant control requirements applicable to scrap recycling facilities, Stormwater Permit, Section 8.N.3;
- b. locate materials, equipment, and activities to contain potential spills, Stormwater Permit, Section 2.1.2.4;
 - c. minimize contact of stormwater runoff with Industrial Materials, scrap processing equipment, and scrap processing areas, Stormwater Permit, Section 8.N.3.1.2;
 - d. keep clean all exposed areas that are potential sources of pollutants by storing materials in appropriate containers, properly controlling runoff associated with dumpsters, and keeping exposed areas free of waste, garbage and floatable debris, Stormwater Permit, Section 2.1.2;
 - e. minimize generation of dust and off-site tracking of Industrial Materials in order to minimize pollutant discharges, Stormwater Permit, Section 2.1.2.10;
 - f. collect and analyze stormwater samples for compliance with EPA benchmarks that apply to scrap metal facilities, including for lead, zinc, aluminum, iron,² copper, chemical oxygen demand (“COD”), and total suspended solids (“TSS”), Stormwater Permit, Sections 6 and 8.N.7;
 - g. conduct routine facility inspections at least quarterly and quarterly visual assessments to, among other things, sample and assess the quality of the facility’s stormwater discharges, ensure that stormwater control measures required by the permit are functioning correctly and are adequate to

² The 2021 Stormwater Permit does not include a benchmark limit for iron for scrap recyclers.

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