

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

RARITAN BAYKEEPER, INC.,

Plaintiff,

v.

PRATT PAPER (NY) INC.,

Defendant.

Case No. 20-2962

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

(Federal Water Pollution Control
Act, 33 U.S.C. §§ 1251 to 1387)

Plaintiff Raritan Baykeeper, Inc. d/b/a NY/NY Baykeeper (“Baykeeper”), by and through its counsel, hereby alleges:

I.

INTRODUCTION

1. This action is brought under the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “the Act”), to address and abate Defendant’s ongoing and continuous violations of the Act.

2. Defendant discharges polluted industrial stormwater from a paper recycling and paper product manufacturing facility located at 4435 Victory Boulevard, Staten Island, NY 10314 (the “Facility”) into the Arthur Kill in violation of CWA Sections 301(a) and 402(p), 33 U.S.C. §§ 1311(a), 1342(p), and the New York State Department of Environmental Conservation SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-17-004 (March 1, 2018), https://www.dec.ny.gov/docs/water_pdf/msgp017004.pdf (“General Permit”).

3. Defendant's violations of the General Permit and the Clean Water Act include: discharges of polluted stormwater and other pollution that are not authorized by the General Permit; inadequate pollution control measures and pollution prevention plans; and the release of pollutants that contribute to violations of water quality standards for dissolved oxygen in the Arthur Kill.

4. Stormwater runoff is one of the most significant sources of water pollution in the nation—comparable to, if not greater than, contamination from industrial and sewage sources. With every rainfall event, hundreds of millions of gallons of polluted stormwater pour into the Arthur Kill and other receiving waters in this District. The State of New York has designated as “impaired” more than 7,000 river miles; 319,000 acres of larger waterbodies; 940 square miles of harbors, bays, and estuaries; 10 miles of coastal shoreline; and 592 miles of Great Lakes shoreline. Under the Clean Water Act, “impaired” means not meeting a state's water quality standards and/or unable to support beneficial uses, such as fish habitat and water contact recreation. In many of these waters, state water quality standards for metals, oil and grease, nutrient enrichment and oxygen depletion, inorganic pollutants, pathogens, taste, color, odor, and other parameters are consistently exceeded. For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment.

5. The Arthur Kill is one of these impaired waterbodies. New York State has determined that the Arthur Kill does not meet state water quality standards for a number of pollutants including PCBs, dioxins, and other toxics. Most importantly here, the Arthur Kill does not meet state water quality standards for dissolved oxygen. Dissolved oxygen is essential to all aquatic life – without it, aquatic organisms die and ecosystems collapse.

6. Defendant's stormwater discharges contribute to this endemic stormwater pollution problem. Defendant engages in industrial activities such as paper recycling, paper product manufacturing, vehicle maintenance, waste storage, and movement by barge and truck of enormous volumes of products, raw materials, and wastes in and out of the Facility. As precipitation comes into contact with pollutants generated by these industrial activities, it conveys those pollutants to nearby waters. Contaminated stormwater discharges such as those from the Facility can and must be controlled to the fullest extent required by law in order to allow these water bodies a fighting chance to regain their health.

II.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the parties and this action pursuant to CWA Section 505(a)(1) (the citizen suit provision of the CWA), 33 U.S.C. § 1365(a)(1), 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).

8. On March 5, 2020, Plaintiff provided notice of Defendant's violations of the Act and of its intention to file suit against Defendant; the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region II; and the Commissioner of the New York Department of Environmental Conservation ("DEC"), as required by the Act under CWA Section 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), and the corresponding regulations at 40 C.F.R. §§ 135.1 to 135.3. A true and correct copy of Plaintiff's notice letter is attached as Exhibit A, and is incorporated herein by reference.

9. More than sixty days have passed since the notice letter was served on Defendant and the State and federal agencies. Plaintiff has complied with the Act's notice requirements under CWA Section 505(b)(1), 33 U.S.C. § 1365(b)(1).

10. Neither the EPA nor the State of New York has commenced or is diligently prosecuting a civil or criminal action to redress the violations alleged in this complaint. *See* CWA § 505(b)(1)(B), 33 U.S.C. § 1365(b)(1)(B).

11. This action is not barred by any prior administrative penalty action under CWA Section 309(g), 33 U.S.C. § 1319(g).

12. Venue is proper in the United States District Court for the Eastern District of New York pursuant to CWA Section 505(c)(1), 33 U.S.C. § 1365(c)(1), and 28 U.S.C. § 1391(b)(2) because the source of the violations is located within this judicial district.

III.

PARTIES

13. Plaintiff RARITAN BAYKEEPER, INC. ("Baykeeper"), doing business as "NY/NJ Baykeeper," is a non-profit corporation, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary through enforcement, field work, and community action. Baykeeper's mission includes safeguarding the environmental, recreational and commercial integrity of the Hudson River Estuary and its ecosystem, as well as the watersheds of the Raritan Bay and Lower Raritan River. Baykeeper achieves its mission through public education, advocacy for sound public policies and participation in legal and administrative forums. To further its mission, Baykeeper 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.

14. Baykeeper has approximately 350 members in the New York and New Jersey region, many of whom use and enjoy the waters of the New York Harbor—including Arthur Kill, which is polluted by industrial stormwater runoff from the Defendant’s Facility.

15. Plaintiff’s members reside near to, use and enjoy the waters which Defendant has unlawfully polluted and is unlawfully polluting. Plaintiff’s members use those areas to fish, crab, sail, boat, canoe, kayak, swim, birdwatch, photograph, observe wildlife and engage in nature study and scientific study, among other activities. Defendant’s discharges of stormwater associated with industrial activity containing pollutants impair each of those uses. Thus, the interests of Plaintiff’s members have been, are being, and will continue to be adversely affected by Defendant’s failure to comply with the CWA and the General Permit. The relief sought herein will redress the harms to Baykeeper caused by Defendant’s activities.

16. The relief sought herein will redress the harms to Plaintiff and its members caused by Defendant’s activities. Continuing commission of the acts and omissions alleged herein will irreparably harm Plaintiff and its members, for which harm they have no plain, speedy, or adequate remedy at law.

17. Baykeeper bring this action on behalf of itself and its members. Baykeeper’s interest in reducing Defendant’s discharges of pollutants into Arthur Kill and requiring Defendant to comply with the requirements of the General Permit are germane to Baykeeper’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 Baykeeper.

18. Baykeeper is informed and believes, and thereupon alleges, that Defendant Pratt Paper (NY) Inc. (“Pratt”) is a corporation incorporated under the laws of the State of New York, that owns and/or operates the Facility.

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