

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RARITAN BAYKEEPER, INC. (d/b/a NY/NJ
BAYKEEPER),

Plaintiff,

v.

STILLWELL READY MIX & BUILDING MATERIALS,
LLC; STILLWELL READY MIX, LLC; and GERARD
GARGANO,

Defendants.

Case No. 21-cv-5265

**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. (“Baykeeper”), doing business as “NY/NJ
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 Defendants’ ongoing and continuous violations of the Act.

2. Defendants discharge process wastewater and polluted industrial stormwater from a ready-mix concrete facility located at 2608 West 13th Street in Brooklyn, New York (Block 7225; Lots 1, 4, 6, 8, 9) (the “Facility”) into Coney Island Creek 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 (“DEC”) 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. Coney Island Creek is an “impaired” waterbody. 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. New York State has determined that Coney Island Creek fails to meet state water quality standards for dissolved oxygen, fecal coliform, and garbage/refuse.

4. Defendants’ stormwater discharges and discharges of process wastewater contribute to the pollution problem in Coney Island Creek. Defendants engage in industrial activities such as manufacturing, loading, and delivering ready-mix concrete. These activities are conducted mostly outdoors, where they generate pollution that is exposed to stormwater. This includes a great deal of dust and cement particles that accumulate outdoors on Defendants’ property, blow off Defendants’ property, or are generated through industrial activities that Defendants conduct on city streets, such as unloading cement deliveries from trucks parked in the street. In addition, Defendants engage in truck washing in areas that discharge to New York City’s municipal stormwater drainage system, contributing polluted process wastewater to stormwater flows into Coney Island Creek.

5. The pollutants discharged in stormwater and wastewater from Defendants’ industrial activities include solids that suspend or dissolve in water; lead, iron, zinc, and other metals; detergents and other cleaning agents; fuel, fuel additives, lubricants, oil, and grease; oxygen-depleting substances; and pH-altering substances. Contaminated discharges such as those from the Facility can and must be controlled to the fullest extent required by law to allow Coney Island Creek a fighting chance to regain its health.

6. Defendants have a long history of violating water pollution laws at the Facility. In 2007, The City of New York’s Environmental Control Board found that operations at the

Facility violated prohibitions on discharges of industrial waste materials to public sewers. In 2008, a New York State DEC inspection found violations of a stormwater pollution permit that preceded the General Permit and inadequate pollution control measures at the Facility. In 2016, DEC issued a Notice of Violation to Defendants for discharging concrete laden industrial wastewater to Coney Island Creek without a permit. In 2017, DEC denied a request from Defendants to waive the requirement to obtain coverage under a stormwater pollution permit. Defendants did not obtain a permit however, and in 2018 Baykeeper sued defendants in the Eastern District of New York for violating the Clean Water Act by discharging polluted stormwater and wastewater without a permit. In 2019, Baykeeper and Defendants settled that lawsuit based on Defendants' promises: to obtain coverage under the General Permit; to comply with the General Permit's terms; to stop discharging wastewater from truck washing operations; and to make certain improvements at the Facility that would reduce stormwater pollution.

7. Throughout this period, city and state officials have received complaints from the Facility's neighbors about water pollution, significant dust pollution (which becomes water pollution when it rains, snows, or otherwise precipitates), and other nuisances caused by Defendants' industrial activities at the Facility.

8. Baykeeper is filing suit against Defendants again because, since the last case was settled in 2019, Defendants have returned to their old ways. Defendants are violating the terms of the prior settlement, their permit, and Sections 301 and 402 of the Clean Water Act.

9. First, Defendants are violating multiple provisions of the General Permit, i.e., the permit that regulates Defendants' discharges of industrial stormwater to Coney Island Creek. Defendants' violations of the General Permit include not using the best available technology to prevent pollution; not developing thorough and accurate pollution prevention plans; and

violations of various recordkeeping, monitoring, and corrective action requirements of the General Permit. Each violation of the General Permit is a violation of the Clean Water Act.

10. Second, Defendants are discharging industrial stormwater to Coney Island Creek from areas and activities that are not covered under the General Permit. Each discharge of industrial stormwater to Coney Island Creek without coverage under the General Permit is a violation of the Clean Water Act.

11. Third, Defendants continue to discharge contaminated wastewater without a permit. Defendants' coverage under the General Permit allows the discharge of stormwater only; it does not allow them to discharge wastewater from washing concrete trucks or other activities to Coney Island Creek. Each unpermitted discharge of wastewater is also a separate violation of the Clean Water Act.

12. In total, Defendants have accumulated more than 2,000 violations of the Clean Water Act since the prior lawsuit was settled and dismissed in 2019.

II.

JURISDICTION AND VENUE

13. 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).

14. Jurisdiction is not barred by the prior settlement between the parties. On November 9, 2018, Baykeeper provided noticed of Defendants' violations of the Clean Water

Act at multiple facilities, including the Facility identified in this lawsuit, and filed a citizen suit on January 14, 2019. *See Raritan Baykeeper Inc. v. Stillwell Ready Mix, LLC*, No. 19-cv-256 (E.D.N.Y.). On July 30, 2019, the Eastern District of New York entered a Stipulation of Settlement between Stillwell and Baykeeper. *Id.*, Electronic Order (E.D.N.Y. July 30, 2019) (citing ECF 20-1) (“Settlement”). In that Settlement, as relevant here, Stillwell agreed to operate the Facility in accordance with the General Permit, its Stormwater Pollution Prevention Plan (“SWPPP”), and the Clean Water Act. Settlement ¶ 2. Stillwell also specifically agreed to “refrain from discharging process wastewater from the 13th Street facility,” and “refrain from engaging in truck washing at the 13th Street facility.” Settlement ¶ 3 (the location identified as “the 13th Street facility” in the prior litigation is referred to here simply as “the Facility”). In consideration for those terms, Baykeeper agreed to dismiss and release all claims for violations of the Clean Water Act occurring prior to July 30, 2019. Settlement ¶ 5. Baykeeper did not waive or release claims for enforcement of that Settlement, nor did Baykeeper waive the right to bring a future action based on violations of the Clean Water Act on or after July 30, 2019. Settlement ¶¶ 5, 7.

15. On April 30, 2021, Plaintiff provided notice of Defendants’ continued violations of the Clean Water Act and of its intention to again file suit to Defendants; 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.

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