

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

SAVE THE GREAT SOUTH BAY, INC.,

Plaintiff,

v.

SCATT MATERIALS CORP. and
THOMAS PRATT,

Defendants.

Case No. 2:22-cv-2481

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

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

Plaintiff Save the Great South Bay, Inc., by and through its counsel, hereby alleges:

I.

INTRODUCTION

1. This is a civil suit brought under the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251–1387, commonly known as the Clean Water Act (“CWA” or “the Act”), to address and abate Defendant’s ongoing and continuous violations of the Act pursuant to the Act’s citizen suit enforcement provisions at CWA Section 505, 33 U.S.C. § 1365.

2. This case is brought against two parties: Defendant Scatt Materials Corp., and Thomas Pratt, an officer of Defendant Scatt Materials Corp. For convenience, the complaint refers to both Defendants in the singular as the Defendant Scatt Materials.

3. Defendant discharges polluted stormwater runoff from its asphalt manufacturing and mineral processing facility located at 44 South 4th Street, Bay Shore, NY 11706 (the “Facility”) into the waters of the United States—specifically, into storm drains that lead to Sampawams Creek—without authorization. This is a violation of CWA Sections 301(a) and

402(p), 33 U.S.C. §§ 1311(a), 1342(p). Typically, a company like Defendant would seek authorization to discharge polluted stormwater under an individual State Pollutant Discharge Elimination System (“SPDES”) permit issued by the New York State Department of Environmental Conservation (“DEC”), or much more likely, under the DEC’s “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”). Defendant’s failures to apply for, obtain coverage under, and comply with the conditions of such a permit are violations of CWA Sections 402(p)(3)(A), and 402(p)(4)(A), 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

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 rainwater pour into the New York Harbor, Long Island Sound, 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 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. Defendant’s stormwater discharges contribute to this endemic stormwater

pollution problem. Defendant engages in industrial activities such as the manufacturing of asphalt, processing of minerals, and warehousing and transporting of minerals. As precipitation comes into contact with pollutants generated by these industrial activities, it conveys those pollutants to nearby surface 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

6. 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).

7. On February 24, 2022, Plaintiff provided notice of Defendant's violations of the Act and of its intention to file suit against Defendant to: 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 and the corresponding regulations. *See* 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.

8. 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).

9. 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).

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

11. 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 complained of is located, and the acts and omissions giving rise to the claims occurred, within this judicial district.

III.

PARTIES

12. Plaintiff Save the Great South Bay, Inc. (“SGSB”) is a non-profit corporation whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Great South Bay through enforcement, field work, and community action. SGSB has approximately 350 members in the New York region, many of whom use and enjoy the Great South Bay and its tributaries—including Sampawams Creek, which is polluted by industrial stormwater runoff from the Defendant’s asphalt manufacturing and mineral processing facility.

13. Plaintiff’s members use and enjoy the waters which Defendant has unlawfully polluted and is unlawfully polluting. Defendant’s pollution affects both Sampawams Creek and the Great South Bay. Plaintiff’s members use those areas to fish, sail, boat, kayak, swim, birdwatch, photograph, engage in spiritual meditation, view 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.

14. For example, one member of SGSB has lived in West Islip on and off since 1956. As a youth, he considered himself the "Tom Sawyer" of Sampawams Creek, visiting the Creek and its lakes and ponds to go swimming, fishing, and frogging. In college, he worked as a clammer in the Great South Bay south of Babylon and West Islip. Over the years he has observed these waterways degrade and joined SGSB specifically because he was concerned about the impact of pollution in runoff on these waterways.

15. Specifically, this member is concerned with the amount of polluted silt that has contaminated Sampawams Creek and its lakes and ponds. He no longer uses these waterways for fishing and swimming and recommends others against it. He has observed that lakes and ponds are now filled in with silt, increased vegetation, and increased mosquitos. He has also observed that the wildlife of his youth—trout, snapping turtles, perch, and sunfish—are no longer present in the waterways; only bottom-feeders such as carp remain.

16. This member is also specifically concerned with pollution in Sampawams Creek north of Babylon Road. There is a small pond north of Babylon Road where he used to fish that is now eutrophied and filled with knee-deep muck that smells "revolting." This member believes that polluted stormwater runoff from municipal pipes upstream cause this problem and is advocating with town governments to improve pollution controls.

17. This member actively participates in SGSB programming and is the Creek Defender for Sampawams Creek and several other Great South Bay tributaries between Lindenhurst and the Connetquot watershed. In that role, he does chemical sampling of the waterways with local high schools, hosts litter collection events, and advocates to town, county, and state governments to improve protection and restoration of these waterways.

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