

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

RIVERKEEPER, INC.
Plaintiff,

v.

R.B. SCRAP IRON & METAL, INC.
Defendant.

Case No. 22-4621

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

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

Plaintiff Riverkeeper, 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. Defendant discharges polluted stormwater runoff from its scrap metal recycling facility located at 730 Saw Mill River Rd., Yonkers, New York, 10710 (the “Facility”) into the waters of the United States without authorization, in violation of CWA Sections 301(a) and 402(p), 33 U.S.C. §§ 1311(a), 1342(p), and has failed to obtain coverage under and comply with the conditions of an individual State Pollutant Discharge Elimination System (“SPDES”) permit or 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”),

in violation 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).

3. 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.

4. Defendant’s stormwater discharges contribute to this endemic stormwater pollution problem. Defendant engages in industrial activities such as the storage and processing of scrap metal. 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

5. 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).

6. On March 31, 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 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.

7. 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).

8. 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).

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

10. Venue is proper in the United States District Court for the Southern 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

11. Plaintiff Riverkeeper, Inc. (“Riverkeeper”) is a non-profit corporation whose mission is to protect and restore the Hudson River from source to sea and safeguard drinking water supplies, through advocacy rooted in community partnerships, science and law.

Riverkeeper has approximately 3,100 members in the New York and New Jersey region, many of whom use and enjoy the Saw Mill River.

12. Plaintiff’s members use and enjoy the waters which Defendant has unlawfully polluted and is unlawfully polluting. 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.

13. For example, one Riverkeeper member lives on the Hudson River, approximately four blocks from day lighted sections of the Saw Mill River. This member takes daily walks along both waterbodies and is an active kayaker. This member is participates in community science projects to monitor the Hudson River’s water quality near the Saw Mill River outlet.

14. Another Riverkeeper member residing less than a mile from the Saw Mill River regularly bikes and walks around the Saw Mill River, bird watches, and occasionally kayaks in the area. This member is an active advocate for the protection of park land in Yonkers, and

founded a community group dedicated to this purpose.

15. 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.

16. Plaintiff is informed and believes, and thereupon alleges, that Defendant R.B. Scrap Iron & Metal, Inc. ("R.B. Scrap") is a corporation incorporated under the laws of the State of New York, which owns and operates a scrap metal recycling facility at 730 Saw Mill River Rd., Yonkers, New York, 10710.

IV.

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

17. Congress enacted the Clean Water Act in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a), 33 U.S.C. § 1251(a). In furtherance of this goal, the Act provides a comprehensive approach for the regulation of pollution discharged into the waters of the United States.

18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. A NPDES permit requires dischargers of pollution to comply with various limitations.

19. NPDES permits are issued by the United States Environmental Protection Agency

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