

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RIVERKEEPER, INC.,  
Plaintiff,

v.

ALL ABOUT RECYCLING, INC.; GENTILE  
CONSTRUCTION CORP.; ALL COUNTY  
MOBILE CONCRETE, INC.; JOSEPH  
GENTILE, JR.; and JOHN BERNAL, JR.,  
Defendants.  
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Case No. 22-6607

**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 Defendants’ 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. Defendants discharge polluted stormwater runoff from their waste material recycling and storage facility (“Gentile Facility”) and concrete manufacturing facility (“All County Facility”) located at 451–455 Old Nepperhan Avenue, Yonkers, NY 10703 (the “Property”) 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 have 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/msgpppermit.pdf](https://www.dec.ny.gov/docs/water_pdf/msgpppermit.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), (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. Defendants’ stormwater discharges contribute to this endemic stormwater pollution problem. Defendants engage in industrial activities such as the processing of construction and demolition debris and materials recycling; the collection, processing, and storage of substances and equipment used in concrete production; the storage of raw materials used in offsite construction and/or concrete production work; and vehicle traffic in and out of the Property. 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 Property 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 June 2, 2022, Riverkeeper provided notice of violations of the Act at the Gentile Facility and of Riverkeeper's intention to file suit against Defendants All About Recycling, Inc., Gentile Construction Corp., and Joseph Gentile Jr. to those Defendants; to the Administrator of the United States Environmental Protection Agency ("EPA"); to the Administrator of EPA Region II; and to 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 Riverkeeper's notice letter is attached as Exhibit A, and is incorporated herein by reference.

7. On June 2, 2022, Riverkeeper provided notice of violations of the Act at the All County Facility and of Riverkeeper's intention to file suit against Defendants All About Recycling, Inc., All County Mobile Concrete, Inc., and John Bernal, Jr. to those Defendants; to the Administrator of the United States Environmental Protection Agency ("EPA"); to the Administrator of EPA Region II; and to 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 Riverkeeper’s notice letter is attached as Exhibit B, and is incorporated herein by reference.

8. More than sixty days have passed since the notice letter was served on Defendants and the state and federal agencies. Riverkeeper 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 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**

12. Plaintiff Riverkeeper, Inc. (“Riverkeeper”), is a non-profit corporation, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson River and its ecosystem through enforcement, field work, and community action. Riverkeeper has approximately 3,800 members in the New York region, many of whom use and enjoy the Hudson River and New York Harbor and its tributaries—including Saw Mill River, which is polluted by industrial stormwater runoff from the Property.

13. Riverkeeper's members use and enjoy the waters which Defendants have unlawfully polluted and are unlawfully polluting. Riverkeeper's members use those areas to boat, kayak, bike, birdwatch, view wildlife, and engage in nature study and scientific study, among other activities. Defendants' discharges of stormwater associated with industrial activity containing pollutants impair each of those uses. Thus, the interests of Riverkeeper's members have been, are being, and will continue to be adversely affected by Defendants' failure to comply with the CWA.

14. For example, one Riverkeeper member resides less than a mile from the Saw Mill River and close to where it meets the Hudson River. This person frequently walks along both rivers, often bikes on the North Country Trailway along the Saw Mill River, and occasionally engages in birding and kayaking along these waterways. This person actively observes negative impacts to the waterways, as they impact the habitat and aesthetics of the area and are related to their volunteer work for Riverkeeper and other organizations. This person is particularly concerned with algae buildup, the clarity of the water, and noticeable smells in the waterway following storms. This member is thus harmed by uncontrolled discharges of stormwater from industrial facilities along the Saw Mill River.

15. For example, another Riverkeeper member resides on the Hudson River and blocks away from the Saw Mill River. This person is employed as a public health researcher with a focus on environmental issues, and is an active member of local environmental protection and community science groups. This person is an active kayaker, and is a member of an organization that frequently paddles near the confluence of the Saw Mill and Hudson Rivers. This person monitors water quality reports, and limits their kayaking activity when there is a poor water quality report. This member is thus harmed by pollution entering the Saw Mill River

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