

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RIVERKEEPER, INC.,
Plaintiff,

v.

STATE CONTRACTING CORP. OF NY
(d/b/a/ CAPITAL INDUSTRIES CORP.); and
GEORGE MCGUIRE,
Defendant.

Case No. 22-6911

**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 vehicle and equipment maintenance and storage facility located at 555 Saw Mill River Rd., Yonkers, NY 10701 (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 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 (“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/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 discharge contribute to this endemic stormwater pollution problem. Defendants engage in industrial activities such as vehicle and equipment storage, maintenance, and vehicle traffic in and out of the Facility. 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 June 2, 2022, Riverkeeper provided notice of Defendants' violations of the Act and of its intention to file suit against Capital Industries, Inc., State Contracting Corp of NY, and George McGuire to the 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. 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).

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, 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 Defendants’ vehicle equipment maintenance and storage facility.

12. 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’ discharge 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.

13. 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.

14. 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 in violation of the Clean Water Act.

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

16. Riverkeeper is informed and believes, and thereupon alleges, that Defendant State Contracting Corp. of NY is incorporated under the laws of the State of New York and, doing business as "Capital Industries Corp.", owns and operates a vehicle and equipment and maintenance and storage facility at 555 Saw Mill River Road, Yonkers, NY.

17. Riverkeeper is informed and believes, and thereupon alleges, that Defendant George McGuire is the Chief Executive Officer of Sate Contracting Corp. of NY and/or the President of Capital Industries Corp.

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