

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

RIVERKEEPER, INC.,

Case No. 16-cv-5008

Plaintiff,

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

v.

FIVE STAR CARTING, INC.; FIVE STAR
CARTING NY, LLC; FIVE STAR CARTING, LLC;
RAPID PROCESSING, LLC; and ANTHONY
TRISTANI,

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

Defendants.

Plaintiff Riverkeeper, Inc. by and through its counsel, hereby alleges:

I.

INTRODUCTION

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act,” “the Act,” or “CWA”) to address and abate Defendants’ ongoing and continuous violations of the Act.

2. Defendants discharge polluted stormwater runoff from their waste trucking facilities located at 58-35 47th Street, Queens, NY (“47th Street Site”), and 860 Humboldt Street, Brooklyn, NY (collectively, the “Facilities”), into waters of the United States without authorization, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B), and have failed to obtain coverage under and comply with the conditions of an individual National Pollutant Discharge Elimination System (“NPDES”) permit

or the State of New York, General Permit for the Discharge of Stormwater Associated with Industrial Activity (“the General Permit”) issued by the New York State Department of Environmental Conservation (“DEC”), in violation of Sections 402(p) of the CWA, 33 U.S.C. §§ 1342(p), 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 more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as “impaired,” or not meeting water quality standards, and 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 that include but are not limited to the collection of commercial waste, scrap metal, paper, and other recyclables and wastes, and outdoor storage of waste containers, trucks, and vehicle maintenance. 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 Facilities 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

1. This Court has subject matter jurisdiction over the parties and this action pursuant to Section 505(a)(1) 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).

2. Plaintiff has complied with the notice requirements under Section 505(b)(1) of the CWA, 33 U.S.C. § 1365(b)(1).

3. On June 28, 2016, Plaintiff provided notice of Defendants' violations of the Act and of their intention to file suit against Defendants to: Defendants; the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region II; and the Commissioner of DEC, as required by the Act, 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 by reference.

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

5. Neither the United States 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).

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

7. Venue is proper in the Eastern District of New York pursuant to Section 505(c)(1) of the CWA, 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

8. Plaintiff Riverkeeper, Inc. is a not-for-profit environmental organization organized under the laws of the state of New York, with its principal place of business in Ossining, New York. Riverkeeper's mission includes safeguarding the ecological and biological integrity of the Hudson River and its tributaries. Riverkeeper was originally founded by the Hudson River Fisherman's Association, a group of fishermen concerned about the ecological state of the Hudson River, and the effect of its polluted and degraded condition on fish. Riverkeeper achieves its mission through public education, advocacy for sound public policies and participation in legal and administrative forums. Riverkeeper has more than 4,000 members, many of whom reside near to, use and enjoy the Hudson River and the waters and tributaries of New York Harbor, including more than one hundred members that live in close proximity to Newtown Creek, which is polluted by industrial stormwater runoff from the Defendants' Facilities.

9. Riverkeeper's members use and enjoy the waters which Defendants have unlawfully polluted and is unlawfully polluting. Many of Riverkeeper's members live near Newtown Creek, participate in community activities focused around Newtown Creek, and recreate upon and alongside the waters of New York Harbor, including Newtown Creek. Water quality in Newtown Creek (and by extension, in New York Harbor) directly affects the health, recreational, aesthetic, commercial, and environmental interests of Riverkeeper's members. The

interests of Riverkeeper's members are adversely affected by defendants' failure to comply with the requirements of the Clean Water Act.

10. The relief sought herein will redress the harms to Plaintiff and its members caused by Defendants' 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.

11. Plaintiff is informed and believes, and thereupon alleges, that Defendant Five Star Carting Inc., is a corporation incorporated under the laws of the State of New York, which owns and operates the Facilities.

12. Plaintiff is informed and believes, and thereupon alleges, that Defendant Five Star Carting, LLC is a New Jersey LLC, authorized to do business in the State of New York under the name Five Star Carting NY, LLC, which owns and operates the Facilities.

13. Plaintiff is informed and believes, and thereupon alleges, that Rapid Processing, LLC is an LLC incorporated under the laws of the State of New York, which owns and operates the Facilities.

14. Plaintiff is informed and believe, and thereupon alleges, that Defendant Anthony Tristani is the Chief Executive Officer of Five Star Carting, Inc., and President of Rapid Processing, LLC.

IV.

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

15. Congress enacted the Clean Water Act in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA Section 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.

16. The CWA prohibits the discharge of pollutants from a “point source” into the waters of the United States without a NPDES permit. A NPDES permit requires dischargers of pollution to comply with various limitations.

17. NPDES permits are issued by EPA or by States that have been authorized by EPA to act as NPDES permitting authorities, provided that the state permitting program ensures compliance with the procedural and substantive requirements of the CWA. *See* 33 U.S.C. § 1342(b)(1); 40 C.F.R. § 123.25(a).

18. In New York, DEC has been delegated the authority to issue NPDES permits.

Stormwater Permits

19. In 1987, to better regulate pollution conveyed by stormwater runoff, Congress enacted Clean Water Act Section 402(p), 33 U.S.C. § 1342(p), entitled “Municipal and Industrial Stormwater Discharges.”

20. Section 402(p) establishes a framework for regulating municipal and industrial stormwater discharges under the NPDES program. 33 U.S.C. § 1342(p). Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

21. In promulgating those regulations, EPA cited abundant data showing the harmful effects of stormwater runoff on rivers, streams and coastal areas across the nation. In particular, EPA found that runoff from industrial facilities contained elevated pollution levels and that, on an annual basis, pollutant levels in stormwater runoff can exceed by an order of magnitude the levels discharged by municipal sewage treatment plants. 55 Fed. Reg. 47990, 47991 (Nov. 16, 1990).

22. Sections 402(p) of the Act, 33 U.S.C. § 1342(p) and the stormwater discharge regulations at 40 C.F.R. § 122.26 require NPDES permits for stormwater discharges “associated with industrial activity.”

23. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity must apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

24. 40 C.F.R. § 122.26(b)(13) defines “storm water” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

25. 40 C.F.R. § 122.26(b)(14) specifies that “storm water discharge associated with industrial activity” includes stormwater discharge from facilities classified under Standard Industrial Classification (“SIC”) code 4212 - local collection and transportation of refuse. Facilities in this industrial category must obtain NPDES permit coverage for their stormwater discharges.

**New York’s General Permit for the Discharge
of Stormwater Associated with Industrial Activity**

26. As a delegated state NPDES permitting agency, DEC has elected to issue a statewide general permit for industrial stormwater discharges in New York. The current version of the “Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity,” Permit No. GP-0-12-001 (the “General Permit”) came into effect on October 1, 2012 and remains in effect.

27. In order to discharge polluted stormwater lawfully in New York, industrial dischargers must obtain coverage under the General Permit and comply with its terms, or obtain coverage under and comply with an individual NPDES permit.

28. To obtain coverage under the General Permit, a facility discharging stormwater associated with industrial activity is required to submit to DEC a registration form called a “Notice of Intent” to be covered under the General Permit.

29. In order to comply with the General Permit, a facility owner or operator must reduce the discharge of pollution from the facility to the extent practicable through use of the best available technology for the industry.

30. The owner or operator also must comply with numeric effluent limitations on the quantity and concentration of pollutants discharged from the facility established in the General Permit, as well as narrative (“non-numeric”) effluent limits established in the General Permit.

31. Typically, facility owners and operators reduce pollution to the extent practicable through use of the best available technology for the industry, and comply with effluent limitations, by adopting “best management practices” that reduce the discharge of polluted stormwater. Best management practices include both changes to industrial practices and activities (for example, more frequent inspections and site clean ups) and structural changes to the property that prevent stormwater from coming into contact with pollutants in the first place and that otherwise reduce the amount of polluted stormwater eventually discharged from the facility.

32. Before submitting a registration form to DEC, the owner or operator of a facility discharging stormwater associated with industrial activity must first prepare, make available, and implement a Storm Water Pollution Prevention Plan (“SWPPP”). Among other things, the SWPPP must document the best management practices that the facility has implemented to ensure that it is reducing the discharge of pollution from the facility to the extent practicable through use of the best available technology for the industry.

33. In addition, the owner or operator must perform inspections, conduct monitoring and sampling, and meet other requirements of the General Permit. The SWPPP must establish a plan for and document compliance with these inspection, monitoring, sampling, and other requirements as well.

CWA Citizen Enforcement Suits

34. Under CWA Section 505(a)(1), any citizen may commence a civil action in federal court on his own behalf against any person who is alleged to be in violation of an “effluent standard or limitation” under the CWA. 33 U.S.C. § 1365(a)(1).

35. Such enforcement action under CWA Section 505(a), 33 U.S.C. § 1365(a), includes an action seeking remedies for an unpermitted discharge in violation of Section 301 of the CWA, 33 U.S.C. § 1311, as well as for violation of a condition of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. *See* CWA Section 505(f), 33 U.S.C. § 1365(f).

36. Declaratory relief in such cases is authorized by 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).

37. Injunctive relief is authorized by Section 505(a) of the Act, 33 U.S.C. § 1365(a).

38. Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day per violation. *See* 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1–19.4 (updating statutory penalties to adjust for inflation).

V.

STATEMENT OF FACTS

Control of Industrial Activities at the 47th Street Site

39. On information and belief, Defendants operate a local waste trucking business out of two locations, one of which is at 58-35 47th Street in Queens, NY.

40. Defendant Rapid Processing, LLC has posted signage bearing its name at the 47th Street Site, and vehicles are routinely parked at the 47th Street Site bearing the name of Defendant Five Star Carting, Inc.

41. The Secretary of State's records indicate that the operations of Defendants Five Star Carting, Inc., Five Star Carting NY, LLC, and Five Star Carting, LLC, are based at the 47th Street Site.

42. Because the Defendants control the industrial activities that take place at the 47th Street Site, they are responsible for managing the site's stormwater associated with those activities in compliance with the CWA.

43. The Defendants are the persons, as defined by 33 U.S.C. § 1362(5), responsible for the 47th Street Site violations alleged in this Complaint.

Control of Industrial Activities at the Humboldt Street Site

44. On information and belief, Defendants also operate their local waste trucking business at 860 Humboldt Street in Brooklyn, NY.

45. The Secretary of State's records indicate that Defendant Rapid Processing, LLC, operates out of the Humboldt Street Site.

46. Containers and equipment located at the Humboldt Street Site bear the words "Five Star."

47. Because the Defendants control the industrial activities that take place at the Humboldt Street Site, they are responsible for managing the site's stormwater associated with those activities in compliance with the CWA.

48. The Defendants are the person, as defined by 33 U.S.C. § 1362(5), responsible for the Humboldt Street Site violations alleged in this Complaint.

Industrial Activities at the Facilities Exposes Pollutants to Stormwater

49. The activities and practices of Defendants at the Facilities expose materials and pollutants to stormwater.

50. Activities at the Facilities include but are not limited to the collection of commercial waste, scrap metal, paper, and other recyclables and wastes, and outdoor storage of waste containers, trucks, and vehicle maintenance. In carrying out these activities at the Facilities, Defendants engages in storing and handling materials in a manner that exposes pollutants to precipitation and snowmelt. At both Facilities, the stormwater discharged into Newtown Creek can bring solids that suspend or dissolve in stormwater, metals, hydraulic fluids, fuel, and other pollutants into Newtown Creek.

51. At the Humboldt Street Site trucks, dumpsters, roll-off containers, and other waste hauling equipment is stored uncovered and exposed to precipitation.

52. At the 47th Street Site, vehicle maintenance of trucks occurs on the street, where the trucks are exposed to precipitation.

53. Vehicles and industrial equipment at the Facilities may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

54. Vehicles driving on and off the Facilities or parked on the public street are point sources of pollution.

55. Riverkeeper is informed and believes and alleges that the operation of the Facilities generates particulate matter and liquids (i.e. “garbage juice”) that are dispersed in and around the properties in question.

Defendants Discharge Stormwater From the Facilities to Waters of the United States

56. With every rain storm or snow melt, polluted stormwater discharges from the Facilities. Stormwater containing the pollutants described above is conveyed off-site into waters of the United States through nearby drains that connect to the separate sewer system.

57. The parts of the separate sewer system into which Defendants discharge polluted stormwater run directly into Newtown Creek.

58. Pollutants entering Newtown Creek also flow into the East River and New York Harbor.

59. Newtown Creek and the East River are “waters of the United States,” as defined in 40 C.F.R. § 122.2 and, therefore, “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

60. Newtown Creek, the East River, and New York Harbor consistently fail to meet state water quality standards.

Defendants have not Obtained Permit Coverage for These Discharges

61. As of August 1, 2016, the Facilities were not covered by an individual NPDES permit.

62. As of August 1, 2016, the Facilities were not covered by the General Permit.

63. Accordingly, on June 28, 2016, Plaintiff sent Defendants via certified mail the notice of intent to sue described above and attached to this complaint.

64. On information and belief, as of the date of filing of this complaint the Facilities still lack NPDES permit coverage.

65. Defendants' violations of the CWA at the Facilities are ongoing and continuous, are capable of repetition, and result from the same underlying and inadequately resolved causes.

VI.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Unlawful Discharge of Pollutants (Violations of 33 U.S.C. §§ 1311)

66. Plaintiff incorporates by reference all preceding paragraphs as if set forth herein.

67. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that the “discharge of any pollutant” by any “person” is unlawful, unless the discharge complies with various enumerated sections of the CWA. Among other things, Section 301(a) prohibits discharges not authorized by a valid NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

68. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership [or] association.”

69. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

70. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, industrial wastes, chemical wastes, biological materials, rocks, sand, and garbage discharged into water.

71. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” broadly to include “any discernible, confined and discrete conveyance, including but not limited to any pipe,

ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

72. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

73. 40 C.F.R. § 122.2 defines “waters of the United States” to include, among other things: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) tributaries to such waters; (iv) wetlands adjacent to such waters or their tributaries; and (v) all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce.

74. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) and the implementing regulation found at 40 C.F.R. § 122.26(a)(1)(i) require that facilities discharging stormwater associated with industrial activity obtain a NPDES permit.

75. Defendants have discharged and continue to discharge stormwater associated with industrial activity at the Facilities that contains pollutants from point sources to waters of the United States without a NPDES permit.

76. Defendants have discharged and continue to discharge industrial process wastewater associated with vehicle maintenance activities from point sources to waters of the United States without a NPDES permit.

77. Each and every day on which Defendants discharge stormwater associated with industrial activity without authorization under a NPDES permit is a separate and distinct violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342.

78. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiff, and its members, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

79. Wherefore, Plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION

Failure to Apply for NPDES Permit Coverage (Violations of 33 U.S.C. §§ 1311, 1342)

80. Plaintiff incorporates by reference all preceding paragraphs as if set forth herein.

81. 40 C.F.R. § 122.26(c)(1) and 122.26(e)(1) require dischargers of stormwater associated with industrial activity to apply for an individual permit or seek coverage under a promulgated stormwater general permit by October 1, 1992.

82. Since 2010, Defendants have operated and continue to operate two facilities that engage in “industrial activity” as that term is defined in 40 C.F.R. § 122.26(b)(14).

83. Defendants have routinely discharged polluted stormwater associated with industrial activity from the Facilities to waters of the United States.

84. Therefore, Defendants have been obligated to apply for coverage under individual or general NPDES permits.

85. Once Defendants began discharging polluted stormwater associated with industrial activity to waters of the United States, each and every subsequent day on which Defendants have failed to apply for permit coverage constitutes a separate and distinct violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342.

86. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiff, and its members, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

87. Wherefore, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

Failure to Implement Adequate Control Measures and Best Management Practices (Violations of 33 U.S.C. §§ 1311, 1342)

88. Plaintiff incorporates by reference all preceding paragraphs as if set forth herein.

89. The General Permit, in Parts I.B and VII, requires that Defendants implement mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facilities.

90. The selected measures must reduce the discharge of pollution from the Facilities to the extent practicable through use of the best available technology for the industry in order to comply with both numeric and narrative effluent limits contained in the permit.

91. For example, the General Permit requires that Defendants minimize the exposure of pollutants to stormwater in the first place. *See* General Permit Part I.B.1.a.2.a. And to the extent that pollutants are exposed to stormwater despite Defendants’ best efforts, the Defendants must also minimize the ultimate discharge of those pollutants in stormwater from the Facilities. *See* General Permit Part I.B.1.a.2.f.

92. In this context, to “minimize” means to “reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.” General Permit, Part I.B.1.

93. To “minimize” the discharge of pollutants as required by the General Permit, the facility’s BMPs must meet the Clean Water Act standards of Best Available Technology Economically Achievable (“BAT” or “BATEA”) or Best Conventional Pollutant Control Technology (“BCT”), depending upon the type of pollutant being discharged.

94. Because the industrial activities carried out at the Facilities are categorized in SIC Code 4212, Defendants must also implement the sector-specific control measures specified in Part VIII of the General Permit for Sector P.

95. Plaintiffs are informed and believe, and thereupon allege that, as of the filing date of this complaint, Defendants have not implemented control measures or BMPs as required by the General Permit.

96. Defendants have failed, and continue to fail, to implement adequate control measures and BMPs at the Facilities as required by the General Permit.

97. Defendants’ ongoing failure to implement adequate control measures and BMPs at the Facilities as required by the General Permit is evidenced by, *inter alia*, Defendants’ storage of trucks, roll-off containers, and heavy machinery without appropriate BMPs; the practice of conducting vehicle maintenance outside on the public street; and inadequate containment of stormwater runoff.

98. Each and every day on which Defendants fail to comply with the General Permit’s control measure and BMP requirements is a separate and distinct violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342.

99. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiff, and its members, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

100. Wherefore, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan (Violations of 33 U.S.C. §§ 1311, 1342)

101. Plaintiff incorporates by reference all preceding paragraphs as if set forth herein.

102. Part III of the General Permit requires industrial dischargers to develop, implement and maintain compliance with a Stormwater Pollution Prevention Plan (“SWPPP”).

103. As described in Part III.A of the General Permit, the SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity.

104. Further, the SWPPP must describe and ensure the implementation of best management practices that minimize the discharge of pollutants in stormwater and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.

105. The SWPPP must address, at a minimum: (1) each of the elements set forth in Part III.C of the General Permit; (2) each of the applicable sector-specific plan elements specified in Part VIII of the General Permit and, (3) as applicable, each of the additional special requirements listed in Part III.F of the General Permit for industrial activities that discharge through a municipal separate storm sewer or to impaired waterbodies, activities that take place at facilities that report under the federal Emergency Planning and Community Right to Know Act,

and facilities that use secondary containment measures. The SWPPP must include records and documentation of compliance with each of these elements and requirements.

106. The SWPPP must be representative of current site conditions and kept up to date.

107. The SWPPP must be signed in accordance with Part V.H of General Permit.

108. At an active facility, the SWPPP must be kept on-site at all times.

109. The SWPPP must be prepared and must provide for compliance with the terms of the General Permit on or before the date of submission of a Notice of Intent to be covered under the General Permit.

110. Because the industrial activities carried out at the Facilities are categorized in SIC Code 4212, Defendants must include the sector-specific SWPPP elements specified in Part VIII of the General Permit for Sector P, in addition to the SWPPP elements set forth in Part III of the General Permit.

111. Under Part III.D.2 of the General Permit, the owner or operator of a facility “must make a copy of the SWPPP available to the public within 14 days of receipt of a written request.”

112. Plaintiff requested a copy of Defendants’ SWPPP on June 28, 2016.

113. Defendants have not provided a copy of a SWPPP to Plaintiff.

114. Plaintiff is informed and believes, and thereupon alleges that, as of the filing date of this complaint, Defendants have not developed a SWPPP.

115. Defendants have failed, and continue to fail, to develop, implement and maintain compliance with an adequate SWPPP for the Facilities as required by the General Permit and to take the other SWPPP-related actions required by the General Permit and described herein.

116. Defendants' ongoing failure to develop and implement an adequate SWPPP for the Facilities and to take the other SWPPP-related actions required by the General Permit is also evidenced by, *inter alia*, Defendants' storage of trucks, roll-off containers, and heavy machinery without appropriate BMPs; the practice of conducting vehicle maintenance outside; and inadequate containment of stormwater runoff.

117. Each and every day on which Defendants fail to comply with the General Permit's SWPPP requirements is a separate and distinct violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342.

118. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiff, and its members, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

119. Wherefore, Plaintiff prays for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

Failure to Conduct Routine Site Inspections and Comply With General Monitoring, Recordkeeping, and Reporting Requirements (Violations of 33 U.S.C. §§ 1311, 1342)

120. Plaintiff incorporates by reference all preceding paragraphs as if set forth herein.

121. The General Permit requires industrial dischargers to conduct and document comprehensive site inspections at appropriate intervals, but in no event less frequently than once a year. The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected. *See* General Permit, Part IV.A.1. Records of this inspection must be kept for five years. *See* General Permit, Part IV.A.2.

122. In addition, qualified facility personnel must carry out routine inspections at least quarterly. *See* General Permit, Part III.C.7.b.2. During these inspections, personnel must

evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP. *See* General Permit, Part III.C.7.b.1 and b.3. Such deficiencies must then be addressed through corrective actions.

123. And all covered facilities must conduct multiple types of analytical monitoring as described in Part IV.B of the General Permit and must keep records of their monitoring efforts in accordance with Parts IV.B and IV.E of the General Permit. The monitoring required under the General Permit includes both various visual inspections and collection and laboratory analysis of water quality samples.

124. In addition, Defendants engage in industrial activities that fall within Sector P of the General Permit's classifications of industrial activity, and therefore must also conduct additional analysis of water quality samples for a range of pollutant parameters as set forth in Part VIII of the General Permit. *See* General Permit, Part VIII (requirements for Sector P).

These include:

- a. Chemical Oxygen Demand,
- b. Oil & Grease,
- c. Benzene,
- d. Toluene,
- e. Ethylene, and
- f. Xylene.

125. Plaintiff is informed and believes, and thereupon alleges that, as of the filing date of this complaint, Defendants have not conducted any of the site inspections, monitoring, and testing required by Parts III, IV, and VIII of the General Permit.

126. Defendants have failed, and continue to fail, to comply with the inspection, monitoring, and testing requirements of the General Permit.

127. Plaintiff is informed and believes, and thereupon alleges that, as of the filing date of this complaint, Defendants also have failed to retain records and submit monitoring reports as required by Parts IV and VIII of the General Permit.

128. Each and every day on which Defendants fail to comply with any of the General Permit's inspection, monitoring, testing, recordkeeping and reporting requirements is a separate and distinct violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342.

129. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiff, and its members, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

130. Wherefore, Plaintiff prays for relief as hereinafter set forth.

SIXTH CAUSE OF ACTION

Failure to Comply with Specific General Permit Requirements Applicable to Local Waste Trucking (Violations of 33 U.S.C. §§ 1311, 1342)

131. Plaintiff incorporates by reference all preceding paragraphs as if set forth herein.

132. The General Permit contains various requirements specific to local trucking facilities. *See* General Permit, Part VIII (requirements for Sector P). These include:

- a. A requirement that the site map identify the locations of any of the following activities or sources: Fueling stations; Vehicle/equipment maintenance or cleaning

areas; Storage areas for vehicle/equipment with actual or potential fluid leaks; Loading/unloading areas; Areas where treatment, storage or disposal of wastes occur; liquid storage tanks; Processing areas; Storage areas; and All monitoring areas;

- b. A requirement to describe and assess in a SWPPP the potential for the following to contribute pollutants to stormwater discharges: On-site waste storage or disposal; Dirt/gravel parking areas for vehicles awaiting maintenance; and Fueling areas;
- c. A requirement that the following areas/activities be included in all inspections: Storage area for vehicles /equipment awaiting maintenance; Fueling areas; Indoor and outdoor vehicle/equipment maintenance areas; Material storage areas; Vehicle/equipment cleaning areas; and Loading/unloading areas;
- d. A requirement that employee training take place, at a minimum, annually (once per calendar year) and address the following, as applicable: Used oil and spent solvent management; Fueling procedures; General good housekeeping practices; Proper painting procedures; and Used battery management;
- e. A requirement that storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks be confined to designated areas (delineated on the site map). The SWPPP shall document considerations of the following BMPs (or their equivalents): The use of drip pans under vehicles and equipment; Indoor storage of vehicles and equipment; Installation of berms or dikes; Use of absorbents; Roofing or covering storage areas; and Cleaning pavement surface to remove oil and grease;

- f. A requirement that storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) are maintained in good condition, so as to prevent contamination of stormwater, and plainly labelled (e.g., “used oil,” “spent solvents, etc.). The SWPPP shall document considerations of the following storage-related BMPs (or their equivalents): Indoor storage of the materials; Installation of berms/dikes around the areas, minimizing runoff of stormwater to the areas; Using dry cleanup methods; and Treating and/or recycling the collected stormwater runoff;
- g. A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning. The SWPPP shall document considerations of the following BMPs (or their equivalents): Performing all cleaning operations indoors; Covering the cleaning operation; Ensuring that all wash waters drain to a proper collection system (i.e., not the stormwater drainage system unless SPDES permitted); and Treating and/or recycling the collected stormwater runoff.
- h. A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from all areas used for vehicle/equipment maintenance. The SWPPP shall document consideration of the following BMPs (or their equivalents): Performing maintenance activities indoors; using drip pans; Keeping an organized inventory of materials used in the shop; Draining all parts of fluids prior to disposal; Prohibiting wet clean up practices where the practices would result in the

discharge of pollutants to stormwater drainage systems; Using dry cleanup methods; Treating and/or recycling collected stormwater runoff; and Minimizing runoff of stormwater to maintenance areas.

133. Defendants have failed, and continue to fail, to comply with these requirements of the General Permit that apply to all local trucking facilities.

134. Each and every day on which Defendants fail to comply with the General Permit's requirements applicable to local waste trucking facilities is a separate and distinct violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342.

135. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiff, and its members, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

136. Wherefore, Plaintiff prays for relief as hereinafter set forth.

VII.

PRAYER FOR RELIEF

137. Plaintiff Riverkeeper respectfully requests that this Court grant the following relief, as allowed by 33 U.S.C. § 1365(a) and 28 U.S.C. §§ 2201(a) and 2202:

- a. Declare Defendants to have violated and to be in violation of the Act as alleged herein;
- b. Enjoin Defendants from discharging pollutants from the Facilities except as authorized by and in compliance with a NPDES permit;
- c. Order Defendants to immediately apply for coverage under, and comply fully with all applicable requirements of, the General Permit (or an individual permit that is at least as stringent);

- d. Order Defendants to take appropriate actions to remediate the harm caused by the violations of their NPDES permit and the CWA, to the extent possible;
- e. Order Defendants to pay, jointly and severally, civil penalties of \$37,500 per day per violation for all violations of the Act occurring after January 12, 2009, as provided by Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a), and by 40 C.F.R. §§ 19.1 – 19.4;
- f. Order Defendants to pay the costs of litigation, including Plaintiff's reasonable investigative costs, attorneys fees, witness, and consultant fees, and other costs, in accordance with Section 505(d) of the CWA, 33 U.S.C. § 1365(d); and
- g. Award any such other and further relief as this Court may deem appropriate.

Dated this 8th day of August, 2016
New York, New York

Respectfully submitted,

s/ Edan Rotenberg

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