Connecticut Fund for the Environment

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August 21, 2014

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OFFICE OF THE REGIONAL ADMINISTRATOR

Via Certified Mail Return Receipt

H. Curtis Spalding, EPA Region 1 Administrator
Environmental Protection Agency
5 Post Office Square - Suite 100
Boston, MA 02109

Re: *Connecticut Fund for the Environment, Inc., Conservation Law Foundation, Inc., and Soundkeeper, Inc. v. P.C. Metals, Inc., and G.C. Metals Recycling, Inc.*, United States District Court for the District of Connecticut, Case No. 3:13-cv-01431-AWT

Dear Administrator:

Pursuant to 33 U.S.C. § 1365(c)(3) of the Clean Water Act (CWA), lead counsel for Plaintiffs, Connecticut Fund for the Environment, Inc. ("CFE"), on behalf of co-Plaintiffs Conservation Law Foundation, Inc. ("CLF"), and Soundkeeper, Inc. ("Soundkeeper"), provides the attached proposed consent decree between Plaintiffs, and Defendants P.C. Metals, Inc. and G.C. Metals, Inc., resolving alleged violations of the CWA and the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit"), issued by the Department of Energy and Environmental Protection ("DEEP"). The parties intend to file a joint motion for entry of consent judgment with the United States District Court for the District of Connecticut. This motion will be brought before the Court following the 45-day period for U.S. government review of the consent decree required by 40 C.F.R. §135.5(b).

The consent decree provides that the defendants will take specific actions to ensure that no discharge of polluted stormwater occurs into the groundwater and eventually the adjacent Johnson's Creek, a water of the United States. The defendants will repair or replace the wall which separates the facility from Johnson's Creek. The defendants will also install filters within the two on-site collection basins to collect solids and separate petroleum compounds that may be present in the stormwater.

The defendants have not agreed to apply for coverage under the General Permit. The defendants vigorously deny any discharge of stormwater associated with industrial activity to the waters of the United States. After a physical inspection of the site by Plaintiffs' engineer, all parties agree that the compromise within this consent decree is appropriate.

Connecticut Fund for the Environment and Save the Sound
142 Temple Street • New Haven, Connecticut 06510 • (203) 787-0646
www.ctenvironment.org • www.savethesound.org

By submitting this consent decree as requested, counsel for Plaintiffs asks the United States to promptly review the agreement and, if it does not object to dismissal of this action, to so notify the Court.

If you have any questions or concerns regarding this matter, please contact me.

Sincerely,

Roger Reynolds
Connecticut Fund for the Environment
142 Temple Street, Suite 305
New Haven, CT 06510
(203) 787-0646 x 105
rreynolds@ctenvironment.org

Attorney for Plaintiffs
Connecticut Fund for the Environment, Inc.
Conservation Law Foundation, Inc.
Soundkeeper, Inc.

Enclosures

cc:

Citizen Suit Coordinator
United States Department of Justice
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Gina McCarthy, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CONNECTICUT FUND FOR THE ENVIRONMENT, INC., CONSERVATION LAW FOUNDATION, INC., and SOUNDKEEPER, INC.,	**Case No. 3:13-cv-01431-AWT**
Plaintiffs,	**(Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387)**
v.	
P.C. METALS, INC., and G.C. METALS RECYCLING, INC.	**PROPOSED CONSENT DECREE**
Defendant.	**August 4, 2014**

WHEREAS, Plaintiffs Connecticut Fund for the Environment, Inc. ("CFE"), Conservation Law Foundation, Inc. ("CLF") and Soundkeeper, Inc. ("Soundkeeper") (collectively "Plaintiffs"), filed this action on September 27, 2013, against Defendants P.C. Metals, Inc. and G.C. Metals, Inc. (collectively "Defendants"), alleging violations of 33 U.S.C. §§ 1311(a) and 1342 of the Clean Water Act and seeking declaratory and injunctive relief, civil penalties, and reasonable attorneys' fees and costs;

WHEREAS, CFE is a Connecticut based nonprofit environmental organization with members who use and enjoy Connecticut's lakes, rivers and Long Island Sound;

WHEREAS, CLF is a regional, nonprofit environmental organization with members who use and enjoy the Long Island Sound watershed for recreational, aesthetic and scientific purposes;

WHEREAS, Soundkeeper is a Connecticut based nonprofit environmental organization with members who use and enjoy Long Island Sound, for both commercial and recreational purposes;

WHEREAS, Defendant P.C. Metals, Inc. owns and operates a scrap metal recycling facility located at 270 Central Avenue, in Bridgeport, CT ("the Facility");

WHEREAS, Plaintiffs have alleged that the Facility discharges stormwater associated with industrial activity into Johnson's Creek in Bridgeport Harbor, and from there into the Long Island Sound and that Defendants have violated and continue to violate 33 U.S.C. §§ 1311(a) and 1342 by, inter alia, discharging such polluted stormwater associated with industrial activity without coverage under the State of Connecticut General Permit for the Discharge of Stormwater Associated with Industrial Activity and by failing to comply with the conditions of the General Permit;

WHEREAS, Defendants have vigorously denied such allegations and claim that no stormwater associated with industrial activity is discharged from the Facility to Johnson's Creek or any water of the United States;

WHEREAS, following receipt of the Notice Letter and prior to the filing of the Complaint, Defendants retained GZA GeoEnvironmental, Inc. ("GZA") to perform an assessment and investigation of the Facility;

WHEREAS, Defendants provided Plaintiffs with a copy of the findings of GZA;

WHEREAS, subsequent to the findings of GZA, Defendants allowed Plaintiffs to enter the Facility and perform their own evaluations. Plaintiffs retained an environmental engineer to evaluate the alleged Clean Water Act violations, and on May 16, 2014, such engineer and representatives of the Plaintiffs inspected the Facility;

WHEREAS, Plaintiffs and Defendants (collectively, "the Parties" or individually "Party") agree that it is in their mutual interest to resolve this matter without the taking of further evidence or findings of fact or law, and would like to avoid prolonged and costly litigation;

WHEREAS, this Decree shall be submitted to the United States Department of Justice ("DOJ") and the United States Environmental Protection Agency ("EPA") for the 45 day statutory review period, pursuant to 33 U.S.C. § 1365(c);

NOW, THEREFORE, without the trial of any issue of fact or law, without the admission by Defendants of any of the facts or violations alleged in the Complaint of any noncompliance or liability of any kind, upon consent of the Parties, and upon consideration of the mutual promises contained herein,

IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND ORDERED, ADJUDGED AND DECREED BY THE COURT as follows:

I. DEFINED TERMS

The defined terms set forth in the foregoing recitals are hereby incorporated into the body of this Decree and are made a part hereof. In addition, the following terms used in this Decree have the meaning set forth below:

1. Effective Date: the day the Court enters this Decree after the expiration of the forty-five (45) day review period required by 33 U.S.C. § 1365(c)(3).

2. Facility: the facility and real property located at 270 Central Avenue, in Bridgeport, CT.

3. Term of this Decree: the period beginning on the Effective Date and ending one (1) year from the Effective Date.

II. JURISDICTION AND VENUE

4. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). For the limited purposes of this Decree, Defendants do not contest that Plaintiffs have standing and have complied with the statutory notice requirements under 33 U.S.C. § 1365(a)(l), and the corresponding regulations at 40 C.F.R. § 135.2. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C. §§ 2201, 2202 and 33 U.S.C. § 1365(a).

5. Venue is properly vested in this Court pursuant to 33 U.S.C. § 1365(c)(l), because the alleged events giving rise to this action occurred at the Facility, and in the Johnson's Creek, Bridgeport Harbor, and Long Island Sound watersheds, which are located within this judicial district.

6. For purposes of this Decree or any action to enforce this Decree only, and not for any future actions or claims, Defendants consent to the Court's jurisdiction over this Decree and over Defendants and consents to venue in this judicial district.

III. CONDITIONS FOR THE SETTLEMENT OF ALL CLAIMS

7. No later than 60 days following the Effective Date, Defendants shall install filters over the two collection basins to collect solids and to separate petroleum compounds that may be present in the stormwater. Such filters will be comparable to, and at least as effective as, "Ultra DrainGuard Oil and Sediment Plus Model (Part #9219)," and will be operated and replaced according to the manufacturer's recommendations. Following installation of the filters, Defendants shall provide Plaintiffs with documentation thereof.

8. No later than 120 days following the Effective Date, Defendants shall repair / replace the wall located on the southern portion of the property, separating the Facility from Johnson's Creek. The wall shall be similar in design to the concrete block wall that exists on the northern portion of the property, and Defendants shall maintain the entire wall in good condition. Following completion of the wall, Defendants shall provide Plaintiffs with documentation thereof.

V. REIMBURSEMENT OF LITIGATION COSTS

9. Upon court approval and entry of this Consent Decree, Defendants shall pay a sum of ten thousand dollars ($10,000) as full and complete satisfaction of Plaintiffs' claim for

attorneys' fees, engineering fees, and litigation costs incurred to date in this matter. The payments shall be made by certified bank check addressed to and made out to Connecticut Fund for the Environment, 142 Temple Street, Suite 305, New Haven, Connecticut, 06510-2600 tel: (203) 787-0646, as trustee, and shall be made in three installments: $5,000 within 60 days of the Effective Date of the settlement, $2,500 within 6 months of the Effective Date of the settlement, and the final $2,500 within 9 months the Effective Date of the settlement.

10. In the event that any installment of the reimbursement of litigation costs owed by Defendants under the Decree is not made on or before the due date, Defendants shall be deemed in default of its payment obligations under the Decree, and, at Plaintiffs' discretion based on written notification to Defendants, all of the outstanding payment obligations under this Decree shall be accelerated such that they shall be immediately due and owing. In addition to a continued requirement to make the payment, Defendants will pay ten (10) percent annual interest, accruing daily, on any unpaid balance remaining nine (9) months after the Effective Date of the settlement.

VI. EFFECT OF DECREE

11. Upon Court approval and entry of this Consent Decree, Plaintiffs covenant not to sue and release Defendants (including its representatives, assigns, agents, employees, officers, attorneys and consultants) from any and all claims, causes of action, or liability under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, or any other claim or relief relating to or resulting from noncompliance with, or any violations of, the Clean Water Act with respect to operations conducted at the Facility alleged, or that could have been alleged, in the Complaint.

12. Defendants release and discharge Plaintiffs, their representatives, assigns, agents, employees, officers, attorneys and consultants, including those who have held positions in the past, from any and all claims, liability, demands, penalties, costs, and causes of action of every nature in connection with this action.

13. Plaintiffs do not, by consent to the Decree, warrant or aver in any manner that Defendants, compliance with this Decree will constitute or result in compliance with federal or state law or regulation. Nothing in this Decree shall be construed to affect or limit in any way the obligation of Defendants to comply with all federal, state, and local laws and regulations governing any activity required by this Decree.

14. All payments to Plaintiffs for reimbursement of their litigation costs pursuant to this Decree shall be made in form of a certified bank check. Any check issued for such payment pursuant to this Decree must be received by Plaintiffs no later than the date specified in this Decree.

15. Defendants agree that as a condition of transfer of ownership or control of the Facility to an entity independent of Defendants, the new owner or operator will be informed in writing of this Decree and of its requirements to comply with the Decree.

VII. REVIEW AND TERM OF DECREE

16. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Decree by the DOJ and the EPA. Therefore, upon signing of this decree by the Parties, Plaintiffs shall serve copies of this Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5. If for any reason the United States should decline to approve this Decree in the form presented, the Parties agree to continue negotiations in good faith to cure any objection to entry of this Decree raised by the United States.

17. Upon the expiration of the forty-five-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will jointly move the Court for entry of this Decree. This Decree shall take effect on the date it is entered by this Court and shall terminate one (1) year from when it is entered by the Court; provided, however, that if Defendants have not complied with any provision of this Decree by the end the Term, the Decree shall not terminate until such provision(s) have been complied with and CFE, CLF, and Soundkeeper may seek to enforce this Decree after the end of the Term, if any of Defendants' obligations are outstanding at that time. In order to exercise this right, CFE, CLF, and Soundkeeper must provide notice of any alleged non-compliance to Defendants prior to the end of the Term.

VIII. MODIFICATION AND ENFORCEMENT OF DECREE

18. This Decree may be modified only upon written consent of the Parties and the approval of the Court.

19. The United States District Court for the District of Connecticut shall retain and will have jurisdiction over the Parties to this Decree for the resolution of any disputes that may arise under this Decree. This Court shall also allow this action to be reopened for the purpose of enabling the Parties to this Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Decree.

20. Plaintiffs will provide Defendants with seven (7) calendar days written notice prior to initiating court proceedings to enforce this Decree. Such notice shall be given as provided in Paragraph 23 of this Decree.

X. MISCELLANEOUS PROVISIONS

21. **Entire Agreement.** This Decree constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written, among the Parties.

22. **Notices.** Any notice, demand, copies of documents and other communications required to be made under the provisions of this Decree (collectively, "Notices") by any Party hereto shall be effective only if in writing and (a) personally served, (b) mailed by United States certified mail, return receipt requested, postage prepaid, or (c) sent by a nationally recognized courier service (i.e., Federal Express) for next-day delivery, to be confirmed in writing by such courier. Notices shall be directed to the Parties at their respective addresses set forth below. Notices given in the foregoing manner shall be deemed given (a) when actually received or refused by the party to whom sent if delivered by courier, or (b) if mailed, on the day of actual delivery as shown by the addressee's certified mail receipt or at the expiration of three (3) business days after the date of mailing, whichever first occurs.

Notices for Plaintiffs shall be sent to:

Roger Reynolds (ct18126)
Connecticut Fund for the Environment
142 Temple Street, Suite 305
New Haven, CT 06510
(203) 787-0646
rreynolds@ctenvironment.org
Attorney for CFE, CLF, and Soundkeeper,

Notices sent to the individual listed above at the address listed above shall be deemed as notice to CFE, CLF, and Soundkeeper.

Notice for Defendants shall be sent to:

P.C. Metals, Inc.
Gloriana Carbone Tardie, President
270 Central Ave.
Bridgeport, CT 06607

With a copy to:

John Bashaw (ct15612)
REID & RIEGE, P.C.
One Financial Plaza
Hartford, CT 06103
Tel. (860) 240-1053
Fax: (860) 240-1002
Email: jbashaw@rrlawpc.com
Attorney for Defendants

Each Party shall promptly notify the other Party of any change in the above-listed contact information by using the procedures set forth in this paragraph.

23. **Authorization.** Each person signing this Decree represents and warrants that s/he has been duly authorized to enter into this Decree by the Party on whose behalf it is indicated that the person is signing.

24. **Successors and Assigns.** This Decree shall be binding upon and inure to the benefit of the Parties and their respective representatives, heirs, executors, administrators, successors, officers, directors, agents, attorneys, employees and permitted assigns.

25. **Interpretation.** The provisions contained herein shall not be construed in favor of or against any Party because that party or its counsel drafted this Decree, but shall be construed as if all Parties prepared this Decree, and any rules of construction to the contrary are hereby specifically waived. The terms of this Decree were negotiated at arm's length by the Parties hereto.

26. **Headings.** The section and paragraph headings contained in this Decree are for reference purposes only and shall not affect in any way the meaning or interpretation of this Decree.

27. **Counterparts.** This Decree may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Decree.

28. **Severability.** In the event that any of the provisions of this Decree are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

CONNECTICUT FUND FOR THE ENVIRONMENT, INC.

BY: [signature] DATE: 8/15/2014

TITLE: Director of Programs

CONSERVATION LAW FOUNDATION, INC.

BY: C W Kirk DATE: 8/12/14

TITLE: Vice President

SOUNDKEEPER, INC.

BY:_____ DATE:_____

TITLE:_____

P.C. METALS, INC.

BY:_____ DATE:_____

TITLE:_____

G.C. METALS, INC.

BY:_____ DATE:_____

TITLE:_____

ENTERED and DATED this__ day of _____ , 2014

_____

Honorable Alvin W. Thompson
United States District Judge

CONSERVATION LAW FOUNDATION, INC.

BY:_____ DATE:_____

TITLE:_____

SOUNDKEEPER, INC.

BY:_____ DATE: 8/8/14

TITLE: Program Administrator

P.C. METALS, INC.

BY:_____ DATE:_____

TITLE:_____

G.C. METALS, INC.

BY:_____ DATE:_____

TITLE:_____

ENTERED and DATED this__ day of _____ , 2014

_____
Honorable Alvin W. Thompson
United States District Judge

24052.000/606215.2

CONSERVATION LAW FOUNDATION, INC.

BY:_____ DATE:_____

TITLE:_____

SOUNDKEEPER, INC.

BY:_____ DATE:_____

TITLE:_____

P.C. METALS, INC.

BY:_____ DATE: Aug. 4, 2014

TITLE: Counsel

G.C. METALS, INC.

BY:_____ DATE: Aug. 4, 2014

TITLE: Counsel

ENTERED and DATED this__ day of _____ , 2014

_____

Honorable Alvin W. Thompson
United States District Judge