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JAN - 6 2016

December 29, 2015

BY CERTIFIED MAIL

Curt Spalding, Regional Administrator
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5 Post Office Square - Suite 100
Boston, MA 02109-3912
Certified # 7014 3490 0000 7429 8015

Gina McCarthy, Administrator
US EPA Headquarters
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Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Certified # 7014 3490 0000 7429 7995

Re: Clean Water Action Complaint v. Rodney-Hunt Fontaine, Inc.
Case No. 15-14229

Dear Sirs and Madam:

In accordance with Section 505(c)(3) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365 (c)(3), and 40 CFR 135.4, we are enclosing a conformed copy of a complaint filed by this office on behalf of Clean Water Action against Rodney Hunt-Fontaine, Inc. on December 29, 2015.

Sincerely,

Nora J. Chorover

Enclosure

cc: Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Certified # 7014 3490 0000 7429 8022

NORA J CHOROVER (Bar No. 547352)
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CLEAN WATER ACTION

Filed Electronically 12/29/2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CLEAN WATER ACTION, Plaintiff, v. RODNEY HUNT-FONTAINE, INC., Defendant.	Case No. 15-14229 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES** (Clean Water Act, 33 U.S.C. §§ 1251 to 1387)

CLEAN WATER ACTION ("CWA") by and through its counsel, hereby alleges:

INTRODUCTION

1. This is a civil suit brought under the citizen suit enforcement provisions of the Clean Water Act, 33 U.S.C. § 1251, et seq. (the "Clean Water Act" or "the Act"). Plaintiff seeks declaratory judgment, injunctive relief, and other relief the Court deems appropriate for defendant's illegal discharges of polluted stormwater into the Millers River. Rodney Hunt-Fontaine, Inc. ("Rodney Hunt") operates a fabricated metal products facility on the banks of the Millers River at 46 Mill Street, Orange, Massachusetts (the "Facility"). As rain or snow melt comes into contact with the Facility, it picks up pollutants and flows to the Millers River.

2. Rodney Hunt has not consistently complied with requirements for controlling and monitoring industrial stormwater discharges under the Clean Water Act. In particular, the company does not control and monitor stormwater discharges from the east side of the Facility,

and it does not consistently monitor stormwater discharges from the west side of the Facility. Since Rodney Hunt has not been properly monitoring its discharges, it cannot have been ensuring that it is adequately controlling levels of pollutants in its stormwater discharges.

3. Stormwater pollution is a significant source of water quality problems for the nation's waters. The Massachusetts Department of Environmental Protection has determined that stormwater runoff represents the single largest source responsible for water quality impairments in the Commonwealth's rivers, lakes, ponds, and marine waters.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).

5. On August 7, 2015, Plaintiff provided notice of Defendant's violations of the Act, and of its intention to file suit against Defendant (the "Notice Letter"), to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region 1; the Commissioner of the Massachusetts Department of Environmental Protection ("DEP"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

6. More than sixty days have passed since notice was served on Defendant and the state and Federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither EPA nor the Commonwealth of Massachusetts has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. 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 District Court of Massachusetts pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

PARTIES

8. Plaintiff CLEAN WATER ACTION ("CWA") is a nationwide non-profit public benefit corporation organized under the laws of the District of Columbia, with offices located in Boston and Northampton, Massachusetts. CWA has approximately 50,000 members who live, recreate, and work in and around waters of the Commonwealth of Massachusetts, including the Millers River. CWA works to protect the nation's water resources. To further this goal, CWA actively seeks Federal and state agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

9. Members of CWA have a recreational, aesthetic and/or environmental interest in the Millers River. One or more of such members who reside in the Town of Orange use and enjoy the Millers River for recreation, sightseeing, wildlife observation and/or other activities in the vicinity of and downstream of Defendant's discharges. These members use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. The interests of CWA's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act, as alleged herein. The relief sought herein will redress the harms to Plaintiff caused by Defendant's activities.

10. Continuing commission of the acts and omissions alleged herein will irreparably harm Plaintiff and the citizens of the Commonwealth of Massachusetts, for which harm they have no plain, speedy, or adequate remedy at law.

11. Defendant Rodney Hunt is a Massachusetts corporation that operates a fabricated metal products facility in Orange, Massachusetts.

STATUTORY BACKGROUND

12. Pollutant Discharges without a Permit are Illegal. The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the Federal Environmental Protection Agency ("EPA") under the National Pollutant

Discharge Elimination System ("NPDES"). Sections 301(a), 402(a) and 402(p) of the Act. 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

13. EPA Has Made Stormwater Discharges from Fabricated Metal Products Facilities Subject to the Requirements of EPA's General Industrial Stormwater Permit. In order to minimize polluted stormwater discharges from industrial facilities, EPA has issued a general industrial stormwater permit ("Stormwater Permit"). EPA first issued the Stormwater Permit in 1995 and reissued the permit in 2000, 2008, and 2015. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 80 Fed. Reg. 34403 (June 4, 2015). Fabricated metal products facilities are subject to the requirements of this Stormwater Permit. Stormwater Permit, Appendix D, pg. 6.

14. Fabricated Metal Products Facilities Must Comply with the Requirements of the Stormwater Permit. The Stormwater Permit requires these facilities to, among other things:

a. ensure that pollutant control measures minimize pollutants in stormwater discharges, Stormwater Permit, pg. 14;
b. ensure that stormwater discharges do not cause or have the reasonable potential to cause or contribute to a violation of water quality standards, Stormwater Permit, pg. 20;
c. conduct monitoring of stormwater discharges at all Facility outfalls in each of the first four full quarters of permit coverage for compliance with benchmark limitations applicable specifically to fabricated metal products facilities, Stormwater Permit, pgs. 165-166;
d. report all monitoring results for all Facility outfalls to EPA by specified deadlines, Stormwater Permit, pgs. 48-49;
e. conduct corrective action after the average of four quarterly samples exceeds EPA benchmark value, Stormwater Permit, pgs. 27, 42;
f. conduct routine facility inspections at least quarterly (Stormwater Permit, pg. 22) and quarterly visual assessments (Stormwater Permit, pg. 24) to, among other things, sample and assess the quality of the facility's stormwater discharges, ensure that stormwater

control measures required by the Permit are functioning correctly and are adequate to minimize pollutant discharge, and timely perform corrective actions when they are not, Stormwater Permit, pgs. 22-26;

g. timely prepare and submit to EPA annual reports that include findings from the facility inspections and visual assessments and the documentation of corrective actions, Stormwater Permit, pgs. 49-50; and

h. comply with any additional state requirements, *see* Stormwater Permit, pgs. 170-173.

15. Citizens May Bring an Action to Enforce these Requirements. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

STATEMENT OF FACTS

16. Defendant owns and operates a fabricated metal products facility at 46 Mill Street, Orange, Massachusetts (the "Facility").

17. On December 23, 2008, Rodney Hunt submitted a Notice of Intent to be covered by the Stormwater Permit.

18. In 2015, Rodney Hunt submitted a Notice of Intent to be covered by the Stormwater Permit.

19. During every rain event, rainwater coming into contact with the Facility becomes contaminated with pollutants.

20. The Stormwater Permit places benchmark standards on various pollutants in the company's stormwater discharges, including standards for aluminum, iron, zinc, and nitrate plus nitrite nitrogen.

21. Metals such as aluminum, zinc, and iron at excessive concentrations are toxic to fish, aquatic plants, and other aquatic life.

22. Elevated concentrations of zinc in water are particularly toxic to species of algae, crustaceans, salmonoids, and other macroinvertebrates.

23. Aluminum can also be highly toxic to aquatic plant species.

24. Dissolved iron is bioavailable and can be toxic to fish and other aquatic life. Iron in the form of solid particulate can settle on the bottom of water bodies and destroy bottom-dwelling invertebrates, plants, or incubating fish eggs. Iron can also cause aesthetically objectionable conditions in water bodies by making the water appear rust colored.

25. Concentrations of these metals can affect the reproductive systems of aquatic life, resulting in severe population declines. Such toxic metals, because of their long biological half-lives, bioaccumulate in organisms over time. They are also hazardous to human life if they enter the water supply.

26. Excessive nitrogen in water causes algae to grow faster than ecosystem can handle. Significant increases in algae harm water quality, food resources and habitats, and decrease the oxygen that fish and other aquatic life need to survive. Algal blooms can severely reduce or eliminate oxygen in the water, leading to illness and death in fish. Some algal blooms are harmful to humans because they produce elevated toxins and bacterial growth. Excessive concentrations of nitrogen in drinking water can be hazardous to health, especially for infants and pregnant women.

FIRST CAUSE OF ACTION

Failure to Comply with the Monitoring Requirements of the Stormwater Permit: Violations of 33 U.S.C. § 1311(a)

27. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herin.

28. Since submitting its December 23, 2008 Notice of Intent to be covered by the Stormwater Permit, Defendant failed to consistently comply with the requirement in Section 6.2.1.2 of the Stormwater Permit to conduct quarterly benchmark monitoring.

29. During several monitoring quarters where one or more measurable storm event had occurred, Rodney Hunt wrongly reported to EPA that there had been no stormwater discharges from its Facility during that monitoring quarter.

30. Stormwater discharges from areas on the east side of the Facility.

31. Rodney Hunt has failed to monitor discharges from all of its outfalls at the Facility. In particular, it has failed to monitor from outfalls on the east side of the Facility.

32. Rodney Hunt has failed to report on monitoring results for discharges from all of its outfalls. In particular, it has failed to report on discharges from outfalls on the east side of the Facility.

33. Defendant has failed to comply with its obligation to monitor each of its benchmark pollutants at all outfalls until the average of four consecutive monitoring values for each seuch pollutant is shown to be below the applicable benchmark.

34. These violations establish an ongoing pattern of failure to comply with the Permit's monitoring requirements.

35. Each of Defendant's violations of the monitoring requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the failure to monitor occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the facility and on which the violation occurred and/or continued.

SECOND CAUSE OF ACTION

Failure to Comply with the Reporting Requirements of the Stormwater Permit: Violations of 33 U.S.C. § 1311(a)

36. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herin.

37. Defendant has failed to consistently comply with the Stormwater Permit's requirement for reporting benchmark monitoring results to EPA. Stormwater Permit, sections 6.1.9 and 7.4. (Previous relevant sections: 4.3.1, 4.3.2, 7.2). Defendant's violations of the Permit's reporting requirements are separate and distinct from violations of the Permit's monitoring requirements.

38. These violations establish an ongoing pattern of failure to comply with the Permit's reporting requirements.

39. Each of Defendant's violations of the benchmark monitoring reporting requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the failure to report occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the facility and on which the violation occurred and/or continued.

THIRD CAUSE OF ACTION

Failure to Reduce and/or Eliminate Pollutants to the Extent Achievable: Violations of 33 U.S.C. § 1311(a)

40. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herin.

41. Since at the latest December 14, 2010 to the present, Rodney Hunt has failed to propertly monitor its stormwater discharges at the eastern side of its facility and therefore cannot have ensured that its control measures reduce and/or eliminate pollutants in its stormwater discharges 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. Stormwater Permit, section 2.0 (pg. 14).

42. Each of Defendant's violations of the reduction and/or elimination requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the violation occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was

discharged from the Facility and on which the failure to reduce and/or eliminate pollutants occurred and/or continued.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

1. Declare Defendant to have violated and to be in violation of the Act as alleged herein;

2. Enjoin Defendant from discharging stormwater containing excessive levels of pollutants from the Facility;

3. Require Defendant to implement the requirements of the Stormwater Permit;

4. Order Defendant to pay civil penalties of up to $37,500 per day of violation, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 74 Fed. Reg. 626, 627 (2009);

5. Order Defendant to take appropriate actions to restore the quality of navigable waters impaired by its activities;

6. Award Plaintiff's costs (including reasonable investigative, attorney, witness, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and

7. Award any such other and further relief as this Court may deem appropriate.

Dated: 12/29/2015

Respectfully submitted,

Nora J. Chorover /s/
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Attorney for Plaintiff
CLEAN WATER ACTION

CLEAN WATER ACTION'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Massachusetts District Court Local Rule 7.3, Plaintiff Clean Water Action states that it does not have a parent corporation and no publicly held company owns 10% or more of its stock.