STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

THE STATE OF RHODE ISLAND, BY AND THROUGH PETER F. NERONHA, ATTORNEY GENERAL AND THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, BY AND THROUGH ITS DIRECTOR, JANET COIT

C.A. No.: PC20-

Plaintiffs,

v.

SMM NEW ENGLAND CORPORATION, d/b/a SIMS METAL MANAGEMENT

Defendant.

COMPLAINT

The State of Rhode Island ("Rhode Island"), acting by and through its Attorney General, Peter F. Neronha, and the Rhode Island Department of Environmental Management ("RIDEM"), acting by and through its Director, Janet Coit (together referred to as, the "State"), file this Complaint against SMM New England Corporation, d/b/a SIMS Metal Management ("SMMNEC") and allege as follows:

SUMMARY OF THE CASE

1. This civil action is brought against SMMNEC for violations of:

   a. The Rhode Island Clean Air Act ("RI CAA"), R.I.G.L.§23-23-1, *et seq.*, and its implementing regulations, the Air Pollution Control Regulations ("APCR"), 250-RICR-120-05-0 *et seq.*, including APCR No. 1, *Visible Emissions*, APCR No. 5, *Fugitive Dust*, APCR No. 7, *Emission of Air Contaminants Detrimental to Person or Property*, APCR No. 9, *Air Pollution Control Permits*, and APCR No. 29, *Operating Permits*;

b. The Environmental Rights Act, R.I.G.L.§10-20-1, *et seq.*; and

c. Common law of public nuisance.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to R.I.G.L. §§8-2-13, 10-1-2, 10-20-3, and 23-23-10.

3. Venue is proper, pursuant to R.I.G.L. §§9-4-2, 9-4-4, and 10-1-2.

DEFENDANT

4. SMMNEC is a Delaware corporation, d/b/a Sims Metal Management in Rhode Island, with its principle business office address listed as 234 Universal Drive, North Haven, Connecticut, and with its Registered Agent listed as Corporation Service Company, 222 Jefferson Boulevard, Warwick, Rhode Island.

5. SMMNEC owns and operates a scrap metal recycling business at its 9.5-acre property located at 15-17 Green Earth Avenue in Johnston, Rhode Island where it accepts delivery of, stores, prepares and/or maintains scrap metal for off-site shipment or sale (the "Facility") and, using a seven-thousand (7,000) horsepower shredder (HP), metal shredder along with other stationary and mobile equipment, shreds end-of-life automobiles and end-of-life appliances, scrap metal, and other light gauge recyclable metal-bearing materials (the "Shredder") (the term "Facility" is used to mean the shredding business, operations and the Shredder itself throughout the Complaint).

6. SMMNEC is a "person" within the meaning of the RI CAA, R.I.G.L. §23-23-3(7), and APCR No. 0.4(A)(39).

7. At all times relevant to this action, SMMNEC was and continues to be the "owner" and "operator" of the Facility within the meaning of APCR No. 0.4(A)(36).

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FACTUAL BACKGROUND

8. SMMNEC accepts deliveries of scrap metals, including light gauge recyclable metal-bearing materials, automobiles and end-of-life appliances ("Feedstock Material") at the Facility from various sources, including, manufacturers, small businesses, and the general public.

9. The Facility processes the Feedstock Material by loading it onto a conveyor with a grappling hook and feeding it through the electronically operated, 7,000 HP Shredder.

10. The Facility used a 9,000 HP shredder until it failed in April 2017. It was replaced by the 7,000 HP Shredder in May 2017.

11. The shredding process generates enough heat to melt or burn the plastics, paints, surfactants, and oils in the scrap metal materials, thereby resulting in emission of volatile organic compounds ("VOCs"), particulate matter ("PM"), and other regulated Toxic Air Contaminants ("TAC"), including, but not limited to, lead, chromium, cadmium, arsenic, mercury.

12. The potential uncontrolled emissions of VOCs, PM, and TACs pose significant risks to human health and the environment.

13. VOCs can irritate eyes, nose and throat, can cause difficulty breathing and nausea, and can damage the central nervous system, as well as other organs.

14. VOCs can also interact with nitrogen oxides to produce ozone pollution.

15. Ozone contributes to many respiratory health problems, including chest pains, shortness of breath, coughing, nausea, throat irritation and increased susceptibility to respiratory infections and conditions such as asthma. Elevated ozone jeopardizes the health of residents of the Town of Johnston and Rhode Island, especially children, those suffering from respiratory illnesses, and people who work or exercise outdoors.

16. Exposure to PM can affect both the lungs and heart, and has been linked to

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premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.

17. Exposure to TACs is associated with kidney and bone damage, lung cancer, and developmental and neurobehavioral effects on fetuses, infants and children, and elevated blood pressure in adults. Additionally, through atmospheric deposition, airborne TACs may contaminate the soils of surrounding properties, creating an additional potential exposure pathway.

18. Since May of 2014, RIDEM has received at least ninety-two (92) citizen complaints related to the emissions created by the Shredder operations at the Facility. Fifty-one (51) of the citizen complaints were received after May of 2019. These complaints describe impacts on neighboring properties, and concerns about possible health impacts, including, but not limited to, respiratory irritation, burning eyes, headaches, and noxious and nauseating odors.

19. In July 2019, a RIDEM inspector became ill on multiple occasions while investigating citizen complaints associated with emissions from the Facility. She complained of eye and throat irritation, which lingered several days after the inspections, and the lingering smell of metal in her hair and on her skin.

20. The Facility has the potential to emit VOCs in excess of 50 tons per year.

21. The Facility has the potential to emit TACs above the thresholds established in APCR No. 9.17, Appendix *A: Minimum Quantities and List of Federal Hazardous Air Pollutants.*

22. At no time did SMMNEC apply for or obtain preconstruction permits for the Facility as required by the RI CAA through the APCRs.

23. To date, SMMNEC has operated the Facility without emission control technology for VOCs or TACs.

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24. At no time did SMMNEC apply for or obtain a Title V operating permit (described in more detail below) as required by APCR No. 29 for the Facility.

BACKGROUND ON THE RHODE ISLAND CLEAN AIR ACT

25. The RI CAA establishes a regulatory scheme designed to "preserve, protect, and improve the air resources of the state to promote the public health, welfare, and safety, to prevent injury or detriment to human, plant, and animal life, physical property and other resources, and to foster the comfort and convenience of the state's inhabitants." R.I.G.L. §23-23-2.

26. The RI CAA also provides that "the director is authorized to exercise all powers, direct or incidental, necessary to carry out the purposes of this chapter to assure that Rhode Island complies with the federal Clean Air Act, 42 U.S.C. § 7401 et seq." R.I.G.L. §23-23-2.

27. The RI CAA and the APCRs comply with the standards and regulatory schemes set forth in the federal Clean Air Act and have received the requisite approvals and authorizations from the United States Environmental Protection Agency ("EPA") confirming the same.

28. For each air pollutant covered by the federal Clean Air Act, EPA has established national ambient air quality standards (the "NAAQS") to protect the public health and welfare. CAA §109, 42 U.S.C. §7409.

29. EPA has specifically promulgated NAAQS for ozone. 40 C.F.R. §§50.9-50.10.

30. The RI CAA, consistent with the federal Clean Air Act, requires new stationary sources of a criteria pollutant (in this case VOCs as precursors to ozone) to apply for a preconstruction permit.

31. Further, since Rhode Island is in an ozone nonattainment area or ozone transport region, a Major Source Permit is conditioned on the proposed stationary source meeting the "lowest achievable emissions rate" ("LAER") and providing emission offsets (among other

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requirements). APCR No. 9.8.1.

RELEVANT STATE REGULATORY TEXT

32. Pursuant to the federal Clean Air Act, APCR Nos. 9.6 and 9.8.1 provide that no person shall construct a new major stationary source of VOCs in areas designated as part of an ozone transport region pursuant to CAA §184(a) without a Major Source Permit.

a. APCR No. 9.5(B)(1) defines the term "major stationary source" to include any stationary source that emits or has the potential to emit ("PTE") 50 tons per year ("tpy") or more of VOCs, and further defines all major sources of VOCs to be major stationary sources for ozone.

(i) APCR No. 0.4(A)(40) defines the "Potential to emit" as the maximum capacity of a stationary source to emit under its physical and operational design. This is measured by the amount that would be emitted if the facility ran 8,760 hours/year, subject to physical and operational restrictions.

b. APCR No. 0.4(A)(19) defines the term "stationary source" to include any building, structure, facility or installation that emits or may emit any air pollutant.

33. APCR No. 9.7.1(A)(6) provides that permit conditions are required for the construction, installation, or modification of any stationary source that has the potential to increase emissions of a listed toxic air contaminant by greater than the minimum quantity for that contaminant, as shown in *Appendix A: Minimum Quantities and List of Federal Hazardous Air Pollutants.*

34. APCR No. 29.11(B) provides that all major sources are required to apply for a Title V operating permit within 12 months of becoming subject to a federally-approved state Title V operating permit program, or such earlier date established by the State.

35. In addition to the permitting standards listed above, the State has adopted other regulatory requirements to implement the RI CAA and to protect the health and safety of Rhode Islanders, as follows;

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a. APCR No. 1.6 prohibits emissions to "the atmosphere from any source and any air contaminant for a period or periods aggregating more than three minutes in any one hour which is greater than or equal to twenty percent opacity."

b. APCR No. 5.6 prohibits "sand, gravel, soil, aggregate and any other organic or inorganic solid matter capable of releasing dust, [being] handled, transported, mined, quarried, stored or otherwise utilized in any way so as to cause airborne particulate matter to travel beyond the property line of the emission source without taking adequate precautions to prevent particulate matter from becoming airborne."

c. APCR No. 7.6 prohibits emissions of "any contaminant which either alone or in connection with other emissions, by reason of their concentration or duration, may be injurious to human, plant or animal life, or cause damage to property or which unreasonably interferes with the enjoyment of life and property."

ENFORCEMENT ACTIONS AGAINST FACILITY

36. In May of 2012, SMMNEC submitted an Applicability Analysis to RIDEM, which represented that no air permit or air pollution controls were required.

37. SMMNEC commenced construction of the Facility in October of 2012, without applying for an air permit with RIDEM and without installation of emission control equipment for VOCs, PM, or APCs.

38. The Facility began operating in October of 2013.

39. EPA and RIDEM inspected the Facility on September 5, 2014.

40. On November 18, 2014, RIDEM issued a Letter of Noncompliance to SMMNEC for violation of APCR No. 5 for fugitive dust which had traveled beyond the property line of the Facility from an inspection on October 14, 2014.

41. On December 1, 2015, RIDEM issued an Expedited Citation Notice to SMMNEC for violations of APCR No. 5 for fugitive dust which had traveled beyond the property line of the Facility and APCR No. 7 for emissions which may be injurious to human life, or cause damage to property, or which unreasonably interferes with the enjoyment of life and property.

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42. EPA issued SMMNEC a federal CAA Testing Order on October 11, 2016.

43. With EPA observers present, SMMNEC tested the Facility for emissions of VOCs and other regulated air pollutants in September 2017 (the "2017 Stack Test").

44. On February 16, 2018, based on the results of the 2017 Stack Test, EPA issued a Notice of Violation to SMMNEC for violations of APCR No. 9 for construction and operation of the Facility in an area designated as part of an ozone transport region without a Major Source Permit and APCR No. 29 for construction and operation of the Facility without the required Title V permit pursuant to CAA §502, 42 U.S.C. § 7661.

45. On September 20, 2018, RIDEM issued an Expedited Citation Notice to SMMNEC for violations of APCR No. 1 for visible emissions in excess of twenty percent opacity and APCR No. 7 for emissions which may be injurious to human life, or cause damage to property, or which unreasonably interferes with the enjoyment of life and property for an inspection in May 2018.

46. In response to numerous citizen complaints, RIDEM conducted fence line inspections of the Facility on June 19, June 20, June 25, July 5, July 11, and July 17, 2019, which revealed violations of the following:

a. APCR No. 1 for visible emissions in excess of twenty percent opacity;

b. APCR No. 5 for fugitive dust which had traveled beyond the property line of the Facility; and

c. APCR No. 7 for emissions which may be injurious to human life, or cause damage to property, or which unreasonably interferes with the enjoyment of life and property.

47. On August 9, 2019, RIDEM issued to SMMNEC a Notice of Intent to Enforce those violations listed in Paragraph 46.

48. On August 9, 2019, the Rhode Island Attorney General's ("RIAG") office issued a 60-day Notice of Intent to File a Citizen's Suit pursuant to CAA §304(a)(1), 42 U.S.C. §7604(a)(1),

against SMMNEC for violations of the following:

a. APCR No. 1 for visible emissions in excess of twenty percent opacity;

b. APCR No. 5 for fugitive dust which had traveled beyond the property line of the Facility;

c. APCR No. 7 for emissions which may be injurious to human life, or cause damage to property, or which unreasonably interferes with the enjoyment of life and property;

d. APCR No. 9 for construction and operation of the Facility in an area designated as part of an ozone transport region without a Major Source Permit; and

e. APCR No. 9.17 for having a PTE over the minimum quantities for listed toxic air contaminants.

f. APCR No. 29 for construction and operation of the Facility without the required Title V permit pursuant to CAA §502, 42 U.S.C. § 7661.

49. The RIAG did not initiate the Citizen's Suit in federal court, but instead now brings these corresponding state law claims with RIDEM in state court.

FIRST CLAIM FOR RELIEF

Violations of APCR No. 9

50. The State repeats and realleges the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

51. Upon information and belief and based on the results of the 2017 Stack Test, the Facility has a PTE of more than 50 tpy of VOCs.

52. Since the Facility has a PTE of more than 50 tpy of VOCs, it qualifies as a major stationary source pursuant to APCR No. 9.5(B)(1).

53. A major stationary source is required to obtain a Major Source Permit pursuant to APCR Nos. 9.6 and 9.8.1.

54. A major stationary source within the ozone transport region is required to install

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LAER control technologies pursuant to APCR No. 9.8.1.

55. Upon information and belief and based on the results of the 2017 Stack Test, the Facility has a PTE for the listed TACs over the minimum quantity thresholds listed in *Appendix A* of APCR No. 9.17, as follows:

Pollutant	**PTE (lbs/year)**	**§9.17-Appendix A Minimum Quantity Threshold (lbs/year)**
Mercury	**25.66**	0.7
Phosphorous	**17.20**	0.2
Chromium	**3.25**	0.009
Cobalt	**0.33**	0.1
Nickel	**2.18**	0.4
Arsenic	**0.37**	0.02
Cadmium	**1.19**	0.07
Antimony	**0.71**	0.6
Lead	**13.49**	0.9

56. SMMNEC has never obtained a Major Source Permit for the Facility.

57. SMMNEC has never installed or implemented LAER control technologies at the Facility or otherwise met the conditions of any type of permit.

58. For their violations of the APCR No. 9, the State is entitled to injunctive relief and civil penalties of ten thousand dollars ($10,000) for each day during which the violation shall be repeated or continued. R.I.G.L §23-23-14(a).

59. Wherefore, the State prays for relief as set forth below.

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SECOND CLAIM FOR RELIEF

Violation of APCR No. 29

60. The State repeats and realleges the allegations set forth in paragraphs 1 through 59 as if fully set forth herein.

61. Upon information and belief and based on the results of the 2017 Stack Test, the Facility has a PTE of more than 50 tpy of VOCs.

62. Since the Facility has a PTE of more than 50 tpy of VOCs, it qualifies as a major stationary source pursuant to APCR No. 9.5(B)(1).

63. A major stationary source is required to apply for an operating permit under APCR No. 29 within 12 months after commencing operation.

64. SMMNEC commenced operation of the Facility in October 2013.

65. SMMNEC was required to apply for a Title V operating permit by October 2014.

66. To date, SMMNEC has never applied for a Title V operating permit.

67. For its violations of the APCR No. 29, the State is entitled to injunctive relief and civil penalties of ten thousand dollars ($10,000) for each day during which the violation shall be repeated or continued. R.I.G.L §23-23-14(a).

68. Wherefore, the State prays for relief as set forth below.

THIRD CLAIM FOR RELIEF

Violation of APCR No. 1

69. The State repeats and realleges the allegations set forth in paragraphs 1 through 68 as if fully set forth herein.

70. The Facility has been found in violation of APCR No. 1 on multiple occasions since at least May 2018, as referenced in Paragraphs 45 and 46 herein.

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71. For its violations of the APCR No. 1, the State is entitled to injunctive relief and civil penalties of ten thousand dollars ($10,000) for each day during which the violation shall be repeated or continued. R.I.G.L §23-23-14(a).

72. Wherefore, the State prays for relief as set forth below.

FOURTH CLAIM FOR RELIEF

Violation of APCR No. 5

73. The State repeats and realleges the allegations set forth in paragraphs 1 through 72 as if fully set forth herein.

74. The Facility has been found in violation of APCR No. 5 on multiple occasions since at least October 2014, as referenced in Paragraphs 40, 41, and 46 herein.

75. For its violations of the APCR No. 5, the State is entitled to injunctive relief and civil penalties of ten thousand dollars ($10,000) for each day during which the violation shall be repeated or continued. R.I.G.L §23-23-14(a).

76. Wherefore, the State prays for relief as set forth below.

FIFTH CLAIM FOR RELIEF

Violation of APCR No. 7

77. The State repeats and realleges the allegations set forth in paragraphs 1 through 76 as if fully set forth herein.

78. The Facility has been found in violation of APCR No. 7 on multiple occasions since at least October 2014, as referenced in Paragraphs 41, 45, and 46 herein.

79. For its violations of the APCR No. 7, the State is entitled to injunctive relief and civil penalties of ten thousand dollars ($10,000) for each day during which the violation shall be repeated or continued. R.I.G.L §23-23-14(a).

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80. Wherefore, the State prays for relief as set forth below.

SIXTH CLAIM FOR RELIEF

State Environmental Rights Act, Equitable Relief Action

81. The State repeats and realleges the allegations set forth in paragraphs 1 through 80 as if fully set forth herein.

82. R.I.G.L. §10-20-1 declares that "each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state," and that "it is in the public interest to provide an adequate civil remedy to protect air, water, land, and other natural resources located within the state form pollution, impairment, or destruction."

83. R.I.G.L. § 10-20-2(6) defines "pollution, impairment, or destruction" to include "any conduct which materially adversely affects or is likely to materially adversely affect the environment."

84. The violations alleged in Claims 1-5 include conduct which qualifies as "pollution, impairment, or destruction" of the natural resources of the State;

85. The violations alleged in Claims 1-5 include conduct which "materially adversely affects or is likely to materially adversely affect the environment."

86. The RIAG "may maintain an action in any court of competent jurisdiction for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment, or destruction," and may "take all possible action, including . . . formal legal action, to secure and insure compliance with the provisions of this chapter." R.I.G.L. § 10-20-3(b), (d)(1), (d)(5).

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87. In such an action maintained by the Attorney General, "[t]he court may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land, or other natural resources located within the state from pollution, impairment, or destruction, considering the health, safety, and welfare of the public, and the availability of feasible, prudent, and economically viable alternatives." R.I.G.L. § 10-20-6.

88. As alleged above, SMMNEC, through its failure to obtain a permit and install appropriate emissions control equipment, has polluted and/or impaired the air of Rhode Island, all of which is actionable pursuant to R.I.G.L. § 10-20-1, *et seq.*

89. Wherefore, the State prays for relief as set forth below.

SEVENTH CLAIM FOR RELIEF

Common Law of Public Nuisance

90. The State repeats and realleges the allegations set forth in paragraphs 1 through 89 as if fully set forth herein.

91. Rhode Island case law defines a public nuisance as "an unreasonable interference with a right common to the general public: it is behavior that unreasonably interferes with the health, safety, peace, comfort or convenience of the general community." Citizens for Preservation of Waterman Lake v. Davis, 420 A.2d 53, 59 (R.I. 1980).

92. The violations alleged in Claims 1-5 include conduct which constitutes a public nuisance that unreasonably interferes with the public right to unpolluted, safe, and clean natural resources, specifically air.

93. The public nuisance caused by SMMNEC has caused and/or threatens to cause substantial injury to the property and air of Rhode Island, in which the public has interests

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represented by and protected by Rhode Island in its *parens patriae* capacity.

94. Wherefore, the State prays for relief as set forth below.

PRAYER FOR RELIEF

The Plaintiff, **STATE OF RHODE ISLAND**, seeks judgment against **SMMNEC** for:

1. Payment of penalties allowed by regulation or statute, including but not limited to R.I.G.L §23-23-14(a);

2. Compensatory damages arising from the health impacts to the citizens of Rhode Island;

3. Compensatory damages arising from the contamination of natural resources, specifically air, including, but not limited to:

   a. Cost of investigation;

   b. Cost of testing and monitoring;

   c. Damages to reimburse the State for any other response costs or other expenditures incurred to address air pollution from the Facility;

   d. Interest on the damages according to law;

4. Injunctive and equitable relief to compel SMMNEC to comply with the APCRs and to abate the continuing nuisance;

5. Costs (including reasonable attorney's fees, court costs, and other expenses of litigation);

6. Prejudgment interest; and

7. Any other and further relief as the Court deems just, proper, and equitable.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial on all causes of action for which a jury is available under the law.

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Respectfully submitted,

THE STATE OF RHODE ISLAND

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