

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

STATE OF MARYLAND *
DEPARTMENT OF THE *
ENVIRONMENT *
1800 Washington Boulevard *
Baltimore, Maryland 21230, *

Plaintiff, *

v. *

ECOLOGY SERVICES INC. *
9135 Guilford Road *
Columbia, Maryland 21046 *

Serve on: *
Margaret Fazi, Resident Agent *
9135 Guilford Road, Suite 200 *
Columbia, Maryland 21046, *

Case No: _____

Defendant. *

* * * * *

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

The State of Maryland, Department of the Environment (the “Department”), through its attorneys, files this complaint for injunctive relief and civil penalties against Ecology Services, Inc. (“Ecology Services”).

INTRODUCTION

1. This is an action for injunctive relief and for civil penalties against Ecology Services for violations of a consent order entered into by the Defendant and the Department, and the State’s water pollution control statute, Title 9, Subtitle 3 of the Environment Article of the Annotated Code of Maryland.

2. The Clean Water Act, 33 U.S.C. §§ 1251 through 1376, prohibits the discharge of pollutants into waters of the United States, unless the U.S. Environmental Protection Agency (“EPA”) issues a National Pollutant Discharge Elimination System (“NPDES”) permit. The EPA may delegate its NPDES authority to a state, 33 U.S.C. § 1342(b), and has done so to the State of Maryland, which has vested that authority in the Department. The Department thus issues NPDES permits that authorize discharges under both federal and State law.

3. Ecology Services conducts a waste management and recycling business. It uses the property located at 8240 Baltimore-Annapolis Boulevard, Pasadena, Maryland 21122 (the “Site”) for heavy vehicle storage, fueling, and operations.

4. During a series of inspections in 2020, the Department observed evidence of unpermitted discharges of pollutants from the Site, including mud and sediment being tracked off the Site, waste storage containers, vehicle parts, and trash exposure to precipitation, and soil stains indicating the discharge of oil at the Site.

5. Ecology Services agreed to the issuance of a consent order authorizing the continued operation of the Site subject to certain pollution-control conditions. Subsequent inspections revealed multiple violations of the consent order’s requirements.

6. The Department brings this action to require Ecology Services to operate the Site in compliance with the consent order, and to seek penalties for operating the Site without required permits and for violations of the consent order.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to §§ 6-102 and 6-103 of the Courts and

Judicial Proceedings Article of the Annotated Code of Maryland because Ecology Services was organized under the laws of Maryland, has an interest in property, or conducted business in Maryland at all times relevant to this complaint.

8. This Court is the proper venue for this action pursuant to § 6-201 of the Courts and Judicial Proceedings Article because Ecology Services resides or carries on a regular business in Anne Arundel County, Maryland.

PARTIES

9. Plaintiff is a State agency within the Executive Branch of the State of Maryland. The Secretary of the Environment is charged with regulating water pollution and enforcing the State's water pollution laws pursuant to Title 9, Subtitle 3 of the Environment Article.

10. Defendant Ecology Services Inc. is a Maryland corporation that engages in solid waste and recycling services and carried out the unlawful activities specified in this complaint at the Site.

STATUTORY AND REGULATORY AUTHORITY

11. The Maryland General Assembly has enacted a comprehensive licensing and regulatory system governing the discharge of pollutants and other activities that impact waters of the State, including discharges to streams and river channels, and their 100-year flood plains. The Department is charged with implementing and enforcing that system. Md. Code Ann., Envir. §§ 1-301(a); 9-319.

12. A person may not discharge any pollutant into waters of the State unless authorized by Title 4, Subtitle 4, or by Title 9, Subtitle 3 of the Environment Article. Envir. § 9-322.

13. Title 4, Subtitle 4 of the Environment Article declares the policy of the State to improve, conserve, and manage the waters of the State for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses, and to ensure that waste is not discharged to waters of the State without necessary treatment. Envir. § 4-202.

14. Under Title 4, Subtitle 4, a person may not add, introduce, leak, spill, or otherwise emit soil or sediment into waters of the State or place soil or sediment in a condition or location where it is likely to be washed into waters of the State unless authorized by an approved soil conservation and water quality plan for agricultural land management practices or a permit issued under Title 9, Subtitle 3. Envir. § 4-413.

15. Title 9, Subtitle 3 of the Environment Article reiterates the State's policy to improve, protect, and maintain waters of the State, and establishes additional and cumulative remedies to prevent, abate, and control water pollution. Envir. § 9-302.

16. Under Title 9, Subtitle 3, a person may not discharge any pollutant into waters of the State without a discharge permit issued by the Department. Envir. § 9-323; COMAR 26.08.04.01B.

17. A person also must hold a discharge permit issued by the Department before the person may construct, install, modify, extend, alter, or operate a commercial or

industrial facility if its operation could cause or increase the discharge of pollutants into waters of the State. Envir. § 9-323.

18. “Waters of the state” is defined as: (1) Both surface and underground waters within the boundaries of this State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay and its tributaries, and all ponds, lakes, river, streams, storm drain systems, public ditches, tax ditches, and public drainage systems within this State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and (2) The flood plain of free flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency. Envir. § 9-101(l).

19. “Discharge” is defined as the addition, introduction, leaking, spilling or emitting of a pollutant into waters of the State; or placing a pollutant in a location where the pollutant is likely to pollute waters of the State. Envir. §§ 9-101(b); COMAR 26.08.01.01B(20).

20. “Pollution” is defined as any contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including a change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into the waters of this State, that will render the waters harmful or detrimental to: (1) public health, safety, or welfare; (2) domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; (3) livestock, wild animals, or birds; or (4) fish or other aquatic life. Envir. § 9-101(h); COMAR 26.08.01.01B(67).

21. The Department may make the issuance of a discharge permit contingent on any conditions the Department considers necessary to prevent the unauthorized discharge of a pollutant. Envir. § 9-326(a)(1).

22. The Department has issued a General Permit for Discharges from Stormwater Associated with Industrial Activities 12SW-A (the “General Permit”), which provides streamlined authorization for stormwater discharges, subject to certain pollution-control conditions, from facilities that notify the Department of their intent to be covered by its terms. COMAR 26.08.04.01B; COMAR 26.08.04.09B.

23. The General Permit is a 5-year State and federal discharge permit that regulates facilities engaging in “industrial activity.” Appendix A of the General Permit, titled “Industry Specific Sectors,” identifies by Standard Industrial Classification code (“SIC Code”) those industry sectors that may choose to be regulated under the General Permit. General Permit, Part I.E.1. SIC Code 4212, within Sector P, includes the following “industrial activity”: motor freight transportation and warehousing with vehicle maintenance shops, including fueling, vehicle rehabilitation, mechanical repairs, painting, and lubrication. 40 C.F.R. § 122.26(b)(14)(viii). SIC Code 4212 permittees must follow certain requirements in the General Permit, including stormwater management and effluent limits (Part III), and sector-specific effluent limits contained in Appendix D.

24. Part III.B.1 of the General Permit requires permittees to keep processing areas, storage areas, oils, chemical products, chemical solutions, paints, solvents, and waste materials inside or under storm-resistant coverings. Liquids, chemicals, oils, and waste materials must also be kept on an impervious surface. Permittees must also stabilize

exposed areas and contain runoff to minimize erosion and sediment discharge. In addition, permittees must minimize dust and offsite tracking of waste material, clean exposed areas, keep materials labelled and stored, and maintain industrial equipment and systems to prevent leakage or exposure of pollutants to stormwater.

25. Part III.C.8 of the General Permit requires permittees to maintain a Stormwater Pollution Prevention Plan (“SWPPP”) and related documentation onsite. The SWPPP is a facility-specific plan to implement effluent limits that are established by the General Permit. Effluent limits are restrictions on the discharge of pollutants from regulated facilities that must be implemented to maintain compliance with the General Permit. Permittees must comply with the General Permit at all times. General Permit, Part VI.A.

26. Facilities may obtain coverage under the General Permit by implementing control measures and submitting a Notice of Intent (“NOI”) and SWPPP to the Department. General Permit, Part II.A. Upon approval, the NOI and SWPPP are incorporated into the General Permit.

27. The General Permit expired on December 31, 2018, and was extended administratively for all existing permittees until a new general permit could be issued. Because the current General Permit has expired, the Department cannot provide coverage under the permit to new applicants. Until a new permit is issued, prospective permittees must either obtain an individual discharge permit tailored to the specific facility, or agree to a Consent Order To Comply with the Terms and Conditions of the General Permit for Stormwater Associated with Industrial Activity 12SW-A (“Consent Order”). The Consent

Order requires compliance with the terms of the General Permit, the NOI, and the SWPPP. It is illegal to engage in industrial activity without obtaining either coverage under the General Permit or an individual discharge permit, or without agreeing to the terms of the Consent Order. Envir. §§ 9-322; 9-323.

FACTUAL ALLEGATIONS

28. The Site is a 4.38-acre facility located near Lake Waterford in Pasadena, Maryland. Ecology Services provides certain waste management services to the greater Anne Arundel County area through a fleet of trucks that are stored, operated, and fueled at the Site. In addition, Ecology Services stores waste containers and vehicle parts at the Site.

29. The Site's entrance, exit, parking area, and fueling area are not paved and are exposed to stormwater. The exit—which is designated as “Outfall 001” under the SWPPP—is adjacent to and connected to the Boulevard. Stormwater from Outfall 001 mixes with stormwater from the Boulevard and is discharged to the Magothy River. The Magothy River is a water of the State and is impaired by sediment, bacteria, ions, metals, nutrients, and PCBs.

30. On January 3, 2020, the Department inspected the Site in response to a complaint about sediment-laden stormwater emanating from the Site. The Department's inspector observed that the Site's parking area was not stabilized, with the result that vehicles were tracking sediment onto the Boulevard. The inspector further observed a large vehicle-fueling station and dumpsters at the Site, all of which were open to stormwater

intrusion. Accordingly, the inspector contacted Paul Hlavinka, Chief of the Department's Industrial Stormwater Permits Division, and relayed these findings. Mr. Hlavinka determined that the Site was performing industrial activity, so a General Permit was required. However, the Site did not have a General Permit, discharge permit, or Consent Order in violation of §§ 9-322 and 9-323 of the Environment Article. The inspector contacted Mr. Timothy Osborne, the Chairman of Ecology Services, and notified him of the Department's findings.

31. On February 12, 2020, the Department performed a follow-up inspection of the Site. The Department's inspector observed ongoing discharge of sediment from the parking area to the Boulevard through vehicular traffic, and noted that the Site was continuing to operate without coverage under the General Permit, an individual discharge permit, or the Consent Order, in violation of §§ 9-322 and 9-323 of the Environment Article. The inspector called Mr. Osborne, who confirmed that he had received a copy of the Department's January 3, 2020 inspection report. Mr. Osborne further confirmed that Ecology Services had not obtained a discharge permit for the Site or agreed to the terms of the Consent Order. A copy of the Department's February 12, 2020 inspection report was sent to Mr. Osborne.

32. On February 21, 2020, the Department re-inspected the Site. The Department's inspector observed the ongoing discharge of sediment from vehicles tracking mud from the Site's parking area onto the Boulevard, and again noted that the Site still had not obtained coverage under the required General Permit, a discharge permit, or the Consent Order, in violation of §§ 9-322 and 9-323 of the Environment Article. The

inspector called Mr. Osborne and left a voicemail.

33. On or about June 23, 2020, Ecology Services submitted an NOI, a SWPPP, and a Declaration of Intent to comply with the Consent Order to govern operations at the Site. The SWPPP is attached hereto as Exhibit A. The NOI and SWPPP were prepared by Grapewell Stormwater Consulting Inc. (“Grapewell”) on Ecology Services’ behalf. The NOI identified the Site under SIC code 4212, and noted that the Site discharges stormwater to the Magothy River. The SWPPP identified Outfall 001, noted the Site as Sector P under Appendix D of the General Permit, and recognized that the Magothy River is impaired by bacteria, ions, metals, nutrients, PCBs, and sediment.

34. On July 23, 2020, the Department re-inspected the Site. Prior to this inspection, the Department’s inspector spoke with Mr. Ben Wells from Grapewell. Mr. Wells stated that the Site was stabilized with stone. However, the Department’s inspection determined that the Site was not stabilized. Instead, stone was stockpiled nearby. The Department’s inspector further observed that vehicles were tracking sediment from the Site to the Boulevard. The inspector contacted Mr. Wells after the inspection and notified him of the results. A copy of the inspection report was sent to Ecology Services and Grapewell.

35. On August 3, 2020, the Department approved the Consent Order for the Site. The Consent Order incorporated the NOI and the SWPPP as enforceable requirements within the General Permit requirements for Ecology Services to control the discharge of polluted stormwater from the Site.

36. On September 10, 2020, the Department conducted a follow-up inspection at the Site. The Department’s inspector observed that sediment continued to be tracked from

Outfall 001 to the Boulevard, and muddy water was pooling at Outfall 001 along the Boulevard. Stone was not installed at the entrance to the Site and the stone installed at the Outfall 001 was insufficient to prevent ongoing erosion. These conditions breached Part III.B.1.b.v of the General Permit and §§ 3.5 and 3.6 of the SWPPP, thereby violating the Consent Order under § 9-342 of the Environment Article. A copy of the report was sent to Ecology Services.

37. On October 16, 2020, the Department again inspected the Site. The Department's inspector again observed sediment being tracked from the parking area onto the Boulevard, as well as muddy water pooling at Outfall 001 along the Boulevard. In addition, the inspector observed a truck engine, machine parts (hydraulic tanks, axles, arm cylinders, truck frames), stains on the ground from unknown liquids, and unidentified containers exposed to precipitation in un-paved areas at the Site. No copies of the SWPPP or related documents required under the Consent Order were available at the Site. These conditions breached Parts III.B.1.b.i, ii, iii, iv, v, xi, xii, and III.C.8 of the General Permit and §§ 3.1, 3.2, 3.3, 3.5, and 3.6 of the SWPPP, thereby violating the Consent Order under § 9-342 of the Environment Article. Finally, the inspector noted a pile of dirt and two piles of stone adjacent to Outfall 001. The inspector relayed these findings to Mr. Sean Parker, Ecology Services' responsible person designated in the SWPPP, who had joined the inspector for a portion of the inspection. A copy of the report was sent to Ecology Services.

38. On February 4, 2021, the Department conducted a follow-up inspection at the Site. The Department's inspector met onsite with Mr. Wells and Mr. Mike Johnson from Ecology Services. The inspector observed various materials exposed to precipitation

at the Site, including hydraulic hoses and cylinders, a hydraulic system, an exposed engine, an old fueling pump, a container with a faded “gas” label, a derelict lawn mower, and plastic containers for liquids. The inspector also observed trash spilling onto the ground from an open garbage truck and exposed to precipitation, as well as petroleum-staining on the ground by a fuel pump at the Site. Finally, the inspector observed sediment on the Boulevard that had been tracked by vehicles from the parking area. Muddy water was again pooling at Outfall 001 and draining down the Boulevard. The inspector further observed visible tire tracks extending from the Site down the Boulevard. These conditions breached Parts III.B.1.b.i, ii, iii, iv, v, xi, and xii of the General Permit and §§ 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.11 of the SWPPP, thereby violating the Consent Order under § 9-342 of the Environment Article.

39. On March 4, 2021, the Department’s inspector spoke with Mr. Wells by phone and requested that he update the SWPPP for the Site. Specifically, the inspector requested that the SWPPP be updated to (1) reflect that sediment is a pollutant onsite, (2) identify maintenance procedures to minimize sediment discharge, and (3) update the Site map.

40. On March 18, 2021, the Department met Mr. Wells and Mr. Mel Morales, who identified himself as Ecology Services’ General Manager, to discuss and observe conditions at the Site. The weather included light-to-moderate precipitation. The Department’s inspector observed that the parking area was soft, muddy, and unstable, and that muddy runoff was traveling from the Site to the Boulevard. These conditions breached Part III.B.1.b.v of the General Permit and §§ 3.5 and 3.6 of the SWPPP, thereby violating

the Consent Order under § 9-342 of the Environment Article.

41. Sections 9-339 and 9-342 of the Environment Article authorize MDE to seek, and this Court to impose, civil penalties up to \$10,000 per day for each day that a violation of Title 9, Subtitle 3 occurs through the operation of the Site without a discharge permit or in violation of the Consent Order. Those provisions also authorize this Court to issue an injunction on a showing that a person is violating or is about to violate Title 9, Subtitle 3 without the necessity of showing lack of an adequate remedy at law. Each day that a violation occurs is a separate offense. The activities of Ecology Services at the Site constitute violations of Title 9, Subtitle 3 and its implementing regulations, including operation without a required General Permit, individual discharge Permit, or Consent Order, as well as operation in violation of the Consent Order at the Site.

COUNT I
(Operation without a permit)

42. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

43. The Defendant's unauthorized operation of the Site without a General Permit, individual discharge permit, or Consent Order, for 213 days from January 3, 2020, to August 3, 2020, constitutes a recurring violation of §§ 9-322 and 9-323 of the Environment Article and its implementing regulations.

WHEREFORE, the Department asks that this Court, pursuant to § 9-342 of the Environment Article, impose a civil penalty of up to \$10,000 on Defendant for each day of unauthorized operation under Count I.

COUNT II
(Violation of the Consent Order)

44. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

45. The Defendant's operation of the Site on September 10, 2020, October 16, 2020, February 4, 2021, and March 18, 2021, breached Parts III.B.1.b.i, ii, iii, iv, v, xi, xii, and III.C.8 of the General Permit, and §§ 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.11 of the SWPPP, thereby violating the Consent Order and § 9-342 of the Environment Article and its implementing regulations.

WHEREFORE, the Department asks that this Court, pursuant to §§ 9-339 and 9-342 of the Environment Article, impose a civil penalty of up to \$10,000 on Defendant for each day of each violation under Count II, and an injunction to compel Defendant to perform all necessary remediation to bring the Site into compliance with, and to operate the Site in conformity with, the Consent Order.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ James S. Phillips-Farley

JAMES S. PHILLIPS-FARLEY
CPF# 1312190007
Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3035
(410) 537-3943 (facsimile)
james.phillips-farley@maryland.gov

/s/ Nathan P. Short

NATHAN P. SHORT
CPF# 1106150240
Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3035
(410) 537-3943 (facsimile)
nathan.short@maryland.gov

Attorneys for Plaintiff
Maryland Department of the Environment