

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

RARITAN BAYKEEPER, INC. (d/b/a NY/NJ
BAYKEEPER); RIVERKEEPER, INC.;
CAROLL FORBES; and
CRYSTAL ERVIN,
Plaintiffs,

v.

AMERICAN RECYCLING MANAGEMENT, LLC;
CHRISTOPHER HEIN; REGAL RECYCLING CO. INC.;
ROYAL CARTING COMPANY, INC.; ROYAL WASTE
SERVICES, INC.; MICHAEL REALI; and PAUL REALI,
Defendants.

Case No. 21-5211

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

Plaintiffs Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper), Riverkeeper, Inc., Caroll Forbes, and Crystal Ervin, by and through their counsel, hereby allege and state as follows:

I.

INTRODUCTION

1. Plaintiff Caroll Forbes, who has lived in the neighborhood known as “Bricktown” off of Liberty Avenue in Jamaica, Queens, for more than six decades, faces a number of impediments in enjoying her own property on a daily basis because of the impacts of the two garbage processing facilities five blocks away. She further has been hampered in enjoying her regular hobby of fishing in Jamaica Bay due to the pollution that has increased in the water, flowing directly from stormwater sewer systems in the same community.

2. Likewise, the garbage facilities interfere with Plaintiff Crystal Ervin’s life on a daily basis, as she lives only two blocks from these noxious facilities; for example, she is routinely startled awake at night by loud banging noises, and cannot stand to open her windows

to catch a breeze because of the overpowering stench of rotting garbage, which often causes her to lose her appetite.

3. For years, Defendants have owned and operated recycling and garbage processing facilities, along with related trucking operations, on Douglas Avenue between 168th Street and 175th Street in Jamaica, Queens (“the Facilities”)—mere blocks from Ms. Forbes and Ms. Ervin’s homes—without regard for applicable federal, state and local laws, and with no regard for the well-being of the surrounding community. Ms. Forbes, Ms. Ervin, and their neighbors--including fellow members of plaintiff organizations Riverkeeper and Baykeeper--avoid the use of the public park and bus stop closest to the Facilities because of the overwhelming odor, and they take roundabout routes to work or errands to try to minimize encountering and stepping in puddles of murky runoff from the Facilities that contaminates local public sidewalks and streets. This runoff ends up in stormwater drains—and from there, Defendants’ pollution harms even greater numbers of the public, in addition to flora, fauna, and marine life, as it flows into Jamaica Bay and the waters surrounding New York City.

4. Defendants engage in industrial activities that include noisily sorting, processing, and recycling construction and demolition (“C&D”) debris, creating clouds of dust that blows around the neighborhood; separating and processing other recyclable materials; tipping and processing smelly putrescible and non-putrescible waste; preparing waste for export; storing and repairing waste containers; repairing, fueling, washing and otherwise maintaining vehicles; and generating significant volumes of vehicle traffic that track pollutants into and out of the Facilities. They do all of this in a manner that releases pollution into surrounding streets and then into storm drains that carry the wastes to Jamaica Bay. Defendants discharge their pollution to Jamaica Bay without a federal water pollution permit, which is a violation of Sections 301 and

402 of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, commonly known as the Clean Water Act (“CWA”). Plaintiffs bring this suit to address and abate Defendants’ ongoing and continuous violations of the Clean Water Act pursuant to the citizen suit enforcement provisions of that law, found at Section 505, 33 U.S.C. § 1365.

5. Defendants discharge two separate types of waste that violate Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1342. First, Defendants discharge polluted “stormwater associated with industrial activities” from their garbage processing facilities into the waters of the United States (i.e. Jamaica Bay) without a permit. 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. Because the discharge of stormwater is unavoidable, Defendants must obtain permits for these discharges.

6. Second, Defendants also discharge polluted wastewater, including leachate (water that has come into contact with garbage) and water used to wash garbage trucks and tipping room floors, into the public street and then, through public storm drains, into Jamaica Bay. These wastewater (i.e. non-stormwater) discharges are also unpermitted, and thus violate the CWA. These wastewater discharges result from Defendants’ poor practices and are entirely preventable; Defendants should be required to abate them.

7. Not only do Defendants’ poorly-managed recycling and garbage processing activities generate water pollution, interfering with the public’s access to safe, clean waterfront parks and recreation; these same activities also emit excessive dust, foul odors, and loud noise around the clock, all of which unreasonably interferes with the ability of neighbors—including Ms. Forbes and Ms. Ervin—to use and enjoy their own property. These nuisance conditions have been created and maintained by Defendants, despite their knowledge of the concerns of

surrounding residents. Community members have organized and communicated their distress from the oppressive stench, the excessive dust, the noxious leachate, and the disruptive noise to Defendants and Defendants' representatives for years, and still Defendants have failed to abate the nuisances.

8. In addition to operating in violation of the federal CWA, Defendants also operate in violation of local and state laws and regulations governing the safe and proper operation of waste management facilities, creating and maintaining a nuisance *per se*. Plaintiffs Carol Forbes and Crystal Ervin (together, the "Individual Plaintiffs") seek the Court's assistance to abate the nuisances and rein in the unreasonable and unlawful water, air, and noise pollution from Defendants' waste processing activities.

9. Defendants' operation of the Facilities have significantly disrupted the Individual Plaintiffs' daily lives. Ms. Ervin, a member of Riverkeeper and Baykeeper, avoids the bus stop closest to her home because it is directly next to the Facilities and she does not want to risk stepping in the pools and puddles of garbage juice and pollution, not to mention the strong stench emanating from the Facilities. So she ends up having to walk further to another public transit option due to the Facilities.

10. Plaintiff Ms. Forbes, also a member of Riverkeeper and Baykeeper, wakes up each day knowing there will be a coat of dust on all of her windows and window sills, which is exhausting to clean day after day. Ms. Forbes has had to completely alter her outdoor recreational activities and is forced to keep her windows closed in response to the nuisances of odor and dust generated by the Facilities.

11. Other community members complain of nausea from the powerful stench from the Facilities, and Ms. Ervin and Ms. Forbes have both experienced loss of appetite and queasiness many days when the smell is strongest.

12. Queens Community District Twelve, and the Jamaica neighborhood in which the Facilities operate, is an Environmental Justice area according to New York City designations¹. The Facilities are some of the numerous industrial operators in the area that causes residents to endure disproportionate harm, worse air quality, and higher incidences of respiratory disease and asthma than in surrounding areas of Queens and New York City.

13. The community has organized and members have voiced their grievances over the Facilities' impacts and Defendants' operations for years, detailing how the Facilities have adversely impacted their lives and the community's quality of life. Community members have filed numerous 311 complaints, organized rallies, met with elected officials, testified in local and state hearings, and helped to pass landmark legislation that mandated reductions in the amount of waste the Facilities are permitted to process. Such community efforts have been documented by local and regional news outlets, including the Queens Chronicle, NY1, and The City.²

¹ *Environmental Justice Areas*, NYC DEP'T OF HEALTH AND MENTAL HYGIENE (Sept. 17, 2021, 11:55 AM), <https://nycdohmh.maps.arcgis.com/apps/instant/lookup/index.html?appid=fc9a0dc8b7564148b4079d294498a3cf>.

² See, e.g., Shannan Ferry, *Residents Hold 'Pray-In' to Protest Waste Sites in Southeast Queens*, NY1, Feb. 26, 2017, <https://www.ny1.com/nyc/queens/news/2017/02/25/-residents-hold--pray-in--to-protest-waste-sites-in-southeast-queens>; Liam Quigley, *In fight over trash zone system, Queens residents demand 'waste equity'*, AMNY, Sept. 5, 2019, <https://www.amny.com/news/waste-equity-queens-1-35931707/>; Daniel Hendrick, *City, Court Approve Expansion of Jamaica Garbage Station*, QUEENS CHRON., April 1, 2004, https://www.qchron.com/editions/eastern/city-court-approve-expansion-of-jamaica-garbage-station/article_4eb7ec90-b523-5eb4-b921-a1b22d4dbc66.html; Michael Gannon, *Jamaica march backs trash zone legislation*, QUEENS CHRON., Sept. 12, 2019, https://www.qchron.com/editions/eastern/jamaica-march-backs-trash-zone-legislation/article_d104b88a-900c-5ca6-88eb-69126a6c9da8.html; Willie Velasquez, *Southeast Queens community leaders discuss enforcement of Waste Equity Law during Liberty Park town hall*, QNS, Aug. 25, 2021, <https://qns.com/2021/08/southeast-queens-community-leaders-discuss-waste-equity-at-liberty-park/>; Christine Chung, *Council Fast-Tracks Exceptions from Landmark Waste Equity Law, Enraging Queens Residents*, THE CITY, July 29, 2021, <https://www.thecity.nyc/environment/2021/7/28/22599204/council-waste-equity-law-exceptions-queens>; Rachel Vick, *Jamaica residents fight waste transfer stations*, QUEENS EAGLE, July 20, 2021, <https://queenseagle.com/all/jamaica-residents-fight-waste-transfer-stations>.

14. While Defendants could take reasonable steps to operate the Facilities in compliance with applicable laws and regulations and in a manner that is less harmful to the community, they have thus far refused to do so, even publicly stating see no need to comply with the CWA.³

15. Defendants' continued failure to abate the noise, pollution, odors and other nuisances caused by their operation of the Facilities—despite their knowledge of these conditions—has compelled Plaintiffs to bring this action to gain relief from the nuisance conditions they have endured for so long, and to ensure that the harmful pollution the Facilities are emitting into Jamaica Bay are finally controlled and contained.

16. Plaintiffs respectfully request the following relief:

- i. a declaratory judgment that Defendants have violated and continue to be in violation of the Clean Water Act as alleged herein;
- ii. a declaratory judgment that Defendants' actions stated herein have constituted and continue to constitute a private nuisance;
- iii. a declaratory judgment that Defendants' actions stated herein have constituted and continue to constitute nuisance *per se*;
- iv. an injunction enjoining Defendants from discharging pollutants from the Facilities except as authorized by and in compliance with a National Pollution Discharge Elimination System (“NPDES”) permit;
- v. an injunction ordering Defendants to immediately apply for coverage under, and comply fully with all applicable requirements of, the General Permit (or an

³ See Naeisha Rose, *CWA violated, say community leaders*, QUEENS CHRON., July 22, 2021, https://www.qchron.com/editions/queenswide/cwa-violated-say-community-leaders/article_9079c443-6240-5f4c-832b-f1c34d720d95.html.

- individual State Pollution Discharge Elimination System (“SPDES”) permit that is at least as stringent);
- vi. an injunction ordering Defendants to take appropriate actions to remediate the harm caused by its violations of the General Permit and the Clean Water Act, to the extent possible;
 - vii. an injunction ordering Defendants, and any and all other persons and/or entities acting in concert with them, to abate the nuisance caused by Defendants’ actions stated herein;
 - viii. an injunction prohibiting Defendants, and any and all other persons and/or entities acting in concert with them, from operating the Facilities and the waste collection trucks in a manner that causes or contributes to a private nuisance;
 - ix. an injunction ordering Defendants, and any and all other persons and/or entities acting in concert with them, to comply with all applicable laws, regulations, and conditions imposed in their various permits;
 - x. an order that Defendants pay civil penalties pursuant to CWA Sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and 1365(a), and by 40 C.F.R. §§ 19.1 – 19.4;
 - xi. an order that Defendants pay the costs of litigation, including Plaintiffs’ reasonable investigative costs, attorney fees, expert witness and consultant fees, and other costs, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d); and
 - xii. any and all other relief that the Court deems just and proper.

II.

JURISDICTION AND VENUE

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

18. This Court has supplemental jurisdiction over the private nuisance and nuisance *per se* claims under 28 U.S.C. § 1367(a).

19. On July 19, 2021, Plaintiffs provided notice of Defendants' violations of the Clean Water Act and of their intention to file suit against Defendants to Defendants, Defendants' registered agents, the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region II, and the Commissioner of the New York Department of Environmental Conservation ("DEC"), as required under CWA Section 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), and the corresponding regulations at 40 C.F.R. §§ 135.1 to 135.3. True and correct copies of Plaintiffs' notice letters are attached as Exhibit A, and are incorporated herein by reference.

20. More than sixty days have passed since the notice letters were served on Defendants and the state and federal agencies. Plaintiffs have complied with the Clean Water Act's notice requirements under CWA Section 505(b)(1), 33 U.S.C. § 1365(b)(1).

21. Upon information and belief, neither the EPA 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).

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

23. Venue is proper in the United States District Court for the Eastern District of New York pursuant to CWA Section 505(c)(1), 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

24. Plaintiff RARITAN BAYKEEPER, INC. (“Baykeeper”), doing business as “NY/NJ Baykeeper,” is a non-profit corporation whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary through enforcement, field work, and community action. Baykeeper has approximately 350 members in the New York and New Jersey region, many of whom use and enjoy New York Harbor and its tributaries—including Jamaica Bay, which is polluted by industrial stormwater runoff from the Defendants’ Facilities.

25. Plaintiff RIVERKEEPER, INC. (“Riverkeeper”) is a non-profit corporation whose mission is to protect and restore the Hudson River from source to sea, and safeguard drinking water supplies, through advocacy rooted in community partnerships, science and law. As a Hudson River estuary waterway, Jamaica Bay is among the bodies of water Riverkeeper defends against pollution and destruction. Riverkeeper has approximately 3,285 members in the New York City area.

26. The Individual Plaintiffs both live within a few short blocks of the Facilities and are members of Baykeeper and Riverkeeper.

27. Crystal Ervin, age 69, lives two blocks from the Facilities, on 103rd Road. She owns her home and has lived there her entire life. Her parents purchased the property in 1953

and raised Ms. Ervin and her four siblings there. Ms. Ervin remained living in the house in part to help care for her aging mother, who lived there with her until her death in 2020. Ms. Ervin is a member of both Baykeeper and Riverkeeper, as she cares a great deal about the preservation of the waters surrounding New York City, and in particular, Jamaica Bay.

28. Caroll Forbes, age 75, has lived in her home, four blocks from the Facilities, for 63 total years. She owns her home and, except a twelve-year period from 1968 to 1980, has lived there her entire life. She raised three children and six grandchildren at this address, and now frequently hosts her great-grandchildren there after school and on weekends.

29. Ms. Forbes is a member of both Baykeeper and Riverkeeper, and has a vested interest in keeping Jamaica Bay free of pollution. Ms. Forbes has always enjoyed fishing in Jamaica Bay, and has done so on a regular basis with her family for decades. Additionally, she enjoys spending time with family and friends in waterfront parks along Jamaica Bay.

30. Baykeeper and Riverkeeper members—including the Individual Plaintiffs and other resident members—use and enjoy the waters which Defendants have unlawfully polluted and are unlawfully polluting. Baykeeper and Riverkeeper members use Jamaica Bay to fish, sail, boat, kayak, swim, birdwatch, photograph, engage in spiritual meditation, view wildlife, and engage in nature study and scientific study, among other activities.

31. In addition, Baykeeper and Riverkeeper members—including the Individual Plaintiffs and other resident members—use and enjoy the waterfront parks adjacent to and overlooking Jamaica Bay to gather, exercise, enjoy nature, and breathe fresh air, among other activities. These parks hold special significance to Baykeeper and Riverkeeper members who reside in the Jamaica, Queens area, a part of the city lacking green space. The importance of these green spaces along the Bay has only grown in light of the Covid-19 pandemic.

32. Defendants' discharges of stormwater associated with industrial activity containing pollutants impair each of these uses of Jamaica Bay and the Jamaica Bay waterfront. Thus, the interests of Baykeeper and Riverkeeper members have been, are being, and will continue to be adversely affected by Defendants' failure to comply with the CWA.

33. The relief sought herein will redress the harms to Plaintiffs caused by Defendants' activities. Defendants' continuing commission of the acts and omissions alleged herein will irreparably harm Plaintiffs. Damages are inadequate to remedy Plaintiffs' harm, and therefore Plaintiffs request injunctive relief.

34. Defendants Regal Recycling, Inc., Royal Carting Company, Inc., Royal Waste Services, Inc., and Michael and Paul Reali shall together be referred to as the "Regal Defendants".

35. Plaintiffs are informed and believe, and thereupon allege, that Defendant REGAL RECYCLING, INC. ("Regal") is a corporation incorporated under the laws of the State of New York which owns and operates a waste material recycling and garbage processing facility in Jamaica, Queens ("the Regal/Royal Facility").

36. Plaintiffs are informed and believe, and thereupon allege, that Defendant ROYAL CARTING COMPANY, INC. ("Royal Carting") is a corporation incorporated under the laws of the State of New York, which owns and operates a waste hauling services business based at 170-21 Douglas Avenue in Jamaica, Queens and carries out operations throughout the Regal/Royal Facility.

37. Plaintiffs are informed and believe, and thereupon allege, that Defendant ROYAL WASTE SERVICES, INC. ("Royal Waste") is a corporation incorporated under the laws of the State of New York, which owns and operates waste hauling services businesses based at 187-40

Hollis Avenue and at 170-21 Douglas Avenue in Jamaica, Queens, as the parent company to Royal Carting, and carries out operations throughout the Regal/Royal Facility.

38. Plaintiffs are informed and believe, and thereupon allege, that Defendant MICHAEL REALI is and was at all relevant times a natural person and citizen of the State of New York who is a vice president and a manager for Regal, and the chief executive officer of Royal Waste.

39. Plaintiffs are informed and believe, and thereupon allege, that Defendant Michael RealI controls the day-to-day operations of the Regal Defendants at the Regal/Royal Facility.

40. Plaintiffs are informed and believe, and thereupon allege, that Defendant PAUL REALI is and was at all relevant times a natural person and citizen of the State of New York who is a Vice President and a manager for Regal, and the chief executive officer of Royal Carting.

41. Plaintiffs are informed and believe, and thereupon allege, that Defendant Paul RealI controls the day-to-day operations of the Regal Defendants at the Regal/Royal Facility.

42. The Regal/Royal Facility occupies several of the lots on the north side of Douglas Avenue between 170th Street and 175th Street; occupies several lots on the south side of Douglas Avenue on that block including the waste and recyclables processing station that occupies about one third of the block bounded by Liberty Avenue, 170th Street, Douglas Avenue, and 175th Street; occupies several of the lots on the south side of Douglas Avenue from 168th Street to 170th Street; and occupies several lots on the north side of Liberty Avenue between 168th and 170th Streets, where Royal Carting Company, Inc., Royal Waste Services, Inc, Regal Recycling, Inc., and Michael and Paul RealI store waste containers.

43. American Recycling Management, LLC and Christopher Hein shall together be referred to as the “American Recycling Defendants.”

44. Plaintiffs are informed and believe, and thereupon allege, that Defendant AMERICAN RECYCLING MANAGEMENT, LLC (“American Recycling”) is a limited liability corporation incorporated under the laws of the State of New York, which owns and operates a waste material recycling and garbage processing facility at 172-33 Douglas Avenue in Jamaica, Queens, and the adjacent lot at tax block 10220, lot 44 (“the American Recycling Facility”).

45. Plaintiffs are informed and believe, and thereupon allege, that Defendant CHRISTOPHER HEIN is and was at all relevant times a natural person and citizen of the State of New York who is a member of and a manager for American Recycling.

46. Plaintiffs are informed and believe, and thereupon allege, that Defendant Christopher Hein controls the day-to-day operations of the American Recycling Defendants at the American Recycling Facility.

IV.

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

47. Congress enacted the CWA in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA § 101(a), 33 U.S.C. § 1251(a). In furtherance of this goal, the CWA provides a comprehensive approach for the regulation of pollution discharged into the waters of the United States.

48. The CWA prohibits the discharge of pollutants from a “point source” into the waters of the United States without a NPDES permit. CWA §§ 301(a) (prohibiting “discharge of any pollutant” except in accordance with other provisions), 402 (authorizing discharges in accordance with NPDES permits), 502 (defining “discharge of a pollutant” as discharges from point sources to waters of the United States); 33 U.S.C. §§ 1311(a), 1342, 1362.

49. 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 Clean Water Act. CWA § 402(b)(1), 33 U.S.C. § 1342(b)(1); 40 C.F.R. § 123.25(a).

50. In New York, the DEC has been authorized to issue NPDES permits. Such state-issued permits, issued by DEC pursuant to its delegated authority from EPA under the Clean Water Act, are referred to as State Pollutant Discharge Elimination System or “SPDES” permits.

Stormwater Permits

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

52. Pursuant to CWA Section 402(p), 33 U.S.C. § 1342(p), EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

53. 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. *See* 55 Fed. Reg. 47990, 47991 (Nov. 16, 1990).

54. CWA Section 402(p) and EPA’s implementing regulations at 40 C.F.R. § 122.26 require NPDES permits for stormwater discharges “associated with industrial activity.”

55. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.

56. 40 C.F.R. § 122.26(b)(13) defines “storm water” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

57. 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”) codes 5093 (Scrap and Waste Materials) and 4212 (Local Trucking Without Storage). Facilities in those industrial categories must obtain NPDES permit coverage for their stormwater discharges.

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

58. As an authorized state NPDES permitting agency, DEC has elected to issue a statewide general permit for industrial stormwater discharges in New York. Formally titled the New York State Department of Environmental Conservation SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-17-004, the current version of the General Permit took effect on March 1, 2018. DEC also has the authority to issue SPDES permits for individual applicants.

59. To discharge polluted stormwater lawfully in New York, industrial dischargers must either obtain coverage under the General Permit and comply with its terms or obtain coverage under and comply with an individual SPDES permit.

60. 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.” General Permit, Part I.D.1.a.2.

61. To comply with the General Permit, a facility owner or operator must reduce the discharge of pollution from the facility through use of the best available technology. The owner or operator also must comply with specific numeric effluent limitations on the quantity and concentration of pollutants and narrative effluent limitations on visible pollutants and pollutant minimization practices, as established in the General Permit. The facility must also ensure that its discharges do not cause or contribute to violations of water quality standards in the receiving waterbodies.

62. Facility owners and operators reduce pollution and comply with effluent limitations primarily by adopting “best management practices” that reduce the discharge of polluted stormwater. Best management practices (“BMPs”) include changes to industrial practices and activities (for example, annual employee training programs) and structural changes to the property (for example, collection basins that reduce stormwater discharged from the facility). In addition, the owner or operator must perform regular inspections, conduct monitoring and sampling of stormwater discharges, and meet other requirements of the General Permit.

63. Before submitting a Notice of Intent to DEC, a facility discharging stormwater associated with industrial activity must first prepare, make available, and implement a Storm Water Pollution Prevention Plan (“SWPPP”). General Permit, Part I.D.1.a.1. 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.

Clean Water Act Citizen Enforcement Suits

64. Under CWA Section 505(a)(1), 33 U.S.C. § 1365(a)(1), citizens 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 Clean Water Act.

65. 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 CWA Section 301, 33 U.S.C § 1311, as well as for violation of a condition of a permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. CWA Section 505(f), 33 U.S.C. § 1365(f).

66. Declaratory relief in such cases is authorized by 28 U.S.C. § 2201–02 (granting U.S. courts the authority to issue declaratory relief in case of actual controversy and grant further necessary relief based on such a declaration).

67. Injunctive relief is authorized by CWA Section 505(a), 33 U.S.C. § 1365(a).

68. Violators of the Clean Water Act are also subject to an assessment of civil penalties of up to \$56,460 per day per violation for violations occurring after November 2, 2015. CWA §§ 309(d), 505(a), 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.

State and City Laws, Regulations, and Permits

69. At the state level, New York’s waste transfer stations are regulated by DEC, which has authority under Article 27 of the Environmental Conservation Law and has promulgated regulations at Title 6, Part 360 of the Official Compilation of Codes, Rules & Regulations of the State of New York. Pursuant to this authority, the DEC issues waste processing permits that regulate how waste processing facilities must be managed and, among other things, set environmental standards that must be achieved.

70. Waste transfer stations are also subject to broader DEC regulations, including the DEC's regulations targeting the prevention and control of air contamination and air pollution at Title 6, Part 211.1 of the Official Compilation of Codes, Rules & Regulations of the State of New York.

71. At the local level, waste transfer stations are permitted by the New York City Department of Sanitation ("DSNY") and specifically regulated under Title 16, Chapter 4 of the Rules of New York City.

72. Waste transfer stations are also subject to broader local regulations under the New York City Administrative Code, including the environmental regulations contained in Title 24.

V.

STATEMENT OF FACTS

The Neighborhood

73. In the Jamaica neighborhood of Southeast Queens, not far from the end of the E subway line, a row of a waste transfer stations and garbage processing facilities sits directly across from a residential community of majority Black New Yorkers known as "Bricktown", and within the watershed of Jamaica Bay. Over the past twenty years, Defendants have steadily expanded their operations: The Regal Defendants have purchased properties adjacent to existing lots, and both the Regal Defendants and American Recycling Defendants have accepted and processed increasing amounts of waste, and more varied types of waste--including putrescible and non-putrescible, construction and demolition debris, and source-separated organic waste.

74. As business for these Facilities has increased, their industrial footprint has grown tremendously. Large diesel-burning trucks, transporting all types of waste, barrel down the streets, and dominate the public streetscape on both Douglas and Liberty Avenues, which are parallel, between 168th and 175th streets.

75. Directly adjacent to these Facilities, at the corners of Douglas Avenue and 168th Street, Douglas Avenue and 170th Street, and Liberty Avenue and 175th Street, storm drains collect surface liquids, and their connected sewer pipes transport these surface liquids into Jamaica Bay.

76. A concentration of sensitive receptors⁴ such as recreation areas, schools, and churches are located in the vicinity of the Facilities. Immediately across Liberty Avenue to the south of these Facilities sits Detective Keith L. Williams Park--which includes basketball and tennis courts, a running track, a swimming pool, and other public recreation spaces. Nearly 600 households live to the west, east, and south of the park, all within one to seven short blocks of the Facilities. Children attend an elementary school, P.S. 116, the William C Hughley School, a mere five blocks from the Facilities. There are seven churches—Greater Zion Deliverance Tabernacle, Tabernacle of Glory NYC, St. Paul’s United Methodist Church, Pentecostal Prayer House, Shiloh Baptist Church, Greater Seccions Church, and Refuge Church of Christ—and one mosque, Darul Wahid Masjid, in the neighborhood.

77. Of the more than 8,000 New Yorkers residing in this neighborhood, which comprises Census Tracts 414 and 440, 72% are Black and 16% are Latinx, according to the United States Census Bureau’s 2019 American Community Survey.

78. The Defendants’ heavy industrial Facilities are zoned in a light industrial M1-1 district, which must meet stringent high-performance standards required by the Zoning Resolution of the City of New York to reduce noise, vibration, smoke, odor, and other negative

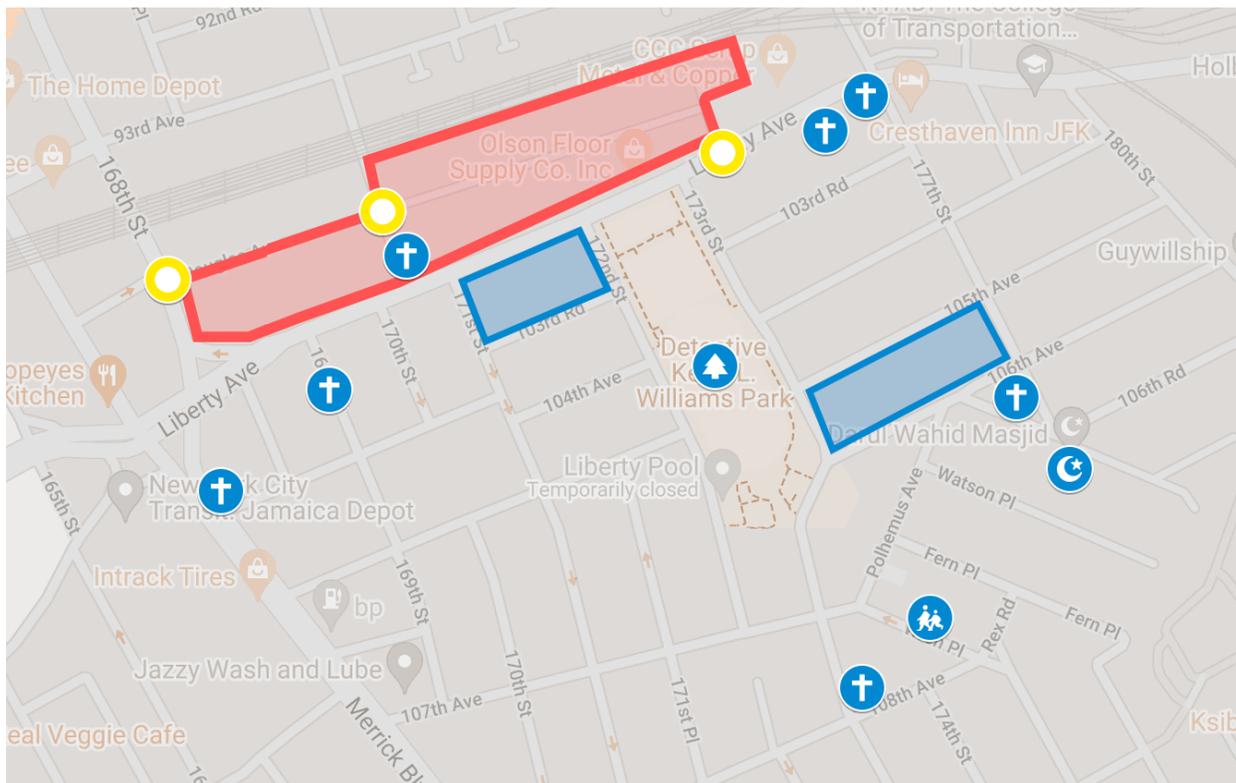
⁴ Sensitive receptors are defined by the EPA as “hospitals, schools, daycare facilities, elderly housing and convalescent facilities. These are areas where the occupants are more susceptible to the adverse effects of exposure to toxic chemicals, pesticides, and other pollutants. Extra care must be taken when dealing with contaminants and pollutants in close proximity to areas recognized as sensitive receptors.” *What are Sensitive Receptors?* U.S. ENV’T PROT. AGENCY, <https://www3.epa.gov/region1/eco/uep/sensitivereceptors.html> (last visited Sept. 17, 2021).

effects on nearby communities. Appropriately, M1-1 districts frequently act as buffers between residential districts and heavier industrial districts. Here, however, the Facilities' heavy industrial activities were allowed to remain after New York City, in 2004, forbade new waste transfer stations to be located in M-1 districts due to the harms these facilities cause on the surrounding community. 16 R.C.N.Y. § 4-32(b)(5). Today, this means Defendants' heavy industrial activities operate directly across the street from the community's residential neighborhood without an appropriate buffer.

79. The fact that the Defendants have continued to expand their operations in this area not zoned for heavy industry, increasing the impacts on both the environment and surrounding community, despite overwhelming community opposition to such expansion due to the nuisance conditions the Facilities already impose on the residents, only exacerbates the historic and cumulative impacts these Facilities and their operations impose on the community.⁵

⁵ See, e.g., Keach Hagey, *Jamaica Transfer Station Granted Controversial Variance to Expand*, QUEENS CHRON., Sept. 18, 2003, https://www.qchron.com/editions/eastern/jamaica-transfer-station-granted-controversial-variance-to-expand/article_a36933bd-703b-5d96-a82e-bdb4c5cfe4a4.html; Liz Donovan, *NYC Council Considers Waste Transfer Bill That Would Roll Back Environmental Gains in Queens, Critics Say*, CITY LIMITS, July 29, 2021, <https://citylimits.org/2021/07/29/nyc-council-considers-waste-transfer-bill-that-would-roll-back-environmental-gains-in-queens-advocates-say/>.

Figure 1: Defendants’ Facilities and Surrounding Community



Source: Google maps

Map Key:

<u>Red area</u>	<u>Blocks containing Defendants’ Facilities</u>
<u>Blue squares</u>	<u>Blocks where Individual Plaintiffs reside</u>
<u>Yellow dots</u>	<u>Location of storm drains that drain to Jamaica Bay</u>
<u>Blue dots</u>	<u>Locations of community park, school, churches, and mosque</u>

Figure 2: Aerial Image of Regal/Royal Facility

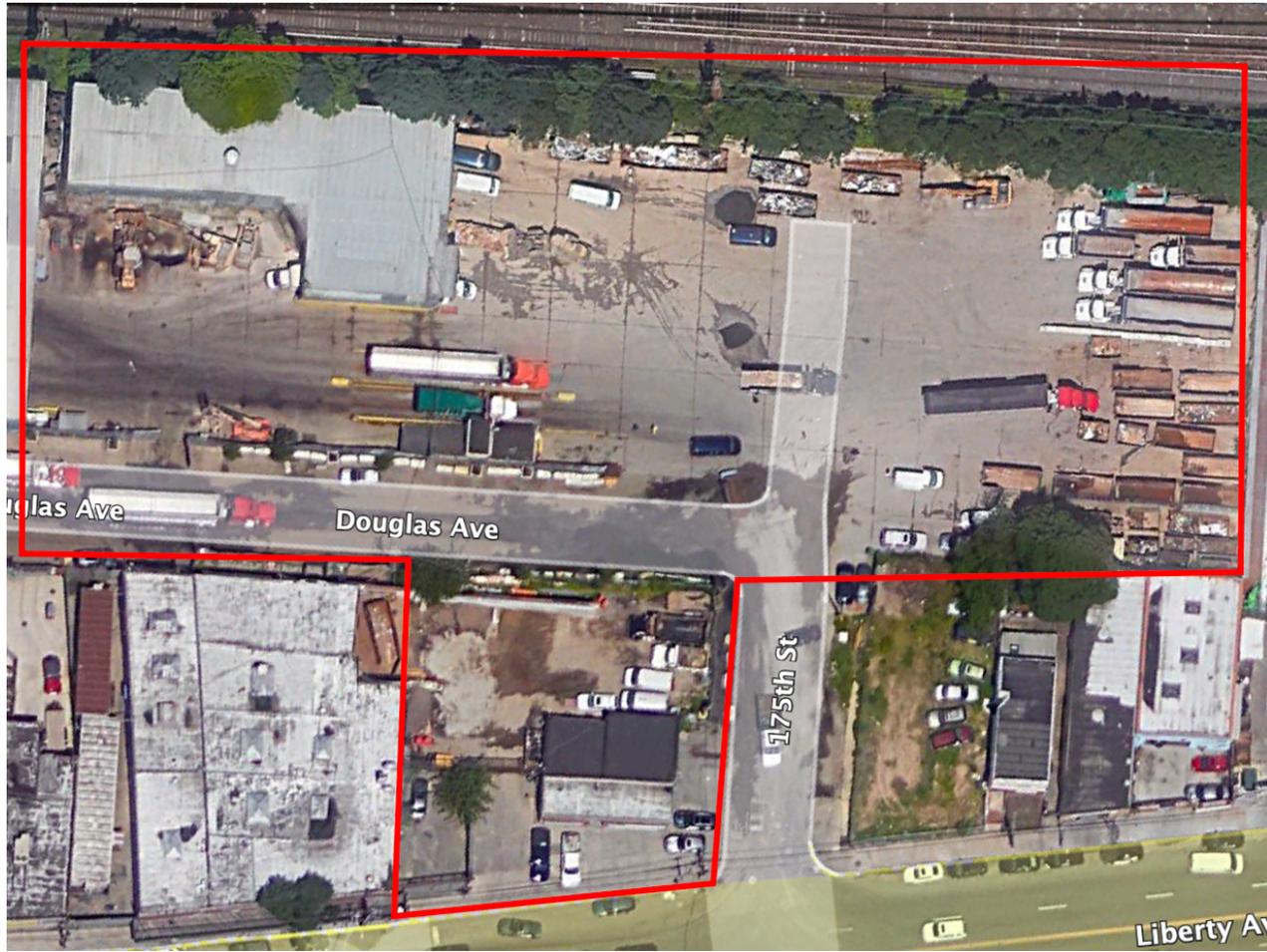


Source: Google Earth

Map Key:

Red area	Blocks containing Regal/Royal Facility
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Figure 3: Aerial Image of American Recycling Facility



Source: Google Earth

Map Key:

Red area	Blocks containing American Recycling Facility
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Defendants Control Industrial Activities at the Facilities

80. Upon information and belief, the Regal Defendants operate in coordination with one another so as to, in effect, manage and control the three companies jointly.

81. The Regal Defendants' principal officer is Michael Reali, listed as the sole owner of Regal, and Vice President of Royal Waste.

82. Upon information and belief, Royal Carting and Royal Waste operate the day-to-day business of commercial waste collection, in which Royal Carting and Royal Waste maintain a large vehicle fleet to transport waste from commercial generators from all around New York City to the Regal/Royal Facility.

83. Upon information and belief, Regal carries out the solid waste processing and recycling operations once the waste arrives at the Regal/Royal Facility.

84. Regal is the day-to-day operator of a solid waste transfer station and a construction and demolition ("C&D") debris processing facility in Jamaica, Queens, that occupies several of the lots on the north and south side of Douglas Avenue between 168th Street and 175th Street.

85. Regal is the entity identified on solid waste management (Part 360) permit No. 2-6307-0008/00007, issued by the DEC to operate the solid waste transfer and C&D process facilities identified here as part of the Regal/Royal Facility.

86. The permit names the addresses as 172-02 and 172-06 Douglas Avenue, respectively.

87. Regal also holds a putrescible waste processing permit (number 3402) and a non-putrescible waste processing permit (number 4336) from DSNY for the operations in its facilities.

88. Upon information and belief, Regal contracts with long-haul transporters to pick up the waste once it has been processed at the Regal/Royal Facility to transport the waste by long-haul truck out of the City for final disposal at landfill or incineration sites in upstate New York and Pennsylvania.

89. Upon information and belief, Defendant American Recycling is the day-to-day operator of a solid waste transfer station and a C&D debris handling and recovery facility in Jamaica, Queens, at 172-33 Douglas Avenue. Its principal officer and sole owner is Christopher Hein.

90. American Recycling is the entity identified on solid waste management (Part 360) permit No. 2-6307-00108, issued by the DEC to operate the solid waste transfer and C&D process facilities identified here as part of the American Recycling Facility.

91. American Recycling also holds a putrescible waste processing permit (number 4313) and a non-putrescible waste processing permit (number 3662) from DSNY for the operations in its facilities.

92. The Defendants' operations are sited across multiple buildings, uncovered areas, and partially uncovered areas where they undertake the following activities: the sorting, recycling, and processing of construction and demolition debris and the tipping and processing of non-putrescible waste; the tipping, compressing and processing of putrescible waste and the processing and preparation of source-separated organic material; and the separation and processing of recyclable materials.

93. To support these operations, the Regal Defendants also conduct vehicle maintenance, including the filling of vehicles at an outdoor fueling station, vehicle maintenance in an auto repair yard, truck washing, and ancillary operations such as parking garbage trucks,

storing uncovered waste containers, and repairing waste containers (which involves metal work) in both the indoor and outdoor areas of these properties.

94. The Regal/Royal Facility's access roads include Liberty Avenue, Douglas Avenue, 175th Street and 170th Street.

95. The Regal/Royal Facility's access roads are used both for access to and from the Facilities and to park garbage trucks and other vehicles.

96. The American Recycling Facility's access roads include Liberty Avenue, Douglas Avenue, and 175th Street.

97. The American Recycling Facility's access roads are used both for access to and from the Facilities and to park garbage trucks and other vehicles.

98. Because the Defendants control the industrial activities that take place at the Facilities, the Defendants are responsible for managing stormwater associated with those activities at the Facilities in compliance with the Clean Water Act.

99. The Defendants are the persons, as defined by CWA Section 502(5), 33 U.S.C. § 1362(5), responsible for the violations alleged in this Complaint.

Defendants Conduct Industrial Activities in a Manner that Exposes Pollutants to Stormwater and Without Appropriate Pollution Prevention Practices

100. Plaintiffs are informed and believe, and thereupon allege, that the management practices at the Facilities are currently inadequate to minimize pollution in industrial stormwater discharged to waters of the United States.

101. The Regal Defendants' ongoing failure to implement adequate control measures and BMPs at the Regal/Royal Facility is evidenced by: (a) the Regal Defendants conducting vehicle maintenance outdoors, without covering or otherwise limiting contact with stormwater; (b) the Regal Defendants processing recycled construction and demolition waste and debris, as

well as putrescible and non-putrescible waste, food waste, and other waste outdoors at 172-06 Douglas Avenue without covering or otherwise limiting contact with stormwater; (c) the Regal Defendants' outdoor storage of dumpsters, roll-off containers, trucks, other machinery, and waste materials, without covering or otherwise limiting contact with stormwater; (d) the Regal Defendants' continued tracking of waste onto public streets from the operation and maintenance of vehicles at the site, including trucks and heavy machinery; (e) the Regal Defendants' discharges of wastewater from tipping floors and truck washing operations into the street, an entirely avoidable form of pollution; and (f) the Regal Defendants' discharge of visibly discolored runoff and failure to either treat stormwater prior to discharge or to implement effective stormwater containment practices to address such visibly polluted stormwater.

102. The American Recycling Defendants' ongoing failure to implement adequate control measures and BMPs at the American Recycling Facility is evidenced by: (a) the American Recycling Defendants' outdoor storage of waste materials, without covering or otherwise limiting contact with stormwater; (b) the American Recycling Defendants' outdoor storage of dumpsters, roll-off containers, trucks, and other machinery without covering or otherwise limiting contact with stormwater; (c) heavy staining of pavements at the American Recycling facility, which is indicative of the American Recycling Defendants' failure to clean accumulated pollution that can runoff in stormwater (e) the American Recycling Defendants' continued tracking of waste onto public streets from the operation of vehicles at the site, including trucks and heavy machinery; and (f) the American Recycling Defendants' discharge of visibly discolored runoff and failure to either treat stormwater prior to discharge or to implement effective stormwater containment practices to address such visibly polluted stormwater.

103. Plaintiffs requested a copy of Defendants' SWPPPs on July 19, 2021.

104. Defendants have not provided a copy of their SWPPPs to Plaintiffs.

105. Plaintiffs are informed and believe, and thereupon allege that, as of the filing date of this complaint, September 20, 2021, Defendants have not developed SWPPPs.⁶

106. Furthermore, based on Defendants' inadequate BMPs and control measures, Plaintiffs are informed and believe, and thereupon allege, that Defendants have not conducted and are not conducting adequate annual comprehensive and quarterly routine site inspections of their Facilities.

**Defendants Discharge Polluted Stormwater From the Facilities
Into Waters of the United States**

107. Pollutants from the commercial waste hauling trucks tipping the trash, from the heavy-duty dump trucks tipping the C&D debris, from long-haul trucks exporting the waste, from the solid waste and debris itself as they transport it into and out of the Facilities, as well as pollutants from the Facilities' operations, all drain into Jamaica Bay via nearby storm drains. This drainage occurs when water meets these pollutants and carries them into storm drains and sewer pipes; in other words, when Defendants spray down trucks with water, when the tipping floor is cleaned and not drained properly, and any time there is a measurable storm event, the resulting pollution is collected into these storm drains. From the storm drains, pipes lead directly to Jamaica Bay, where the pollutants contaminate the water and harm the Bay's ecosystems.

108. During precipitation events, including rainfalls and snow or ice melt events, stormwater flows freely from the Regal/Royal Facility into nearby storm drains located at the

⁶ Dominic Susino, the controller of American Recycling, indicated as much on the record with the *Queens Chronicle* after Defendants received notices of intent to sue in connection with this lawsuit, stating: "We have never received a violation for stormwater issues and we are not near Jamaica Bay. There is no direct runoff from us. We don't know what these environmental groups are looking at in making this claim." Rose, *supra* note 2.

corners of Douglas Avenue and 168th Street, Douglas Avenue and 170th Street, and through storm drains on 175th Street and on Liberty Avenue.

109. During precipitation events, including rainfalls and also snow or ice melt events, stormwater flows freely from the American Recycling Facility into nearby storm drains located on 175th Street and on Liberty Avenue.

110. The storm drains, in turn, flow into Jamaica Bay through a municipal separated storm sewer system owned by the City of New York.

111. Jamaica Bay is a “water of the United States.”

112. The Regal Defendants’ industrial activity at the Regal/Royal Facility has caused and continues to cause a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12), and a “stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facilities on at least each and every day that there has been a precipitation event greater than 0.1 inches. (EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity). *See, e.g.*, 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event)).

113. The American Recycling Defendants’ industrial activity at the American Recycling Facility has caused and continues to cause a “discharge of pollutants” within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12), and a “stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facilities on at least each and every day that there has been a precipitation event greater than 0.1 inches.

**Defendants Discharge Polluted Wastewater from the Facilities
into Waters of the United States**

114. Defendants wash garbage and liquid waste off the tipping floor and out onto the sidewalks and street.

115. The Regal Defendants also wash trucks and other vehicles at their respective Facilities.

116. Some of the truck-washing wastewater discharges onto the sidewalks and street adjacent to the Facilities.

117. The leachate from these washing activities often pools in potholes and by the curbs along Douglas Avenue, and collects on the sidewalks where it pools in cracks. During wet periods, the leachate drains into storm sewers with any rain event, causing the pollution to be carried directly out to Jamaica Bay. In dry and hot conditions, the water in the leachate may evaporate, but the pollutants remain on the street to be carried into storm sewers and out to Jamaica Bay.

118. Defendants' trucks leave both liquid and solid waste in their wake on the public street in violation of their permits and local laws.

119. Defendants have done nothing to curtail these actions, and have refused to clean the waste left behind by the trucks.

Defendants Have Not Obtained Permit Coverage for These Discharges

120. Upon information and belief, the Facilities are not covered by individual SPDES permits.

121. Upon information and belief, the Facilities are not covered by the General Permit.

122. Upon information and belief, Defendants have not filed registrations with DEC seeking General Permit coverage for the Facilities.

123. Upon information and belief, Defendant have not complied with any provisions of the General Permit.

124. Accordingly, on July 19, 2021, Plaintiffs sent Defendants via certified mail the notices of intent to sue described above and attached to this Complaint as Exhibit A.

125. Upon information and belief, as of the date of filing of this complaint, the Facilities still lack NPDES permit coverage under the General Permit or SPDES permits.

126. Defendants' violations of the Clean Water Act at the Facilities are ongoing and continuous, are capable of repetition, and result from the same underlying and inadequately resolved causes.

Defendants' Violations of the Clean Water Act Have Harmed Plaintiffs

127. Riverkeeper and Baykeeper have multiple members, including the Individual Plaintiffs, who use and enjoy Jamaica Bay, which is polluted by industrial stormwater runoff from the Defendants' Facilities.

128. These members have been harmed by Defendants' violations of the CWA, as these members' ability to fish, swim, and otherwise use and enjoy Jamaica Bay has been hindered by the Facilities' polluted discharges.

129. Individual Plaintiff Caroll Forbes is one such member.

130. Ms. Forbes joined Riverkeeper and Baykeeper because of her concern about the water quality of Jamaica Bay.

131. Ms. Forbes grew up swimming and playing with friends and family at Jamaica Bay and the beaches near Jamaica Bay, such as Rockaway Beach.

132. Before the pandemic, Ms. Forbes would visit Jamaica Bay and its nearby beaches at least once a week. She plans on continuing her visits to Jamaica Bay when it is safe to do so.

133. Ms. Forbes has fished in Jamaica Bay for more than forty years. She cherished teaching her children and then her grandchildren to fish, and wishes she felt more comfortable taking her great-grandchildren to fish now.

134. She eats the flounder and fluke that she catches in Jamaica Bay. However, she is concerned about the pollutants these fish contain. This pollution has harmed her and has hindered her enjoyment of Jamaica Bay.

135. Ms. Forbes has also observed families fishing and swimming in Jamaica Bay, and removing fish for consumption. She is therefore worried about the health and safety of the people in her local community because of the pollution in Jamaica Bay.

136. Ms. Forbes wants the members of her local community to have access to clean water to fish and swim in, and is distressed that they cannot rely on Jamaica Bay for these purposes.

137. If Jamaica Bay were cleaner and less polluted, she would encourage the members of her community to eat fish from Jamaica Bay, and she would take her grandchildren and great-grandchildren to fish with her in Jamaica Bay more often.

138. Ms. Forbes also regularly visits public parks adjacent to Jamaica Bay, such as Baisley Pond Park, Brookville Park, and Hook Creek Park. She visits these parks for enjoyment of the natural open spaces and for spending time with family and friends.

139. She regularly observes fish, birds, and other wildlife at Jamaica Bay and these nearby parks. She cares about that wildlife and the natural areas in her community that depend on clean water from Jamaica Bay.

140. Defendants' polluted discharges therefore specifically impair Ms. Forbes' use and enjoyment of Jamaica Bay.

141. Defendants' failure to comply with the CWA harms Plaintiff Carroll Forbes, as well as many other members of Riverkeeper and Baykeeper.

142. The relief sought herein will redress the harms to Plaintiffs and their members caused by Defendants' activities. Continuing commission of the acts and omissions alleged herein will irreparably harm Plaintiffs and their members. Damages are inadequate to remedy Plaintiffs' harm, and therefore Plaintiffs request injunctive relief.

Defendants' Industrial Activities Have Created and Maintained a Nuisance Affecting the Surrounding Community

143. The Regal Defendants' and American Recycling Defendants' operations at the Facilities have harmed and negatively impacted the surrounding neighborhood in a number of ways that interfere with the residents' ability to use and enjoy their own property in their day-to-day lives.

144. Defendants' tipping, compressing and processing of putrescible waste and the processing and preparation of source-separated organic material leaves a rotten stink in the air that can be smelled for blocks, causing nausea and preventing community members from opening their windows on nice days, and impairing the use and enjoyment of the outdoors, including residents' own backyards as well as nearby Detective Keith L. Williams Park.

145. Defendants' sorting, recycling, and processing of construction and demolition debris, and the tipping and processing of non-putrescible waste, emits high decibel bass sounds as concrete is being crushed, and releases dense clouds of noxious dust into the air where it floats and settles around the neighborhood, irritating neighbors and triggering upper respiratory reactions.

146. Generally, Defendants' processing of putrescible solid waste in structures that are not entirely enclosed with four walls and a complete roof releases offensive odors that are residents smell constantly, even blocks away. The recycling and processing of C&D debris sends excessive amounts of dust into the air, which causes and exacerbates respiratory problems, and accumulates in the surrounding streets, yards, sidewalks, and public park, on parked vehicles and inside private homes and gardens. The mismanagement of leachate causes disgusting and potentially toxic flows of liquid which pool in the street and sidewalk, impeding pedestrians.

147. Defendants operate the Facilities twenty-four hours a day, up to seven days per week.

148. The incessant truck traffic and loud machinery necessary to process the hundreds of tons of solid waste and C&D debris the Facilities accept each day can be heard inside homes that sit blocks away from the Facilities.

149. These conditions, directly due to the Defendants' operations, differ both in degree and kind from the normal inconveniences of New York City life. For a new visitor to the neighborhood, the putrid smell, ubiquitous dust, and excessive truck noises are immediately arresting. Longtime residents of the neighborhood have had to take numerous steps to try and adjust to the many impacts of the Facilities: For example, they dare not open their windows, and end up having to pay for extra air conditioners and purifiers during the summer months; they decide against taking their grandchildren to the nearby, otherwise-enjoyable park; they decide against waiting for the bus at the closer yet nausea-inducing smelly bus stop and either walk further to another transportation option, or are required to pay for cars; they no longer host events or guests in their outdoor spaces. For residents, the Facilities' operations unreasonably encumber daily life.

i) Plaintiff Caroll Forbes

150. Plaintiff Caroll Forbes has lived in the neighborhood for more than sixty years at her childhood home on 105th Avenue, which she owns, four blocks from the Facilities. She has raised three children and six grandchildren there, and now frequently cares for her great-grandchildren when they visit her there after school and on weekends.

a. Odor

151. When Ms. Forbes first noticed a foul, rotten odor hanging in the air on her block, around 20 years ago or so, she thought there must be a dead body somewhere in the immediate area. She could not imagine that anything other than a decomposing body would create such a powerful and overwhelming stink. She even dialed 911 to report a suspected dead body. It was only after no corpse was ever located that she realized the source of the stink was in fact the waste transfer stations located four blocks away. This “dead body” odor has been a regular feature of life in her community ever since.

152. Ms. Forbes’ daily life has been impacted by the putrid odor emanating from the Facilities. Each day, Ms. Forbes listens to the weather report in the early mornings. If the wind is expected to blow from the Facility towards her home, she will not open her windows in her attempt to reduce the smell of the oppressive, disgusting odor. Burning incense, candles, and oils has become a necessary daily routine; Ms. Forbes currently has five air purifiers, two dehumidifiers, and a number of diffusers to try and combat the stink from invading her home. In addition to having to purchase odor-reducing home goods, Ms. Forbes also is forced to run the air conditioning on days where she ordinarily would have loved to simply open her windows.

153. Ms. Forbes used to regularly exercise in the park across the street from her home, which has a track and tennis courts among other amenities, but she is no longer able to exercise

outdoors in her own neighborhood. Ms. Forbes actually used to teach wellness and exercise classes in the park, and enjoyed the sense of community that brought, and has not done that in many years due to the oppressive odor. Whereas Ms. Forbes used to take full advantage of the park's amenities, jogging on its track, stretching in the grass, and simply enjoying being outside sitting on the benches in the shade, she now she opts to walk or drive to other parks farther away from her home because the Facilities have caused the entire area to reek of rotting garbage, which is not conducive to aerobic activity.

154. To make matters worse, the odor seeps into one's clothes if he or she is outside near the Facilities for too long; Ms. Forbes has waited for a bus adjacent to the Facilities only to then realize that she was carrying the stench with her on her clothing, and became highly self-conscious. This is another reason she avoids the most convenient bus stop.

155. Additionally, on the many days that the smell is the most pungent, Ms. Forbes experiences intense nausea and her appetite becomes significantly reduced simply from breathing the air outside her home.

b. Dust

156. The Facilities and their operations processing C&D waste release excessive dust that accumulates on surfaces everywhere. Ms. Forbes' windowpanes and sills accumulate the dust and grime, and the dust has affected the plants in her garden. Ms. Forbes spends a significant amount of time every day wiping down exposed surfaces inside and outside her home. She wears a face mask outside while gardening, and sprays filtered water on her vegetable plants daily to clear away the dust. She has even purchased a plastic cover for the plants in the hopes that it will protect them from the dust and allow her to grow edible vegetables once again.

157. The plants in Ms. Forbes' garden, as well as the trees in her yard and in the neighborhood surrounding her home have stopped growing, and their leaves develop holes after being covered in the dust blown from the Facilities. The dust accumulates so much that when it rains, the mixture becomes a sludge-like mud, which itself creates a walking hazard. Ms. Forbes has slipped and fallen in this mud one block from the Facilities, necessitating an emergency visit to the hospital.

158. The most concerning aspect of the dust and pollution caused by the Facilities for Ms. Forbes is the impact on her family's health. Ms. Forbes raised six grandchildren in her home, and, until schooling went remote during the pandemic, five of her great-grandchildren attended school in the neighborhood and regularly spent afternoons and weekends with her there. Several of her grandchildren developed asthma while living with her; two of her grandsons had especially severe asthma attacks that required ambulance trips to the hospital. When a seventh grandson would come to visit her from out of town, his asthma would act up and become more severe than it ever was when he was home. Out of concern for her own health, Ms. Forbes has ceased taking walks in her own neighborhood and makes a regular habit of driving to parks outside of her immediate community to take in fresher air.

c. Noise

159. The loud sounds of dump trucks barreling through the neighborhood and revving their engines wake Ms. Forbes up at night. She is especially disturbed by the big booms she hears from the direction of the Facilities.

d. Leachate

160. Ms. Forbes witnesses unsightly, noxious leachate hosed and pushed out of the Facilities and onto the sidewalks and streets by Defendants. As a result, Ms. Forbes avoids

walking on Liberty Avenue or even standing at the nearby bus stop as much as possible. She regularly takes longer detours or goes to public transit stops further away as a result of the offensiveness of the leachate released by the Facilities, especially after her slip-and-fall.

ii) Plaintiff Crystal Ervin

161. Plaintiff Crystal Ervin has lived at her home on 103rd Road, which she owns, for her entire life. Over the past seven decades, she has shared the home with her parents and siblings, although she has lived there alone since her mother's passing last year. The home is a mere two blocks from the Facilities, making their impacts especially directly felt.

a. Odor

162. Ms. Ervin has consistently struggled to cope with the putrid smell from the Facilities since Defendant started their operations. Ms. Ervin used to enjoy the nearby park for recreation, but does not use it anymore due to the smell. She rarely opens her windows. Backyard cookouts with friends and family, which were a mainstay during her childhood and which she always looked forward to hosting as an adult, are inconceivable now.

163. Ms. Ervin feels shame and embarrassment over the stench near her home and avoids having guests over even for small social gatherings.

164. Ms. Ervin used to take the bus from the stop less than 200 feet from her house and relished its convenience. However, due to the proximity of the stop to the Facilities, Ms. Ervin now walks further out of the way to wait for the bus in order to avoid the strong stench emanating from the Facilities.

b. Dust

165. Ms. Ervin confronts the excessive dust from the Facilities every day. She keeps her windows closed even on beautiful days on which she would like to keep them open. The

dust still manages to get into her home, including being tracked in on shoes and clothes. She is forced to wipe and clean windows and surfaces from the dust buildup so frequently that she finds herself feeling hopeless about the task. However, she nonetheless continues to force herself to clean it on an almost daily basis, despite know it will just reappear in a matter of hours.

166. Ms. Ervin's car is always filthy, even right after she washes it, because a film of dust accumulates within hours of being parked outside of her home. This frustrates Ms. Ervin, and it is a frustration she shares with her neighbors, who likewise complain about the inability to keep a clean car on the street.

167. On the days when the air contains the most dust, Ms. Ervin suffers intense bouts of sneezing and coughing, despite never having been diagnosed with any airborne allergies.

168. The dust and particulate matter pollution from the Facilities and their operations—as well as from Defendants' trucks—also pose a risk to Ms. Ervin's cardiac health. She has been diagnosed with a heart valve condition that she must carefully manage, and she worries that the poor air quality and increased air pollution from Defendants' operations will increase her risk of cardiac complications.⁷

c. Noise

169. The night-time noise from the Facilities' overnight operations significantly disrupts Ms. Ervin's sleep. Truck traffic into and out of the Facilities, as well as the heavy-duty machinery inside the Facility, emit loud banging sounds throughout the night.

170. Ms. Ervin has been diagnosed with polymyalgia rheumatica, which is an inflammatory disorder that causes muscle pain and stiffness. To minimize pain, she positions

⁷ Importantly, the American Heart Association has highlighted the connection between air pollution and cardiovascular disease since 2004. See Robert D. Brook et al., *Particulate Matter Air Pollution and Cardiovascular Disease*, 21 CIRCULATION 2331 (2010), <https://www.ahajournals.org/doi/epub/10.1161/CIR.0b013e3181d8e1>.

herself carefully in bed. She is regularly startled by the truck noise at night and is forced to reposition herself, which has caused broken sleep patterns and exacerbates the pain she experiences during the subsequent days.

d. Leachate

171. Ms. Ervin regularly encounters leachate from the Facilities when walking near her house. To get past the pools and puddles of murky ooze on public roads, she must take detours—going one to two blocks out of her way to reach her destination.

172. Ms. Ervin avoids wearing open-toed shoes for fear of having any of the nasty liquid contact her feet.

**Defendants’ Have Violated and Continue to Violate
State and City Laws, Regulations, and Permits**

i) Odor

173. Defendants’ operations create offensive odors so strong that Individual Plaintiffs and their neighbors often must avoid the outdoors, including the use of their windows and backyards, as well as Detective Keith L. Williams Park. As a result, Defendants are in violation of their Part 360 permits and 6 N.Y.C.R.R. § 360.19(i), which states, “The owner or operator [of a permitted or registered solid waste management facility] must ensure that odors are effectively controlled so that they do not constitute a nuisance as determined by the [DEC].”

174. Defendants’ putrescible waste processing activities release the stink of rotting garbage, while Defendants’ truck fleets travel in and out of the neighborhood to and from the Facilities, filling the air with noxious diesel fumes that exacerbate health conditions like asthma and heart disease. Defendants thus operate in violation of 6 N.Y.C.R.R. § 211.1, which prohibits emissions of “air contaminants [including odors, mists, gases, and fumes] to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or

animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property.”

175. Further, foul odors generated by Defendants’ operations put Defendants in violation of NYC Admin. Code § 24-141, which prohibits emissions of any “odorous air contaminant...[that] causes or may cause detriment to the health, safety, welfare or comfort of any person, or injury to plant and animal life, or causes or may cause damage to property or business.” Note that § 24-104 defines “odorous air contaminant” as “any air contaminant that is released in sufficient concentrations to be detected by the human olfactory sense”. The odors from Defendants’ operations can be smelled for many blocks, in direct violation of this section of the Admin. Code.

176. Defendants’ emissions of toxic and noxious matter beyond their lot lines that is detrimental to and endangers the public health, safety, comfort of residents in the area, are also a violation of Zoning Resolution, art. 4, ch. 2, § 42-252.

ii) Dust

177. Defendants do not take adequate precautions to minimize the amount of air-borne dust their operations generate. Excess dust is visible on surfaces, including windows and vegetation, within a several block-radius of the Facilities. Defendants thus violate their Part 360 permits and 6 N.Y.C.R.R. § 360.19(g), which states, “The owner or operator [of a permitted or registered solid waste management facility] must ensure that dust is effectively controlled so that it does not constitute a nuisance as defined by the [DEC]; and must undertake any and all measures as required by the department to maintain and control dust at and emanating from the facility.”

178. In addition, Defendants are in violation of NYC Admin. Code § 24-146(b), which states, “No person shall cause or permit any material that may generate dust to be transported or stored without taking such precautions as may be ordered by the commissioner or as established by the rules of the department [of environmental protection] to prevent dust from becoming airborne”. Note also that Section 24-146(a) states that the purpose of this section of the Admin. Code is “to protect public health and safety and the environment by minimizing the emission of dust into the air of the City.”

iii) Noise

179. The operations of the Facilities often are excessively loud and disturb the peace and quiet of the surrounding residents, so much so that some struggle to sleep at night. Noise from Defendants’ operations—truck traffic, the unloading of C&D by dump trucks, the moving and processing of waste with large front-end loaders or payloaders, and other activities—resonates through the neighborhood at all hours. Defendants thus violate their Part 360 permits and 6 N.Y.C.R.R. § 360.19(j). This provision regulates the permissible noise levels resulting from equipment or operations at permitted or registered solid waste management facilities beyond the property line owned or controlled by the owner or operator of the facility at locations authorized for residential purposes. In urban areas, such as Jamaica, Queens, noise levels may not exceed 67 decibels during the day and 57 decibels at night.

180. In addition, Defendants are in violation of NYC Admin. Code § 24-218. This provision prohibits the making of “any unreasonable noise...during the course of conducting any commercial activity”. Section 24-203 defines “unreasonable noise” to include “any excessive or unusually loud sound that disturbs the peace, comfort or repose of a reasonable person of normal

sensitivities or injures or endangers the health or safety of a reasonable person of normal sensitivities”.

iv) Leachate

181. The Defendants’ trucks cause damage to public streets and leave both liquid and solid waste in their wake. Defendants have done nothing to discourage these actions and have failed to clean the waste left behind by the trucks. Additionally, the Defendants’ employees hose garbage and liquid waste onto the tipping floor and out onto the sidewalks and street, causing the pollution to be carried directly out to Jamaica Bay. The leachate often pools in potholes and by the curbs along Douglas Avenue, where it then can be drained into the storm sewers with any rain event. As a result, Defendants are in violation of their Part 360 permits and 6 N.Y.C.R.R. § 360.19(b), which states that the owner or operator of a permitted or registered solid waste management facility “must prevent waste from being deposited in or entering surface waters or groundwater” and “must operate the facility in a manner that minimized the generation of leachate and that does not allow any leachate to enter surface waters or groundwater except under authority of a [SPDES] permit.”

182. Finally, the solid waste left behind by Defendants on public streets violates their Part 360 permits and 6 N.Y.C.R.R. § 360.19(f). This provision requires the owner or operator of a permitted or registered solid waste management facility to “ensure that waste at the facility is confined to an area that can be effectively maintained, operated, and controlled; and that blowing litter is confined to waste holding and operating areas by fencing or other suitable means”. It makes clear that “[a]ny litter outside the waste holding area must be controlled.”

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Discharges of Stormwater: Unlawful Discharge of Pollutants (Violations of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342)

183. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.

184. This cause of action is brought against all Defendants.

185. CWA Section 301(a), 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 Clean Water Act. Among other things, Section 301(a) prohibits discharges not authorized by a valid NPDES permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

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

187. CWA Section 502(12), 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.”

188. CWA Section 502(14), 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.”

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

190. 40 C.F.R. § 122.2 defines “waters of the United States” to include, *inter alia*: (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, including interstate ‘wetlands’”; (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.”

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

192. 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 CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.⁸

SECOND CAUSE OF ACTION

Discharges of Wastewater: Unlawful Discharge of Pollutants (Violations of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342)

193. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.

194. This cause of action is brought against the Regal Defendants.

195. CWA Section 301(a), 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 CWA Section 402, 33 U.S.C. § 1342.

⁸ The American Recycling Defendants have discharged stormwater associated with industrial activity without authorization under a NPDES permit a total of 409 times from July 19, 2016 through July 19, 2021, and the Regal Defendants have likewise discharged stormwater associated with industrial activity without authorization under a NPDES permit a total of 409 times during this same period. *See* Exhibit A, pages 11 and 33.

196. Process wastewater, such as wastewater generated by truck washing or the draining of leachate from wet garbage (“Process Wastewater”), constitutes such an unpermitted discharge if it flows to waters of the United States.

197. By washing garbage and liquid waste off their respective Facilities’ tipping floors and out onto the sidewalks and street, and also by washing trucks and other vehicles at their respective Facilities and discharging the resulting Process Wastewater to municipal storm drains that flow to Jamaica Bay, the Regal Defendants discharge and continue to discharge process wastewater that contains pollutants from unpermitted discharge locations at their Facilities to waters of the United States without valid NPDES permits.

198. Every day on which the Regal Defendants discharge Process Wastewater without authorization under a NPDES permit is a separate and distinct violation of CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342. These violations are ongoing and continuous.

THIRD CAUSE OF ACTION

Failure to Apply for NPDES Permit Coverage (Violations of CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311 and 1342)

199. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.

200. This cause of action is brought against all Defendants.

201. CWA Section 402(p)(4)(A), 33 U.S.C. § 1342(p)(4)(A) and the implementing regulation found at 40 C.F.R. § 122.26(a)(1)(i), (c)(1), and (e)(1), require facilities discharging stormwater associated with industrial activity to obtain a NPDES permit.

202. 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.

203. Since at least July 19, 2016, Defendants have operated and continue to operate a facility that engages in “industrial activity” as that term is defined in 40 C.F.R. § 122.26(b)(14).

204. Since that time, Defendants have routinely discharged polluted stormwater associated with industrial activity from the Facilities to waters of the United States.

205. Therefore, since that time, Defendants have been obligated to apply for coverage under an individual or general NPDES permit.

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

207. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiffs, and their members. Damages are inadequate to remedy Plaintiffs’ harm, and therefore Plaintiffs request injunctive relief.

FOURTH CAUSE OF ACTION

Failure to Implement Adequate Control Measures and Best Management Practices (Violations of CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311 and 1342)

208. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.

209. This cause of action is brought against all Defendants.

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

211. The selected measures must reduce the discharge of pollution from the Facilities 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.

212. For example, the General Permit, Part II.A, requires Defendants to minimize the exposure of pollutants to stormwater at the Facilities and—to the extent pollutants are exposed to stormwater despite Defendants’ best efforts—to minimize the ultimate discharge of those pollutants in stormwater from the Facilities.

213. Under the General Permit, Part II, the term “minimize” means to “reduce and/or eliminate to the extent achievable using control measures (including Best Management Practices (BMPs) selected and designed in accordance with Part II.D) that are technologically available and economically practicable and achievable in light of best industry practice.”

214. 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. CWA § 301(b)(2)(A), (E), 33 U.S.C. § 1311(b)(2)(A), (E).

215. Because the industrial activities carried out at the Regal/Royal Facility are categorized in SIC Codes 5093 and 4212, the Regal Defendants must implement the sector-specific control measures specified in Part VII of the General Permit for Sectors N and P.

216. Because the industrial activities carried out at the American Recycling Facility are categorized in SIC Code 5093, American Recycling must implement the sector-specific control measures specified in Part VII of the General Permit for Sector N.

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

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

219. Defendants' ongoing failure to implement adequate control measures and BMPs at their Facilities is described above.

220. 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 CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.

221. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiffs, and their members. Damages are inadequate to remedy Plaintiffs' harm, and therefore Plaintiffs request injunctive relief.

FIFTH CAUSE OF ACTION

Failure to Develop, Implement, and Make Available an Adequate Storm Water Pollution Prevention Plan (Violations of CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311 and 1342)

222. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.

223. This cause of action is brought against all Defendants.

224. The General Permit, Part III, requires industrial dischargers to develop, implement, and maintain compliance with SWPPP.

225. As described in Part III.A.3 of the General Permit, the SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with the discharger's industrial activity.

226. Further, the SWPPP must describe how the discharger has implemented BMPs to minimize the discharge of pollutants in stormwater and to assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.

227. The SWPPP must address, at a minimum: (1) each of the universally applicable elements set forth in Part III.A of the General Permit; (2) each of the applicable sector-specific plan elements specified in Part VIII of the General Permit, *see* Part III.A.7; and, (3) as applicable, additional special requirements listed in Part III.D of the General Permit for discharges through a municipal separate storm sewer or discharges to impaired waterbodies. Each of these elements also require the discharger to maintain records and documentation of compliance with each of these elements.

228. The SWPPP must be representative of current site conditions and kept up to date. General Permit, Part III.E.

229. The SWPPP must be signed in accordance with Appendix H.8 of the General Permit and, where the facility is active, retained on-site in accordance with Parts III.A.9 and VI.C. General Permit, Part III.C.1.

230. 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. General Permit, Part I.D.1.a.1.

231. Because the industrial activities carried out at the Regal/Royal Facility are categorized in SIC Codes 5093 and 4212, the Regal Defendants must include the sector-specific SWPPP elements specified in Part VII of the General Permit for Sectors N and P, in addition to the SWPPP elements set forth in Part III of the General Permit. General Permit, Part III.A.7.

232. Because the industrial activities carried out at the American Recycling Facility are categorized in SIC Code 5093, the American Recycling Defendants must include the sector-specific SWPPP elements specified in Part VII of the General Permit for Sector N, in addition to the SWPPP elements set forth in Part III of the General Permit. General Permit, Part III.A.7.

233. Under Part III.C.2.c. of the General Permit, the owner or operator of a facility “must make a copy of the SWPPP available to the public within fourteen (14) days of receipt of a written request.”

234. As described above, Plaintiffs requested a copy of Defendants’ SWPPPs, and Defendants have not provided a copy of their SWPPPs to Plaintiffs.

235. Plaintiffs are informed and believe, and thereupon allege that, as of the filing date of this complaint, September 20, 2021, Defendants have not developed SWPPPs.

236. Defendants have failed, and continue to fail, to develop, implement, and maintain compliance with and make available adequate SWPPPs 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.

237. Defendants’ ongoing failure to develop and implement adequate SWPPPs for the Facilities and to take the other SWPPP-related actions required by the General Permit is also evidenced by Defendants’ failure to implement adequate control measures and BMPs, as set forth above.

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

239. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiffs, and their members. Damages are inadequate to remedy Plaintiffs’ harm, and therefore Plaintiffs request injunctive relief.

SIXTH CAUSE OF ACTION

Failure to Conduct Routine Site Inspections and Comply with General Monitoring, Recordkeeping, and Reporting Requirements

(Violations of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342)

240. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.

241. This cause is brought against all Defendants.

242. 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. General Permit, Part IV.A.1. Records of this inspection must be kept for at least five years. General Permit, Part IV.A.2.

243. In addition to or alongside the annual comprehensive inspection, industrial dischargers must also conduct an annual “dry inspection” to ensure there are no non-stormwater sources being discharged into the stormwater system. General Permit, Part IV.C.

244. Qualified personnel must also carry out routine inspections of the facility’s stormwater management practices at least quarterly. General Permit, Part IV.B. During these inspections, personnel must inspect all areas of the facility where industrial materials or activities are exposed to stormwater, evaluate the performance of stormwater BMPs identified in the facility’s SWPPP, and document any deficiencies in the implementation or adequacy of the BMPs. Such deficiencies must then be addressed through corrective actions under Part V of the General Permit. General Permit, Part IV.B.4.

245. In addition to inspections, all covered facilities must conduct multiple types of analytical monitoring, including quarterly visual inspections of stormwater discharges and sampling and laboratory analysis of outfalls from all qualifying storm events. General Permit, Parts IV.D–F.

246. Further, Defendants engage in industrial activities that fall within Sectors N and 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 VII of the General Permit. General Permit, Part VI.F.

247. Records of these monitoring efforts must be maintained for at least five (5) years from the date of the sample, measurement, report, or application. General Permit, Part VI.C.2.

248. Covered facilities are required to report on the results of their monitoring efforts to the DEC, through Annual Certification Reports, Discharge Monitoring Reports, and supplemental reports as necessary. General Permit, Part VI.A–B.

249. Plaintiffs are informed and believe, and thereupon allege that, as of the filing date of this complaint, Defendants have not conducted any of the site inspections, monitoring, or sampling required by Part IV of the General Permit.

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

251. Plaintiffs are informed and believe, and thereupon allege 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 VI of the General Permit.

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

253. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiffs, and their members. Damages are inadequate to remedy Plaintiffs' harm, and therefore Plaintiffs request injunctive relief.

SEVENTH CAUSE OF ACTION

**Failure to Comply with Specific General Permit Requirements Applicable to the
Waste Recycling Facility Sector and the Land Transportation and/or
Warehousing Sector
(Violations of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342)**

254. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.

255. This cause of action is brought against all Defendants.

256. The General Permit contains various requirements specific to waste recycling facilities. General Permit, Part VII.N.

257. The General Permit contains various requirements specific to land transportation and/or warehousing facilities. General Permit, Part VII.P.

258. Defendants have failed, and continue to fail, to comply with these requirements of the General Permit that apply to all waste recycling facilities. The Regal Defendants have also failed, and continue to fail, to comply with the requirements of the General Permit that apply to all land transportation and/or warehousing facilities.

259. To the extent that Defendants' failure to comply with these sector-specific requirements is not captured in the above Causes of Action, such failure is included here.

260. Each and every day on which Defendants fail to comply with the General Permit's sector-specific requirements applicable to scrap recycling and waste recycling facilities and land transportation and/or warehousing facilities is a separate and distinct violation of CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.

261. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiffs, and their members. Damages are inadequate to remedy Plaintiffs' harm, and therefore Plaintiffs request injunctive relief.

262. Wherefore, Plaintiffs pray for relief as hereinafter set forth.

EIGHTH CAUSE OF ACTION

**Failure to Comply with Specific General Permit Requirements Applicable to
Facilities that Discharge to an Impaired Waterbody
(Violations of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342)**

263. Plaintiffs incorporate by reference all preceding paragraphs as if set forth herein.
264. This cause of action is brought against all Defendants.
265. Discharges to an impaired waterbody are not eligible for coverage under the General Permit if the cause of impairment is a pollutant of concern included in the “benchmarks” or “effluent limitations” (as those terms are defined in the General Permit) to which the facility is subject, unless the facility:
- a. Prevents all exposure to stormwater of the pollutant(s) for which the waterbody is impaired, and maintains all analysis and documentation supporting such eligibility with the SWPPP;
 - b. documents that the pollutant for which the waterbody is impaired is not present on-site, and maintains all analysis and documentation supporting such eligibility with the SWPPP; or
 - c. provides additional information in the SWPPP to minimize the pollutant of concern causing the impairment as specified in Part III.D.2 of the General Permit. General Permit, Part II.C.2.
266. Jamaica Bay is an impaired water.
267. One of the causes of impairment is excessive oxygen demand (and thus low dissolved oxygen in the water). Chemical Oxygen Demand is a parameter included in the benchmarks to which Defendants’ Facilities are subject under Sectors N and P.

268. Defendants have not prevented all exposure of substances that create chemical oxygen demand in stormwater.

269. Defendants have not documented that such substances are not present onsite.

270. Defendants have not submitted SWPPPs with the additional information specified in Part III.D.2 of the General Permit.

271. Defendants are violating the requirements of the General Permit related to discharges to impaired waterbodies.

272. Each and every day on which Defendants violate the General Permit's requirements governing discharges to impaired waterbodies is a separate and distinct violation of CWA Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342.

273. Continuing commission of the acts and omissions alleged herein irreparably harms the waters of the State, Plaintiffs, and their members. Damages are inadequate to remedy Plaintiffs' harm, and therefore Plaintiffs request injunctive relief.

274. Wherefore, Plaintiffs pray for relief as hereinafter set forth.

NINTH CAUSE OF ACTION

Private Nuisance

275. Plaintiffs repeat and reallege the allegations contained above as if set forth fully herein.

276. This cause of action is brought against American Recycling Management, LLC, Regal Recycling Co. Inc., Royal Carting Company, Inc., and Royal Waste Services, Inc.

277. Defendants' operation of the Facilities has caused the emission of offensive and noxious odors, excessive noise, release of large quantities of dust, and leachate.

278. The offensive and noxious odors, noise, dust, and leachate substantially interfere with the Individual Plaintiffs' use and enjoyment of property that they own.

279. Such interference is a result of Defendants' actions in operating the Facilities.

280. Defendants' actions in causing such interference are intentional, negligent and/or reckless.

281. Defendants know, have been made aware, or are substantially certain that their operations cause odors, noise, leachate, and excessive dust that are offensive and noxious to the Plaintiffs, and the community.

282. Defendants' actions are unreasonable in nature because reasonable steps can be taken to reduce the severity of these impacts on the community.

283. Defendants' actions constitute a private nuisance.

284. Defendants have not abated the nuisance.

285. Defendants' conduct constitutes a private nuisance and has proximately caused and will continue to cause harm to Plaintiffs. Plaintiffs are entitled to injunctive relief requiring, *inter alia*, Defendants to abate the nuisance.

TENTH CAUSE OF ACTION

Nuisance Per Se

286. Plaintiffs repeat and reallege the allegations contained above as if set forth fully herein.

287. This cause of action is brought against American Recycling Management, LLC, Regal Recycling Co. Inc., Royal Carting Company, Inc., and Royal Waste Services, Inc.

288. The Defendants' actions are in violation of city and state laws, regulations, and permit conditions.

289. Such illegality makes the nuisance a nuisance *per se*.

290. Defendants' conduct constitutes nuisance *per se* and has proximately caused—and will continue to cause—damage to Plaintiffs. Plaintiffs are entitled to injunctive relief requiring, *inter alia*, Defendants to abate the nuisance.

PRAYER FOR RELIEF

291. Plaintiffs respectfully request that this Court award the following relief, as allowed by 33 U.S.C. § 1365(a) and 28 U.S.C. §§ 2201(a) and 2202 and New York State common law:

- i. A declaratory judgment that Defendants have violated and continue to violate the Clean Water Act as alleged herein;
- ii. An injunction enjoining Defendants from discharging pollutants from the Facilities except as authorized by and in compliance with a NPDES permit;
- iii. An injunction ordering Defendants to immediately apply for coverage under, and comply fully with all applicable requirements of, the General Permit (or an individual SPDES permit that is at least as stringent);
- iv. An injunction ordering Defendants to take appropriate actions to remediate the harm caused by their violations of the General Permit and the Clean Water Act, to the extent possible;
- v. An injunction ordering Defendants to pay, jointly and severally, civil penalties, pursuant to CWA Sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and 1365(a), and by 40 C.F.R. §§ 19.1 – 19.4;
- vi. An injunction ordering Defendant to pay the costs of litigation, including Plaintiffs' reasonable investigative costs, attorney fees, expert witness and

consultant fees, and other costs, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d);

- vii. A declaratory judgment that Defendants' actions stated herein have constituted and continue to constitute a private nuisance;
- viii. A declaratory judgment that Defendants' actions stated herein have constituted and continue to constitute nuisance *per se*;
- ix. An injunction ordering Defendants, and any and all other persons and/or entities acting in concert with them, to abate the nuisance caused by Defendants' actions stated herein;
- x. An injunction prohibiting Defendants, and any and all other persons and/or entities acting in concert with them, from operating the Facilities and the waste collection trucks in a manner that causes or contributes to a private nuisance;
- xi. An injunction ordering Defendants, and any and all other persons and/or entities acting in concert with them, to comply with all applicable laws, regulations, and conditions imposed in their various permits; and
- xii. Any and all other relief that the Court deems just and proper.

Dated this 20th day of September 2021
New York, New York

Respectfully submitted,

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