

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA,
A municipal corporation,
441 4th Street NW,
Washington, D.C. 20001,

Plaintiff,

v.

RODGERS BROTHERS CUSTODIAL
SERVICES, Inc.,
2225 Lawrence Avenue, N.E.
Washington, D.C. 20018,

GEORGE RODGERS, JR.,
In his individual capacity,
2230 Lawrence Avenue, N.E.
Washington, D.C. 20018,

and

MARK UHAR
In his individual capacity,
2230 Lawrence Avenue, N.E.
Washington, D.C. 20018,

Defendants.

Case No.:

Judge:

COMPLAINT

JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATIONS OF THE WATER POLLUTION CONTROL ACT

Plaintiff, the District of Columbia, by its Attorney General, brings this enforcement action against Defendants, Rodgers Brothers Custodial Services, Inc., George Rodgers, Jr., and Mark Uhar, for ongoing violations of the District's Water Pollution Control Act. Defendants own and manage a trash transfer facility located in Ward 5 that continues to actively and illegally pollute District waters. Defendants have ignored admonitions and direction of District Department of Energy and

Environment (DOEE) inspectors regarding how to conduct business safely and legally and repeatedly have allowed waste, dirt, and debris from their facility to discharge and leech into common space and waters, leading to persistent water quality violations. The District seeks injunctive relief and civil penalties.

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to D.C. Code § 8-103.18(b)(1) and § 11-921(a)(6).

2. The Court has personal jurisdiction pursuant to D.C. Code § 13-423 on the grounds that each of the Defendants transacts business in the District of Columbia and has caused tortious injury in the District of Columbia by their acts or omissions in the District.

PARTIES

3. Plaintiff, the District of Columbia (District), a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented in this enforcement action by its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the Water Pollution Control Act, pursuant to D.C. Code § 8-103.08(b).

4. Defendant Rodgers Brothers Custodial Services, Inc. (Rodgers Brothers) is a corporation organized under the laws of the District of Columbia and maintains a

principal place of business at 2225 Lawrence Avenue, N.E., Washington, D.C. 20018. Defendant Rodgers Brothers Custodial Services, Inc. operates a commercial and construction materials processing and recycling facility (the Site), in the District of Columbia.

5. Defendant George Rodgers, Jr. (Mr. Rodgers) is a principal, president, and manager of Rodgers Brothers. At all times relevant to this Complaint, Mr. Rodgers directed, controlled, had the authority to control, participated in, or with knowledge approved of the acts or practices of Rodgers Brothers, including the acts and practices set forth in this Complaint. Mr. Rodgers supervises all employees at the Site and makes final decisions at the Site, including acquisitions, hiring, firing, and whether employees have the day off from work. Mr. Rodgers maintains a business address at 2230 Lawrence Avenue, N.E., Washington, D.C. 20018.

6. Defendant Mark Uhar (Mr. Uhar) is Vice President of Rodgers Brothers. At all times relevant to this Complaint, Mr. Uhar directed or participated in the acts or practices of Rodgers Brothers related to health and safety and hiring and firing staff of Rodgers Brothers. Mr. Uhar reports directly to Mr. Rodgers. Mr. Uhar's business address is 2230 Lawrence Avenue, N.E., Washington, D.C. 20018.

THE WATER POLLUTION CONTROL ACT

7. The purpose of the Water Pollution Control Act (WPCA) is to restore and purify water in the District of Columbia.

8. The WPCA prohibits any persons from discharging pollutants into the waters of the District, except as allowed by the Mayor. D.C. Code §§ 8-103.02, 8-103.06.

THE SITE OF DEFENDANTS' VIOLATIONS

9. The Site is located in Ward 5 in the District of Columbia, generally adjacent to Lawrence Avenue NE, between Edwin Street NE and Bryant Street NE. The Site lies on approximately 5.5 acres, and includes 1) an area (“the trash transfer area”) that generally collects construction and demolition debris waste for processing before being transferred off-site, and 2) an area that services (“the service area”) machinery that is used to process waste at the trash transfer area.

10. Numerous stormwater catch basins border the Site and collect stormwater runoff from the Site and other properties in the area. In fact, the Site is less than 15 feet from three downstream stormwater catch basins. The stormwater catch basins adjacent to the facility connect to an outfall that discharges directly into Hickey Run, a tributary of the Anacostia River. Both Hickey Run and the Anacostia River are waters of the District.

THE DEFENDANTS' HISTORY OF VIOLATING DISTRICT ENVIRONMENTAL LAW AT THE TRASH TRANSFER FACILITY

11. Over the past decade, Defendants have developed a recurring pattern of environmental noncompliance, including prior violations of the District’s WPCA as well as the Air Pollution Control Act (APCA).

2012 Water Quality Inspection and Violation

12. On April 9, 2012, a DOEE inspector observed Rodgers Brothers hosing sediment, dirt, garbage, and other industrial waste toward and into a stormwater catch basin along Lawrence Avenue, and in turn, into the waters of the District of Columbia.

13. On April 18, 2012, a DOEE inspector observed sediment discharging from the Site to a nearby stormwater catch basin.

14. Thereafter, DOEE issued administrative fines for discharging a pollutant to the waters of the District without a permit in violation of the WPCA, D.C. Code § 8-103.02

15. On November 19, 2013, the District's Office of Administrative Hearings found Rodgers Brothers liable for violating the WPCA on April 9 and 18, 2012, and ordered payment of an \$8,000 administrative penalty.

2014 Air Quality Inspection and Violation

16. On April 24, 2014, a DOEE inspector observed dark clouds of dust from the trash transfer facility migrating off the property, in violation of the implementing regulations of the District's APCA. In particular, Rodgers Brothers violated 20 DCMR § 605.1(b) (failing to control fugitive dust from a paved roadway) and 20 DCMR § 605.1(h) (failing to control fugitive dust from a stockpile). Despite it being common practice at trash transfer facilities to control fugitive dust with water, Rodgers Brothers was not using these basic techniques.

17. Rodgers Brothers admitted liability for these violations.

18. On April 23, 2015, the District's Office of Administrative Hearings found Rodgers Brothers liable for the violations and ordered Rodgers Brothers to pay a \$600 administrative penalty.

Defendants' Charged Conduct—Violations of the WPCA

19. Defendants have continued to violate the WPCA, twice in 2016 and twice in December 2020.

February 3, 2016 Inspection

20. On February 3, 2016, DOEE inspectors observed a mixture of petroleum and stormwater discharging from the service area of the Site to a nearby stormwater catch basin.

21. Petroleum leaks occurred because Defendants failed to properly store machinery, equipment, and petroleum containers in covered areas so they would not be exposed to rainfall.

22. At the Site, the DOEE inspectors discussed the petroleum discharges with Mr. Uhar. DOEE issued a site directive to Mr. Uhar to eliminate the discharge of petroleum from the Site. At that time, Mr. Uhar observed the petroleum sheens.

March 22, 2016 Inspection

23. On March 22, 2016, Mr. Uhar spoke with a DOEE inspector on the phone regarding the Site's historical noncompliance issues. The DOEE inspector informed Mr. Uhar of a DOEE inspection to occur later that day.

24. On March 22, 2016, DOEE inspectors observed the trash transfer area was not adequately sloped, and in the event of rain, stormwater would not be contained on the Site.

25. DOEE inspectors observed that vehicles exiting the Site were tracking sediment from the Site to nearby stormwater catch basins.

26. Inspectors observed that Defendants did not maintain or incorrectly installed rock guard sediment socks, which are meant to prevent sediment from entering stormwater catch basins. Inspectors also observed Defendants using a hose to rinse the roadway of sediment. Inspectors observed that Defendants' actions resulted in sediment flowing to and entering stormwater catch basins.

December 11, 2020 Inspection

27. On December 11, 2020, a DOEE inspector performed an inspection of the trash transfer area observing that, again, Defendants failed to maintain rock guard sediment socks.

28. A DOEE inspector observed that Defendants' work at the trash transfer area had caused sediment and construction and demolition debris waste to leave the Site and enter an adjacent stormwater catch basin, clogging the catch basin.

December 14, 2020 Inspection

29. On December 14, 2020, after a recent rainfall, DOEE performed an inspection of the trash transfer area.

30. A DOEE inspector observed that construction and demolition debris, waste, and stormwater containing these materials, was leaving the Site, discharging and entering or threatening to enter the nearby stormwater catch basin.

31. The inspector observed the stormwater catch basin was still clogged with construction and demolition debris waste, and with the recent rainfall, storm water pooled in front of the stormwater catch basin.

CLAIMS FOR RELIEF

COUNT ONE

Unlawful Discharges of Pollutants in Violation of the WPCA (as to all Defendants)

32. The District realleges and incorporates by reference the allegations set forth in all preceding paragraphs.

33. At all relevant times, Defendants have been “person[s]” as that term is defined in the WPCA. Defendant Mr. Rodgers is individually liable because he is the principal and president of Rodgers Brothers and has held himself out as exercising authority and control over operations at the Site. Mr. Rodgers supervises all employees at the Site and makes final decisions at the Site, including acquisitions, hiring, firing, and whether employees have the day off from work. Mr. Uhar is individually liable because he is vice president of Rodgers Brothers and has held himself out as exercising authority and control over operations at the Site. Mr. Uhar is directly responsible for hiring and firing employees at the Site. Further, Mr. Uhar has held himself out as responsible for managing the Site’s environmental compliance, including eliminating and preventing pollutant discharges from the Site.

34. The WPCA, D.C. Code § 8-103.02, prohibits the unpermitted discharge of pollutants into District Waters.

35. On or about February 3, 2016, March 22, 2016, December 11, 2020, and December 14, 2020, without a permit Defendants discharged a pollutant or pollutants, from the Site, which entered or threatened to enter District waters.

36. The District is authorized to obtain a preliminary or permanent injunction, which the Court may grant upon a showing that any person is violating or is about to violate the WPCA. D.C. Code § 8-103.18(a).

37. Defendants WPCA violations continue as of the filing of this Complaint and are likely continuing to this day.

REQUEST FOR RELIEF

WHEREFORE, the District respectfully requests that judgment be entered in its favor and against Defendants, and that this Court impose civil penalties, fines, and injunctive relief as follows:

1. A declaratory judgment that Defendants have violated the District's Water Pollution Control Act as set forth in this Complaint;
2. A preliminary and/or permanent injunction enjoining Defendants from continuing violations of the District's Water Pollution Control Act and directing them to take corrective measures at the Site and any adjacent or surrounding areas impacted by illegal discharges from the Sites that are reasonable and necessary pursuant to D.C. Code § 8-103.18(a);

3. Statutory penalties against Defendants, as authorized by the Water Pollution Control Act, in an amount to be proven at trial; and
4. Such other relief as this Court deems just and proper.

JURY DEMAND

The District demands a jury trial on all issues triable of right by a jury in this matter.

Dated: January 14, 2021

Respectfully submitted,

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Attorney General for the District of
Columbia

KATHLEEN KONOPKA
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Public Advocacy Division

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