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Stormwater Enforcement/Citizen Suit Action: Federal Court Addresses Pennsylvania Metal Fabrication Facility's Motion to Dismiss

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The United States District Court for the Eastern District of Pennsylvania ("Court") addressed in an August 24th Memorandum Opinion ("Opinion") issues arising out of a Clean Water Act citizen suit action involving stormwater discharges. *See Friends of the Delaware River LLC v. Martelli's Metal Fabrication, Inc.*, Civil Action No. 25-5806.

The Court considered whether a motion to dismiss filed by the defendant should be granted.

In considering the motion to dismiss facts outlined in the complaint are assumed true.

Friends of the Delaware River LLC ("Friends") after an investigation concluded that Martelli's Metal Fabrication, Inc.'s ("MMF") facility contributed to polluted stormwater runoff in the Delaware River. MMF is described as owning and operating a roughly 60,000-square-foot metal fabrication facility that performs metal processing, fabrication, and other related activities. The facility is upstream of the Little Neshaminy Creek.

The Opinion states that the Friends' investigation indicated that MMF's outdoor storage of industrial machinery, such as metal slabs, dumpsters, refuse, and construction equipment, causes pollutants to be exposed to rainfall. Friends is also stated to have uncovered that the presence of gasoline, antifreeze, battery fluids, and hydraulic fluids exposes stormwater to contaminants before it flows into municipal storm drains, the Little Neshaminy Creek, and ultimately the Delaware River. The referenced contaminants are stated to be known to mix with stormwater which include Nitrate + Nitrite-Nitrogen, Total Phosphorus, pH, total suspended solids, and waste oils.

The MMF facility is described by Friends as a "Fabricated Structural Metal Facility. The organization argues that MMF failed to obtain permit coverage pursuant to a required Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit. The relevant Pennsylvania Department of Environmental Protection ("DEP") permit is a Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("General Permit").

MMF's facility is alleged to have been required to obtain this General Permit and also undertake:

- Best Management Practices ("BMPs").
- Incorporation of technology to reduce stormwater pollution.
- Implementation of a "Preparedness, Prevention and Contingency Plan" ("PPC Plan").
- Monitoring of compliance through routine recordkeeping.

After providing the required statutory notice to the United States Environmental Protection Agency's ("EPA") and DEP, Friends filed a citizen suit action pursuant to the Clean Water Act and Pennsylvania's Clean Streams Law arguing that MMF discharged stormwater without proper coverage under the General Permit.

The complaint also alleged that MMF contravened the General Permit's requirements by:

- Exceeding effluent limitations.
- Failing to develop a PPC Plan.
- Declining to undertake monitoring and recordkeeping.

MMF filed a motion to dismiss.

The Court first rejected MMF's claim that Friends lacked standing.

The Court then addressed MMF's claims that Friends:

- Failed to allege discharge from a point source.
- Allegations are overly speculative.

The Court rejects the claim of failure to allege discharge from a point source noting that a pollutant discharge is the:

... addition of any pollutant to navigable waters from any point source.

Further, "point source" is defined as:

... 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.

The Court states that Congress intended for the Clean Water Act to eliminate pollution from the nation's waters and courts read "point source" broadly. Friends' claim that contaminated from MMF's facility flows into Little Neshaminy Creek, and eventually the Delaware River, through municipal storm drains is deemed a:

... mechanism that falls comfortably within the class of channels or conveyances that are point sources.

Further, the Delaware River was noted to be a navigable water and the previously-referenced contaminants fit within the definition of "pollutant."

The Court further holds that Friends' claims are not overly speculative, and instead, are well-pleaded allegations, accepted as true, are sufficient to make it plausible that MMF is liable for the alleged misconduct.

As to the Clean Water Act claim, the Court held that Friends proved the relevant elements that MMF:

1. Discharged;
2. a pollutant;
3. into navigable waters;
4. from a point source;
5. without a permit.

The fifth element is noted to be applicable because the MMF activities fit within the Pennsylvania Standard Industrial Classification Code 3441, which required the facility to obtain coverage under the General Permit.

MMF's allegation that Friends lacks water-quality testing and empirical data is deemed by the Court as premature at the pleading stage. In addition, as to the remaining counts, Friends identified specific components of the permit that MMF allegedly violated and because these were not challenged individually, the Court denies the motion as to these counts and allows the factual record to develop.

A copy of the Opinion can be found [here](#).