



RIVERKEEPER®

August 25, 2009

Robert Kelman, President, Commercial North America
Sims Metal Management
Executive Head Office
New York
110 Fifth Avenue
Seventh Floor
New York NY 10011

Re: Discharge from Sims Metal Management Long Island City Facility into Newtown Creek

Dear Mr. Kelman:

We are writing to put you on notice of potential Clean Water Act violations resulting from barge loading and/or unloading activities at Sims Metal Management's Long Island City facility located at 30-27 Greenpoint Ave., Long Island City, NY.

On August 20, 2009 at approximately 12:25pm, while patrolling Newtown Creek and conducting water quality sampling, we observed what appeared to be shredded plastic, glass, and other garbage and debris both sitting on the edge and cascading from a barge docked in front of your property into Newtown Creek. The enclosed photographs we took depict the scene as we witnessed it. *See Exhibit A.* These materials and debris were being discharged into the Creek in violation of the federal Clean Water Act, 33 U.S.C. Section 1251 *et seq.*

Organizational Background

Riverkeeper is an independent, member supported, not-for-profit environmental organization with offices in Tarrytown and White Plains, New York. Our mission is to protect the environmental, recreational, and commercial integrity of the Hudson River, its tributaries, and New York Harbor and to safeguard the New York City drinking water supply. We carry out this mission through enforcement, litigation, advocacy, and public education.

Violations of Clean Water Act

The Clean Water Act (the "Act") prohibits discharges of pollutants from a point source into waters of the United States without a permit. *See* 33 U.S.C. §§1311, 1362. The courts have interpreted "pollutant" broadly to include "solid waste," "garbage," and "wrecked or discarded equipment." *See* 33 U.S.C. §1362(6). "Point source" is defined as "any discernable, confined

and discrete conveyance, including but not limited to any pipe, ditch, tunnel . . . vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. §1362(14). The concept of point source incorporates “the broadest possible definition of any identifiable conveyance from which pollutants might enter waters of the United States.” *United States v. Earth Science, Inc.*, 599 F.2d 368, 373 (10th Cir. 1979). The barge in front of your property clearly constitutes a point source, while shredded plastic, glass, and other debris cascading off the barge clearly constitute pollutants under the terms of the Act.

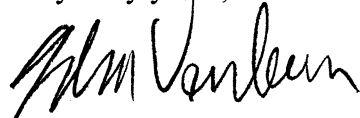
The Act also prohibits placement of fill or debris in waters of the United States without a permit. *See* 33 U.S.C. §1344. The dumping of debris such as shredded plastic, glass, and assorted debris into the creek is precisely what these sections of the Act were designed to prohibit. Any discharge of any pollutant into the creek or its banks below flood line is a violation of the Act, enforceable by citizens. *See* 33 U.S.C. §1365.

Riverkeeper protects and safeguards the ecological integrity of the Hudson River, its tributaries, and the waters of New York Harbor. On behalf of our members, we routinely file citizen suits under the Clean Water Act to prevent and remediate environmental pollution problems. While this is not a formal “notice of intent to sue” under the Clean Water Act, we reserve the right to bring such litigation if necessary.

We have forwarded pictures and a report of the conditions we observed to the New York State Department of Environmental Conservation, and encourage you to clean up the debris and take steps to improve loading and unloading practices to prevent such dumping in the future. Riverkeeper will continue to conduct regular patrols of Newtown Creek and look forward to seeing the steps you have taken to rectify this problem.

Thank you in advance for your attention to this matter. To discuss this further, I can be reached at jverleun@riverkeeper.org or 914-478-4501 x 247.

Very truly yours,



Joshua S. Verleun, Esq.
Staff Attorney/Investigator

Cc:

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White Plains, N.Y. 10603-2860

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