



RIVERKEEPER®

**Via Certified Mail – Return Receipt Requested**

September 14, 2009

6<sup>th</sup> Street Iron and Metal  
163 6<sup>th</sup> Street  
Brooklyn, NY 11215

Louis Petrosino  
Petros Realty Corporation  
Registered owner of property  
161-163 6<sup>th</sup> Street  
Brooklyn, NY 11215

RE: Notice of Intent to Sue 6<sup>th</sup> Street Iron and Metal, et. al., for Clean Water Act and Resource Conservation and Recovery Act Violations at its Scrap Metal Facility, Located at 163 6<sup>th</sup> Street, Brooklyn, NY.

Dear Sirs and Madams:

This letter constitutes Riverkeeper's NOTICE OF INTENT TO SUE 6<sup>th</sup> Street Iron and Metal as operator of the scrap metal facility located at or about 163 Sixth Street in Brooklyn, New York and Petros Realty Corporation as registered owner of the parcel of property located at or about 163 6<sup>th</sup> Street, Brooklyn, New York (hereinafter "6<sup>th</sup> Street Iron and Metal"), for violations of the federal Clean Water Act ("CWA"), 33 U.S.C. § 1251, *et seq.*, and the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.* Specifically, this letter gives notice of our intent to seek redress for the illegal discharge of pollutants without a State Pollutant Discharge Elimination System ("SPDES") permit, failure to obtain coverage for stormwater discharges under the SPDES Multi-sector General Stormwater permit for discharges associated with industrial activity, and the illegal placement of fill and debris into the Gowanus Canal. Lastly, this letter also gives notice of our intent to seek redress for 6<sup>th</sup> Street Iron and Metal's continuing use of the shore and bottom of the Gowanus Canal as an open dump, a violation of RCRA.

Riverkeeper is a non-profit, environmental watchdog organization that protects and safeguards the ecological integrity of the Hudson River, its tributaries, and the New York City Watershed. On behalf of our 7,000 members, we routinely patrol the region's waters including the Gowanus Canal and, when necessary, file citizen suits under the CWA to prevent and remediate

environmental pollution problems. Many of Riverkeeper's members and constituents live near the Gowanus Canal and recreate in and around this area of Brooklyn.

### 6<sup>th</sup> Street Iron and Metal Is Discharging Pollutants into the Gowanus Canal and Placing Fill and Debris into the Canal without a Permit

The 6<sup>th</sup> Street Iron and Metal property is located at or about 163 6<sup>th</sup> Street, Brooklyn, NY 11215 with a portion of the property located directly adjacent to the Gowanus Canal. Upon information and belief, 6<sup>th</sup> Street Iron and Metal operates a scrap metal processing facility and uses cranes and other machinery to move, and create piles of scrap metal and other metal objects. The site contains at least two piles of scrap metal, debris, crushed cars, wrecked machinery, and other assorted objects that sit directly adjacent to the Gowanus Canal. During the course of the above referenced surveillance dates, Riverkeeper staff have documented what, upon information and belief, appeared to be a sanitation/garbage compacting truck, crushed cars, kitchen appliances, large spools of cable, large steel beams, a metal storage tank, and all manner of other metal objects and scrap piled directly adjacent and leaning towards the Gowanus Canal.

Riverkeeper staff has documented scrap metal and other garbage, debris, and objects on the 6<sup>th</sup> Street bulkhead, above the bulkhead on the Canal's banks, hanging off the bulkhead, and in the Gowanus Canal. In addition, scrap metal, debris, and other large metal objects have been documented on the Canal's bottom directly adjacent to the 6<sup>th</sup> Street Iron and Metal property. In addition, Riverkeeper has reason to believe that stormwater and other precipitation runs through, pools, and collects in and around the piles of scrap metal, metal objects, and scrap moving cranes and machinery during rain and other precipitation events and flows towards and into the Canal. Riverkeeper staff conducted waterborne surveillance on May 16, 2008, October 15, 2008, May 29, 2009, June 19, 2009, July 15, 2009, and September 2, 2009. These conditions were observed on all of the above dates.

### 6<sup>th</sup> Street Iron and Metal is Violating the Federal Clean Water Act.

Pursuant to sections 505(a) and (b) of the CWA, 33 U.S.C. sections 1365(a) and (b), Riverkeeper intends to sue 6<sup>th</sup> Street Iron and Metal for violating, and continuing to violate, effluent standards and limitations as defined under section 505(f) of the CWA, 33 U.S.C. § 1365(f), by discharging pollutants into waters of the United States without a permit required by CWA section 301(a), 33 U.S.C. § 1311(a).

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States except when pursuant to and in compliance with a permit.<sup>1</sup> *See* 33 U.S.C. § 1311(a); 33 U.S.C. § 1342. The Act defines "pollutant" to include chemical wastes, biological materials, rock, sand, garbage, wrecked or discarded equipment, and industrial waste discharged into water. 33 U.S.C. § 1362(6). The CWA also prohibits placement of fill or debris in waters of the United States without a permit from the US Army Corps of Engineers. *See* CWA section 404, 33 U.S.C.

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<sup>1</sup> The State of New York was delegated authority by the Environmental Protection Agency to administer the National Pollution Discharge Elimination System ("NPDES") permit program pursuant to 33 U.S.C. Section 1342(b). The State Pollution Discharge Elimination System ("SPDES") permit program is the functional equivalent of NPDES.

§1344. The discharge of stormwater and fill/debris such as scrap metal, debris, and other metal objects into the Gowanus Canal is precisely what these sections of the Act are designed to prohibit.

“Point source” is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure ... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). The piles of scrap metal, cranes and other scrap handling/moving equipment, crushed cars, metal tanks, wire spools, wrecked machinery, and other metal objects constitute “point sources” under CWA §1362(14). Pollutants including scrap metal and debris from these point sources enter the Canal directly through the force of gravity and from activities of machinery, and workers working in this portion of the property.

In addition, Riverkeeper has reason to believe that during rain or other precipitation events stormwater flows through, collects, and pools in the piles of scrap metal, metal objects, debris, and cranes/machinery and flows towards and into the Gowanus Canal. Given the onsite operations which include the handling of crushed cars, wrecked machinery, and scrap metal any stormwater that discharges to the canal likely picks up oil, grease, chemicals, and other pollutants by flowing through and pooling in the previously described piles of scrap metal and debris.

The United States Supreme Court has defined the phrase “waters of the United States” under the CWA to include, at its most basic, all waters “navigable in fact, or readily susceptible of being rendered so.” *Rapanos v. United States*, 547 U.S. 715, 723 (2006). This definition clearly includes the Gowanus Canal. The Supreme Court further elaborated that the phrase also encompasses more waters than those simply navigable in fact. Specifically, it held that wetlands with a continuous surface connection to bodies that are “waters of the United States” in their own right are adjacent to such waters and therefore covered under the CWA. *Rapanos*, 547 U.S. at 742. The Gowanus Canal is navigable in fact and is therefore a “water of the United States” under the CWA.

Upon information and belief, 6<sup>th</sup> Street Iron and Metal does not have a State Pollution Discharge Elimination System (“SPDES”) permit, which is required by the CWA for such discharges, nor has it applied for or obtained coverage under the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-06-002). In addition, upon information and belief, 6<sup>th</sup> Street Iron and Metal does not have a CWA section 404 permit for discharging dredged or fill material into the Canal.

Upon information and belief, 6<sup>th</sup> Street Iron and Metal’s discharge of pollutants is ongoing, continuous, and in violation of the federal Clean Water Act, 33 U.S.C. §1251 *et seq.* Each day of unpermitted discharges comprises a series of separate violations of the CWA, with a discrete violation for each pollutant illegally discharged from each point source. 6<sup>th</sup> Street Iron and Metal will remain in violation of the Act each day that the company discharges stormwater, scrap metal, debris, and other pollutants without a CWA permit.

6<sup>th</sup> Street Iron and Metal is Violating the Federal Resource Conservation and Recovery Act.

Pursuant to 42 U.S.C. §§ 6907(a), 6944(a) and 6945 of RCRA, EPA promulgated criteria for sanitary landfills and open dumps. RCRA provides that citizens may commence a citizen suit against any person who violates any prohibition in effect under that statute. 42 U.S.C. § 6972(a)(1)(A).

RCRA prohibits the open dumping of solid waste and the operation of open dumps. *Id.*, § 6945(a). The criteria for determining what constitutes an open dump are set forth in 40 C.F.R. Part 257. Waste disposal practices not in compliance with sanitary landfill criteria constitute the operation and maintenance of an open dump. 40 C.F.R. § 257.1. An open dump is defined as “a facility for the disposal of solid waste that does not comply with [40 C.F.R. Part 257].” 40 C.F.R. § 257.2.

RCRA and EPA regulations define “disposal” as “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.” 42 U.S.C. § 6903(3); 40 C.F.R. § 257.2. “Solid waste” is defined as “any garbage ... and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations....” 42 U.S.C. § 6903(27); 40 C.F.R. § 257.2. Water from precipitation events collects, pools, and flows through piles of scrap metal, metal, objects, debris, and machinery. This water likely picks up contaminants including petroleum, oil, grease, and chemicals. In addition scrap metal, garbage, and debris have been dumped into the Canal’s waters, have fallen on the 6<sup>th</sup> Street Iron and Metal bulkhead, is embedded in and laying on the banks of the Canal above the bulkhead, and has fallen to rest against the bulkhead. These substances qualify as solid and/or hazardous wastes under RCRA.

In order to be in compliance with 40 C.F.R. Part 257, a solid waste disposal facility must meet certain criteria. First, EPA regulations provide that “[f]acilities or practices in floodplains shall not restrict the flow of the base flow, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.” 40 C.F.R. § 275.3-1(a). 6<sup>th</sup> Street Iron and Metal is located in a floodplain, regularly causes a reduction in the water storage capacity of that floodplain, and its practices result in the washout of solid and/or hazardous waste in a hazardous manner.

Second, the “facility shall not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act, as amended.” 40 C.F.R. § 257.3-3(a). As discussed above, 6<sup>th</sup> Street Iron and Metal is causing the discharge of pollutants in violation of the CWA.

Third, “[t]he facility or practice shall not exist or occur unless the on-site population of disease vectors is minimized through the periodic application of cover material or other techniques as appropriate to protect public health.” 40 C.F.R. § 257.3-6(a). Notwithstanding that some of the scrap and debris is embedded in the banks of the Canal and its bottom, there is no evidence that 6<sup>th</sup> Street Iron and Metal is using cover material or any other technique to prevent the spread of disease, which may be caused by its open dumping.

Lastly, the “facility shall not allow uncontrolled public access so as to expose the public to potential health and safety hazards at the disposal site.” 40 C.F.R. § 257.3-8(d). 6<sup>th</sup> Street Iron and Metal is operating on the banks of a public waterway, and thereby regularly exposing the public to potential health and safety hazards at the site.

In sum, 6<sup>th</sup> Street Iron and Metal is violating RCRA’s prohibition against open dumping. This disposal of solid waste poses a reasonable probability of adverse effects on human health and the environment. 6<sup>th</sup> Street Iron and Metal is engaging in disposal of solid and/or hazardous waste by discharging, depositing, and placing discarded material into the Gowanus Canal, in violation of RCRA and EPA regulations. 42 U.S.C. § 6945(a); 40 C.F.R. Part 257.

Riverkeeper intends to sue 6<sup>th</sup> Street Iron and Metal as owner and operator of the 6<sup>th</sup> Street Iron and Metal scrap yard facility, for maintaining an open dump in violation of EPA regulations promulgated in accordance with RCRA. 42 U.S.C. § 6945(a); 40 C.F.R. Part 257. Liability under RCRA is retroactive, and 6<sup>th</sup> Street Iron and Metal’s ongoing disposal of solid and/or hazardous waste is illegal and subject to liability. 42 U.S.C. §§ 6972(a)(1)(b); 40 C.F.R. Part 257.

### Summary

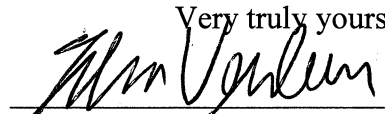
The above-referenced discharges at 6<sup>th</sup> Street Iron and Metal constitute the unpermitted discharge of pollutants from point sources into waters of the United States and are thus illegal under the CWA. Furthermore, the above-referenced discharges of solid and/or hazardous waste are illegal under RCRA’s prohibition against open dumping.

Riverkeeper believes that this Notice of Intent to Sue sufficiently states the grounds upon which it intends to file suit. The discharges referenced above and 6<sup>th</sup> Street Iron and Metal’s failure to obtain required Clean Water Act permits for the illegal discharges constitute ongoing violations of the CWA. Each day of unpermitted discharge constitutes a series of separate violations under applicable regulations, and 6<sup>th</sup> Street Iron and Metal will remain in violation until all such discharges cease or until permits are obtained therefore. The CWA and 40 C.F.R. § 19.4 authorize penalties of up to \$32,500 per day for each violation and up to \$37,500 for each violation occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. In addition, RCRA authorizes penalties of up to \$32,500 per day for each violation of the Act, and up to \$37,500 for each violation occurring after January 12, 2009. 42 U.S.C. § 6928(g); 40 C.F.R. § 19.4. At the close of the 60-day CWA notice period and the 60-day RCRA notice period, we intend to file a citizen suit against 6<sup>th</sup> Street Iron and Metal and Petros Realty Corporation, owners and operators of the scrap metal processing facility located on this property, for the violations discussed above **and for all similar violations that occur after your receipt of this**

**notice letter.** We intend to seek civil penalties (payable to the U.S. Treasury) and injunctive relief, as well as attorneys' fees and litigation costs, for these CWA and RCRA violations.

During the 60-day notice period, we will be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue a settlement, we suggest that you initiate discussions within ten days of receiving this notice so that a meeting can be arranged and negotiations may be completed before the end of the notice period. Please do not hesitate to contact me at (914) 478-4501 x247 if you wish to discuss this matter.

Very truly yours,

  
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Cc (all via certified mail- return receipt requested)

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