



CHESAPEAKE
LEGAL ALLIANCE



Lower Susquehanna
RIVERKEEPER®
ASSOCIATION

3/31/2025

Via Certified Mail – Return Receipt Requested

J&K Salvage, Inc.
1099 Kings Mill Road
York, PA 17403

Joe Darrah, Inc.
Applicant for Permit
1099 Kings Mill Road
York, PA 17403

Harry J. Darrah, III
Applicant for Permit
513 E Lancaster Street
Red Lion, York County, PA, 17403

Darrah Realty, L.P.
1099 Kings Mill Road
York, PA 17403

Darrah Management, LLC
1099 Kings Mill Road
York, PA 17403

Pennsylvania Department of Environmental Protection
Jacob S. Rakowsky, Environmental Engineering Specialist
South Central Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110

Pennsylvania Department of Environmental Protection
Scott M. Arwood, Environmental Engineering Specialist
South Central Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110

Pennsylvania Department of Environmental Protection
Jill Whitcomb, Deputy Secretary
Office of Water Programs
Rachel Carson State Office Building

400 Market Street
Harrisburg, PA 17105

Catherine Libertz, Acting Regional Administrator
Mid-Atlantic Regional Office (Region 3)
U.S. Environmental Protection Agency
1650 Arch St. Philadelphia, PA 19103

Lee Zeldin, Administrator
U.S. Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Ave, N.W. Washington, DC 20460

Re: Notice of Intent to File Citizen Suit for Violations of the Clean Water Act and the Resource Conservation and Recovery Act at J&K Salvage, Inc. Automobile Scrap Yard Located at 1099 Kings Mill Road, York, PA 17403.

To the Individuals and Entities Addressed Above:

Chesapeake Legal Alliance writes on behalf of Lower Susquehanna Riverkeeper Association (“Riverkeeper”)¹ pursuant to Section 505 of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1365, 40 C.F.R. Part 135, in regard to violations of the CWA, 33 U.S.C. § 1251 *et seq.*, the Pennsylvania Clean Streams Law (“CSL”) 35 P.S. §§ 691.1 *et seq.*, and Section 7002(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972, at the J&K Salvage Incorporated Scrap Yard, located at 1099 Kings Mill Road York, Pennsylvania, 17403-3485, Spring Garden Township, York County (“Facility”). The Facility located at the above address discharges stormwater runoff via four Outfalls into tributaries of the Lower Susquehanna River, which discharge into the Chesapeake Bay.

The purpose of this Notice of Intent to Sue letter (“NOI”) is to notify the owners and operators of the Facility, namely the J&K Salvage Scrap Yard, of the Lower Susquehanna Riverkeeper’s intent to file suit regarding:

- Ongoing and continuous discharges without a Permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a);
- Ongoing and continuous violations of “an effluent standard or limitation” under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A), including the Facility’s failure to comply with National Pollutant Discharge Elimination System (“NPDES”) Permit No. PAS603505 in at least the instances enumerated in this notice letter;
- Violations of the Clean Water Act 33 U.S.C. § 1311(a) for unauthorized discharges to waters of the United States;
- Violations of the applicable portions of the Environmental Protection statute of Pennsylvania, namely Title 25 of Pa Code Section 92a and the Pennsylvania Clean Streams Law 35 P.S. §§ 691.1 *et seq.*; and
- Violations of RCRA, 42 U.S.C. §§ 6973, and 6972(a)(1)(B), due to the handling, storage, transportation, and/or disposal of various pollutants considered solid wastes including metals, PFAs, and various VOCs, which have presented and continue to present an imminent and substantial endangerment to health and the environment.

The Facility’s failure to comply with NPDES permit limits, the CWA, RCRA, and state law has injured and will continue to injure or threaten to injure the environmental, aesthetic, health, and/or economic interests of Riverkeeper and its members. These injuries and risks are traceable to violations at, and pollution from, the Facility, and the correction of these ongoing violations will

¹ <https://www.lowerSusquehannaRiverkeeper.org/>

redress these injuries or risks. The statements herein are based on Riverkeeper's information and belief, including, but not limited to, records obtained from the Pennsylvania Department of Environmental Protection ("DEP") via the data reporting tool on Pennsylvania DEP's website, other public PA State databases, public information available on the internet, and data available on federal databases.

Members of the public are entitled to bring suit against "any person...alleged to be in violation" of an "effluent standard or limitation" established under the CWA or "an order issued by...a State with respect to such a standard or limitation." 33 U.S.C. § 1365(a)(1). Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(a). Similarly, the PA CSL authorizes citizen suits pursuant to Section 601.

Moreover, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, any person who violates sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342 shall be subject to a civil penalty up to \$68,445 per day per violation for violations that occur or occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025. See also 40 C.F.R. § 19.4.²

Pursuant to Section 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), and CSL Section 601 this letter serves to notify the Facility that Riverkeeper intends to file a citizen suit for violations of the CWA and PA state law in the United States District Court for the Middle District of Pennsylvania. The suit will be filed any time beginning 60 days after the postmarked date of this letter for the CWA violations, and will seek an order requiring the cessation of all violations, assessment of civil penalties, an award of attorneys' fees, and such other relief as the court deems appropriate.³

Additionally, Claimant may bring suit against any person who is in violation of any permit, standard, or regulation under RCRA or against any person who is contributing to the handling, storage, treatment, transportation, or disposal of any solid waste which may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(A) and (B). Thus, this letter also serves to notify that Claimant intends to file suit for violations of RCRA in the U.S. District Court for the Middle District of Pennsylvania any time after 90 days from the postmarked date of this letter. 42 U.S.C. § 6972(b)(2)(A). Any person who violates RCRA may be assessed a civil penalty and each day of violation constitutes a separate violation. 42 U.S.C. § 6928(g).

I. BACKGROUND

The Facility currently operates under an expired NPDES Permit issued by the Pennsylvania Department of Environmental Protection, NPDES Permit No. PAS603505.⁴ This permit was issued

² 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4.

³ 40 C.F.R. §135.2(c).

⁴ PAS603505 Final Permit.

on December 1, 2019, and expired on November 30, 2024.⁵ The Permit authorized the Facility to discharge to Codorus Creek and an unnamed tributary of Codorus Creek.⁶ The Permit authorized outfalls 001, 002, and 004 to discharge into Codorus Creek and Outfall 003 to discharge into an unnamed tributary of Codorus Creek.⁷ Codorus Creek flows into the Lower Susquehanna River.

Based on information and belief, Harry J. Darrah, III (“Mr. Darrah”) is an adult individual who resides at 513 East Lancaster Street, Red Lion, York County, Pennsylvania 17356.

Joe Darrah, Inc. is a Pennsylvania corporation with a registered address of 1099 Kings Mill Road, Spring Garden Township, York County, Pennsylvania 17403.

J&K Salvage is a Pennsylvania registered fictitious name owned by Joe Darrah, Inc. with a registered address of 1099 Kings Mill Road, Spring Garden Township, York County, Pennsylvania 17403.⁸

Darrah Realty, LP is a Pennsylvania limited partnership with a registered address of 1099 Kings Mill Road, Spring Garden Township, County of York, Pennsylvania 17403.

Darrah Realty, LP owns the property at 1099 Kings Mill Road, Spring Garden Township, County of York, Pennsylvania 17403, York County Parcel ID Number 48000340001H000000.

Darrah Management, LLC is a Pennsylvania limited liability company with a registered address of 1099 Kings Mill Road, Spring Garden Township, County of York, Pennsylvania 17403 and is the General Partner of Darrah Realty, LP.

Based on information and belief and at all times material hereto, Mr. Darrah has acted and held himself out as the decision maker for J&K Salvage, Inc., Joe Darrah, Inc., Darrah Realty, LP, and Darrah Management, LLC for all matters relevant to this notice letter. As of the date of this letter and based on information and belief none of the individuals or entities named above have submitted a NPDES permit application for the Facility.

A. NPDES Permit and State Law Requirements

The Permit contains effluent limitations and monitoring requirements for the following pollutants permitted to be discharged from Outfalls 001, 002, 003, and 004.⁹

⁵ *Id.* at 1.

⁶ *Id.* at 1.

⁷ *Id.* at 2-9.

⁸ <https://salvage.jksalvageco.com/>

⁹ The requirements for each outfall are identical and as such only one chart of effluent limits is reproduced here.

Effluent Limitations of NPDES Permit PAS603505– Outfall 001, 002, 003, and 004¹⁰

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day)		Concentrations (mg/L)				Minimum ⁽¹⁾ Measurement Frequency	Required Sample Type
	Average Monthly	Average Weekly	Minimum	Average Quarterly	Daily Maximum	Instant. Maximum		
Flow (MGD)	Report Avg Qtrly	Report Daily Max	XXX	XXX	XXX	XXX	1/quarter	Estimate
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0	1/quarter	Grab
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Total Suspended Solids	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Oil and Grease	XXX	XXX	XXX	15	XXX	30	1/quarter	Grab
Aluminum, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Cadmium, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Chromium, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Copper, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Iron, Dissolved	XXX	XXX	XXX	7.0	XXX	7	1/quarter	Grab
Iron, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab

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Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day)		Concentrations (mg/L)				Minimum ⁽¹⁾ Measurement Frequency	Required Sample Type
	Average Monthly	Average Weekly	Minimum	Average Quarterly	Daily Maximum	Instant. Maximum		
Lead, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Manganese, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Mercury, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Nickel, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Zinc, Total	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab
Acetone	XXX	XXX	XXX	Report	Report	XXX	1/quarter	Grab

The Permit also prohibits “floating solids, scum, sheen or substances that result in observed deposits in the receiving water” pursuant to 25 Pa Code § 92a.41(c).¹¹ The Permit further prohibits “oil and grease in amounts that cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline, or that exceed 15 mg/l as a daily average or 30 mg/l at any time (or lesser amounts if specified in this permit)” pursuant to 25 Pa. Code § 92a.47(a)(7) and § 95.2(2).¹² Finally, the Permit prohibits “substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life pursuant to 25 Pa Code § 93.6(a); and “foam or substances that produce an observed change in the color, taste, odor or turbidity of the receiving water, unless those conditions are otherwise controlled through effluent limitations or other requirements in this permit” pursuant to 25 Pa Code § 92a.41(c).

The Permit authorizes the Facility to discharge stormwater associated with industrial activity via Outfalls 001, 002, 003, and 004. The Permit at Part C also lists the type of stormwater discharges and non-stormwater discharges from the Facility that are allowed.¹³ The Permit authorizes discharges from only Outfalls 001, 002, 003, and 004 and no other water pollution discharges are authorized by the Permit.

¹⁰ Final Permit PAS603505, at 4-10.

¹¹ *Id.* at 10

¹² Permit PAS603505 Fact Sheet at 1.

¹³ *Id.*

B. RCRA Requirements

RCRA prohibits, among other things, the handling, storage, treatment, transportation, or disposal of any solid waste that may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(B). RCRA defines “person” to include an “individual,” “corporation,” “partnership,” or “association,” in addition to other terms. 42 U.S.C. § 6903(15). The term “solid waste” “means any garbage, refuse, sludge . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . .” 42 U.S.C. § 6903(27).

Riverkeeper may bring suit against any person who is in violation of any permit, standard, or regulation under RCRA or against any person who is contributing to the handling, storage, treatment, transportation, or disposal of any solid waste which may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(A) and (B).

C. Compliance History of the Facility

J&K Salvage operated under NPDES Permit PAS603505 for stormwater associated with industrial activities. The Facility is a scrap yard advertising that it can “recycle 300 automobiles daily and up to 5,000 tons of material monthly.”¹⁴ The Facility processes ferrous and non-ferrous materials, and has four Outfall points where stormwater runoff discharges into tributaries of the Lower Susquehanna River.

Outfalls 001 and 002 contain oil/water separators prior to discharging the contents into Codorus Creek (WWF).¹⁵ Outfall 003 contains an oil/water separator prior to discharging into an unnamed tributary of Codorus Creek (WWF).¹⁶ Outfall 004 was added to the renewal permit application in December 2018 because it was previously owned and permitted to American Rock Salt Company, but came under ownership of J&K Salvage.¹⁷ Outfall 004 contains an HDPE lined basin and discharges into Codorus Creek (WWF).¹⁸

The Facility has a history of noncompliance with its General Waste Permit—WMGR138-SC001.¹⁹ On July 27, 2017, the PA DEP revoked the Facility’s General Waste Permit, and a Consent Order and Agreement was the result of negotiations following J&K Salvage’s appeals over the revocation of the Permit.²⁰ On October 23, 2018, the Pennsylvania Department of Environmental Protection and J&K Salvage (and others) entered into said Consent Order and Agreement following the Facility’s appeals over the revocation.²¹

The Consent Order and Agreement entered on October 23, 2018 directed the Facility to, among other things, stop accepting and processing all yard and woody wastes, and any other wastes previously specified under the revoked permit.²² The Order also directed the Facility to remove all

¹⁴ *About Us*, J&K SALVAGE, <https://salvage.jksalvageco.com/> (last visited Feb. 18, 2025).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Permit PAS603505 Fact Sheet at 1.

²⁰ Consent Order & Agreement, (see pages 4-5 for the violation specifics).

²¹ *Id.*

²² *Id.* at 8-10.

waste streams.²³ Finally, this Order directed J&K Salvage to apply for an individual NPDES Permit for any stormwater discharges, and barred the Facility from continuing operations until the issuance of that permit.²⁴

On May 7, 2018 the original application for the individual NPDES Permit was accepted by PA DEP.²⁵ There remained open violations for the period ranging from May 2017 to May 2018, which culminated with the Consent Order and Agreement entered into in October 2018.²⁶ Public comment opened on September 9, 2019, and closed October 9, 2019.²⁷ The DEP recommended issuance of the final permit. This is Permit PAS603505 that was effective as of December 1, 2019.

On July 2, 2021, the PA DEP and J&K Salvage entered into another agreement, namely a Stipulation and Order.²⁸ In this Stipulation and Order, the parties agreed that the Facility would cease “accepting and/or processing yard and woody waste, shingles, construction and demolition waste, and any other wastes previously specified in Darrah’s revoked coverage for the Site under the Waste Permit.”²⁹ Further, the parties agreed that the Facility would “no later than July 30, 2021, [remove] the remaining construction and demolition waste on the Site, including any wood material piles remaining anywhere on the J&K property.”³⁰ The Facility owner was also ordered to pay civil penalties.

On August 11, 2021, PA DEP conducted a follow up inspection of the Facility.³¹ This inspection led to a report with 21 violations of various Pennsylvania statutes, federal statutes, and the Stipulation and Order. The corrective actions included ceasing receiving and processing solid wastes, and wood waste that is not clean wood. They also included addressing “releases of waste oil, petroleum substances, automotive fluids, leachate, contaminated run-off, and other liquids or to the ground and/or surface waters at the facility.” Further, the corrective actions included, “tak[ing] measures to control and abate contamination of surface water runoff at the facility.” This meant that “surface water runoff from waste/material storage areas and run on to waste/material storage areas should be minimized and/or collected and managed in accordance with the Clean Streams Law and NPDES Permit No. PAS603505.”

On December 2, 2021, the PA DEP issued a Notice of Violation (“NOV”) to the Facility for failure to properly turn in DMR reports required by Permit No. PA603505.³² On five occasions, the water/soil surrounding Outfall 001 has been tested—February 2, 2022, March 3, 2022, May 13, 2022, January 6, 2023, and October 3, 2024. The May 13, 2022 sample was collected from Outfall 001 (a white PVC pipe) which was shown to exceed PA State Water Quality Standards for Boron, Cadmium, Iron, and Lead. The March 3, 2022 soil sample contained arsenic above PA DEP’s residential Statewide Health Soil Standards. These are just some examples of the egregious contaminants found in samples taken near Outfall 001 of the Site.

²³ *Id.*

²⁴ *Id.*

²⁵ Proposed Permit PAS603505 2017 Fact Sheet.

²⁶ *See supra* note 22.

²⁷ Permit PAS603505 2019 Fact Sheet.

²⁸ Stipulation and Order.

²⁹ *Id.*

³⁰ *Id.*

³¹ Enforcement ID: 396453.

³² PA DEP Notice of Violation December 2, 2021.

On April 10, 2024, PA DEP inspected the Facility and noted the following violations: failure to submit the 2022 and 2023 Annual Reports, petroleum sheens in multiple locations at the site with potential to reach waters of the commonwealth of PA, failure to sample and report from outfalls 002, 003, and 004, failure to timely submit Discharge Monitoring Reports of Q3 of 2022 and 2023, and failure to submit a Corrective Action Plan to address benchmark exceedances at Outfall 001 in Q3 and Q4 of 2023.³³ The Facility was instructed to respond to this inspection report within 15 days with a list of follow up documents addressing the violations and other issues at the Facility.³⁴

On May 8, 2024 PA DEP issued a NOV to the Facility for violations of its NPDES permit and required the Facility to respond within 15 days with a written report describing the causes of noncompliance and a plan for eliminating the violations.³⁵ To the best of Riverkeeper's knowledge the Facility did not provide the required report to PA DEP within 15 days.

On December 12, 2024 PA DEP issued a NOV to the Facility for continued violations of its NPDES permit noted in the May 8, 2024 NOV and for operating the Facility without a NPDES permit, noting that the Facility's permit expired on November 30, 2024 and a renewal application was not timely submitted.³⁶ To the best of Riverkeeper's knowledge, as of the date of this NOI the Facility has not submitted a NPDES permit application and has been and continues to discharge pollution without a permit in violation of state and federal law.

On January 27, 2025, the Facility provided a response letter to PA DEP providing DEP with some of the requested documentation but did not include a report about the violations and what would be done to stop them. Additionally in this letter the Facility acknowledged that it was operating without a permit and would continue illegally operating the Facility for some time.³⁷

In addition to DEP's repeated identifications of noncompliance and violations at the Facility, Business owners and nearby residents have voiced their concerns about the activities taking place on site at J&K Salvage. There are repeated reports of explosions on site that are sending metal and debris into Codorus Creek from J&K Salvage's shredder. This site has a long history of actions violating permit requirements, as well as actions jeopardizing the safety of the residents nearby.³⁸

D. The Affected Water

There are two affected waterways: Codorus Creek, and an Unnamed Tributary to Codorus Creek.³⁹ Codorus Creek is located in York City, Pennsylvania, 17401. The Codorus Creek

³³ PA DEP NPDES Compliance Inspection Report J & K Salvage Yard NPDES Permit No. PAS603505 4-10-2024.

³⁴ *Id.*

³⁵ PA DEP Notice of Violation to Mr. Harry J. Darrah J&K Salvage NPDES Permit No. PAS603505 5-8-2024.

³⁶ PA DEP Notice of Violation to Mr. Harry J. Darrah J&K Salvage NPDES Permit No. PAS603505 12-12-2024.

³⁷ J&K Salvage Response Letter to DEP 1-27-2025.

³⁸ <https://www.ydr.com/story/news/2024/02/19/court-holds-jk-salvage-in-contempt-over-shingles-storage-dispute/72629364007/> and <https://www.fox43.com/article/news/local/spring-garden-township-bomb-noises-explosion-flying-metal-homes-roof-windows/521-686cc19e-d9c5-4bfc-9acd-22dabc256058> accessed 3/3/2025

³⁹ See Final Permit.

Watershed encompasses 278 square miles of drainage area.⁴⁰ The entire watershed has been assessed for impairment. The branch of Codorus Creek receiving stormwater runoff from Outfall 001, located at 39° 56' 41.32" and 76° 44' 48.71", is designated for Warm Water Fish. The branch of Codorus Creek receiving stormwater runoff from Outfall 002, located at 39° 56' 41.53" and 76° 44' 51.10", is designated for Warm Water Fish. The branch of the Unnamed Tributary to Codorus Creek receiving stormwater runoff from Outfall 003, located at 39° 56' 35.40" and 76° 44' 51.40", is designated for Warm Water Fish and Migratory Fish. Finally, the branch of Codorus Creek receiving stormwater runoff from Outfall 004, located at 39° 56' 41.30" and 76° 44' 46.40", is designated for Migratory Fish and Warm Water Fish. Both Codorus Creek and the Unnamed Tributary to Codorus Creek are impaired.⁴¹ ATTAINS data also indicates both waterways are designated for use in Water Contact Sports.⁴²

More particularly, the impairments identified in Codorus Creek include an abnormal flow, bacteria and other microbes, a degraded habitat for aquatic life, and sediment. The impairments identified in the Unnamed Tributary for Codorus Creek include bacteria and other microbes.

Codorus Creek is a tributary of the Susquehanna River which is impaired for numerous pollutants including PCBs and Nutrients.

II. VIOLATIONS OF THE CLEAN WATER ACT

Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), and CSL Section 601 entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. Moreover, it is unlawful to discharge pollutants to waters of the United States, such as the Codorus Creek, without or in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). Each day the discharged effluent exceeds permitted limits or other permit conditions are not met is a separate violation for which a penalty of up to \$68,445 can be assessed. This suit, when filed, will also address any violations that are identified subsequent to the most recent violation listed in this letter.

A. Unpermitted Discharges - Discharge Without a NPDES Permit

Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and Section 301 of the CSL, prohibit the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(a). A 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

⁴⁰ York County Conservation District, *Codorus Creek Nonpoint Source Pollution Control Watershed Implementation Plan*, York County, Pennsylvania, (2007), https://files.dep.state.pa.us/water/BWEW/Watershed%20Management/lib/watershedmgmt/nonpoint_source/implementation/codorus_creek.pdf.

⁴¹ *How's My Waterway?* - EPA Assessment Database for Impaired Waterways, EPA, (2024) <https://mywaterway.epa.gov/waterbody-report/21PA/PA-SCR-57468859> & <https://mywaterway.epa.gov/waterbody-report/21PA/PA-SCR-57469169>.

⁴² *Id.*

are or may be discharged.” 33 U.S.C.S. § 1362.

Since November 30, 2024 the Facility has been operating and presumably discharging pollution to waters of the United States daily from multiple outfalls without a valid NPDES Permit. The Facility did not timely submit a renewal application to PA DEP and the Facility’s NPDES permit expired on November 30, 2024.⁴³ Furthermore, the Facility has acknowledged it is operating illegally without a permit and that it plans to continue this illegal operation for some time.⁴⁴ The Permit has been expired for 121 days and each day following the expiration date where the Facility discharges pollution from any of the prior permitted outfalls is now illegal, resulting in daily violations of the CWA.

It is unlawful to discharge pollutants to waters of the United States, such as Codorus Creek, without or in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). Each day and from each outfall that the Facility discharges from with an expired permit is a separate violation for which a penalty of up to \$68,445 can be assessed. This suit, when filed, will also include any discharges previously authorized under the expired permit from the date of the NOI to the date of filing suit.

B. Unpermitted Discharges - Unpermitted Discharge Locations and Unpermitted Pollutants

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(a). A 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.” 33 U.S.C.S. § 1362.

As discussed above, the Permit only authorizes the Facility to discharge from Outfalls 001, 002, 003, and 004. All discharges from these outfalls must comply with the permitted limits and the Permit’s terms and conditions. Discharges of pollutants not specifically authorized in the permit are illegal and it is illegal to discharge any pollution from any point sources at the Facility other than Outfalls 001, 002, 003, and 004.

Based on knowledge, information, and belief, unpermitted discharges have occurred at the facility in at least the following instances identified by Riverkeeper:

1. Sampling by Riverkeeper—February 2, 2022

On February 2, 2022 Riverkeeper sampled Codorus Creek immediately downstream of the Facility’s outfalls site and identified the following unpermitted pollutants in the waterway:

- Boron 2.1 mg/liter

⁴³ Supra fn. 36.

⁴⁴ *Id.*

- Cobalt .0044 mg/liter
- Lithium .059 mg/liter

These pollutants were not detected in Codorus Creek on the same day upstream of the Facility and it is likely these unpermitted pollutants entered Codorus Creek from point sources at the Facility. The Facility is not permitted to discharge any Boron, Cobalt, or Lithium to Codorus Creek from its operation.⁴⁵

Additionally, on the same day Riverkeeper also sampled water below a permitted discharge pipe from the Facility that was actively discharging into Codorus Creek. This sampling identified the following unpermitted pollutants entering Codorus Creek:

- Iron 29.9 mg/liter in excess of effluent limit
- Arsenic 0.014 mg/liter
- Boron 0.78 mg/liter
- Cobalt 0.017 mg/liter
- Nitrate 1.1 mg/liter

The Facility is not permitted to discharge any Boron, Cobalt, Arsenic, or Nitrate to Codorus Creek from its operation nor is it permitted to discharge Total Dissolved Iron above 7.0 mg/L at any time.

2. Sampling by Riverkeeper—March 3, 2022

On March 3, 2022, Riverkeeper sampled a permitted discharge pipe from the Facility that was actively discharging into Codorus Creek. This sampling identified the following unpermitted pollutants entering Codorus Creek:

- Iron 25.6 mg/liter in excess of permitted limit
- 1, 2, 4 trimethylbenzene 1.6 ug/liter
- Toluene 1.1 ug/liter
- Cobalt .0059 mg/liter
- Boron 2.8 mg/liter

The Facility is not permitted to discharge any Boron, Cobalt, Toluene, or 1, 2, 4 trimethylbenzene, to Codorus Creek nor is it permitted to discharge Total Dissolved Iron above 7.0 mg/L at any time.

3. Sampling by Riverkeeper—May 13, 2022

On May 13, Riverkeeper sampled immediately downstream of the Facility's outfalls. This sampling identified the following unpermitted pollutants entering Codorus Creek:

⁴⁵ See supra part I.A.

- Boron 0.8 mg/liter
- Nitrate 1.9 mg/liter

These pollutants were not detected in Codorus Creek on the same day upstream of the Facility and it is likely these unpermitted pollutants entered Codorus Creek from outfalls at the Facility. The Facility is not permitted to discharge any Boron, or Nitrate to Codorus Creek from its operation.

On the same day, Riverkeeper also sampled a permitted discharge pipe from the Facility that was actively discharging into Codorus Creek. This sampling identified the following unpermitted pollutants entering Codorus Creek:

- Iron 13.9 mg/liter in excess of permitted limit
- Boron 9.3 mg/liter
- Lithium 0.44 mg/liter

Additionally, on this day Riverkeeper also sampled the discharge coming from what is believed to be an unpermitted pipe at the Facility. All discharges from this pipe are unpermitted discharges. This sampling identified the following unpermitted pollutants entering Codorus Creek:

- Aluminum 0.35 mg/L
- Boron 23.2 mg/L
- Cadmium 0.0066 mg/L
- Chromium 0.019 mg/L
- Iron 7.0 mg/L
- Lead 0.066 mg/L
- Lithium 1.1 mg/L
- Manganese 0.86 mg/L
- Nickel 0.037 mg/L
- Gasoline Range Organics 236 ug/L

4. Sampling by Riverkeeper—January 6, 2023

On January 6, 2023 Riverkeeper sampled the discharge coming from an unpermitted outfalls pipe at the Facility. This sampling identified the following unpermitted pollutants entering Codorus Creek:

- Aluminum 2.7 mg/L
- Arsenic 0.0080 mg/L
- Boron 3.2 mg/L
- Cadmium 0.0070 mg/L
- Chromium 0.030 mg/L
- Iron 22.4 mg/L
- Lead 0.34 mg/L
- Manganese 0.78 mg/L
- Mercury 0.00056
- Nickel 0.036 mg/L

5. Sampling by Riverkeeper—October 3, 2024

On October 3, 2023 Riverkeeper sampled the discharge coming from an unpermitted outfall at the Facility. This sampling identified the following unpermitted pollutants entering Codorus Creek:

- Arsenic 0.0018 mg/L
- Iron 5.6 mg/L
- Lead 0.0070 mg/L
- Lithium 0.086 mg/L
- Manganese 3.6 mg/L
- Nickel 0.010 mg/L
- Total PFAS concentration of 53.8 ppt

As described above, effluent from the Facility is discharging to Codorus creek from at least one unpermitted point source at the Facility and unpermitted pollutants are being discharged from permitted point sources from the Facility to Codorus Creek. These unpermitted discharges are illegal and constitute violations of the Clean Water Act. Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. Additionally, Riverkeeper’s sampling identified instances where pollution levels in Codorus Creek were above the limits in the Facility’s Permit. It is unlawful to discharge pollutants to waters of the United States, such as Codorus Creek, without or in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). Each day the discharged effluent exceeds permitted limits, each day a discharge occurred from an unpermitted source, and each day unpermitted pollutants were discharged to Codorus Creek is a separate violation for which a penalty of up to \$68,445 can be assessed.⁴⁶ This suit, when filed, will also address any violations that were reported or identified after the date of the most recent violations listed above.

C. Violation of Other Permit Conditions

As stated above, Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. This includes conditions of NPDES permits. Based on a review of inspection reports and other documents and to the best of Riverkeeper’s knowledge, prior to the expiration of the Facility’s NPDES permit it was routinely failing to comply with the permit conditions listed below likely every day from at least January 1, 2022 until the date of this NOI letter. This letter also serves to notify the Facility of any permit condition violations identified after the date this letter is sent until the date a suit is filed in federal court.

Part A - Effluent Limitations, Monitoring, Recordkeeping and Reporting Requirements.⁴⁷

This condition of the Facility’s NPDES permit requires that the permittee monitor, sample, and report on four outfalls at the Facility. DEP inspection reports indicate that outfalls 002, 003, and 004 have not been sampled and reported in compliance with Part A of the Permit from at least 2022 to

⁴⁶ Supra note 2.

⁴⁷ Permit PAS603505

the present. Each day that each outfall was not properly monitored, sampled, and recorded is a separate violation of the Permit and the CWA.

Part C.V. Stormwater Monitoring Requirements.⁴⁸ Among other things this condition requires the Facility to conduct stormwater sampling of discharges at the Facility resulting from storm events of greater than 0.1 inch in magnitude and this stormwater sampling must be documented in Annual Reports required by Part A.III.C.1 of the Permit. The annual reports submitted by the Facility for 2023 and 2024 only document two qualifying storm events for 2023 and 2024. A review of rainfall data for the closest rain gauge to the facility⁴⁹ indicates that from 2022 to 2024 there were 210 days with rainfall events greater than .1 inches. Based on this information and the fact that in 2023 and 2024 the Facility only reported a total of four rain events greater than .1 inches it is likely that the Facility has repeatedly and continuously failed to conduct and report the required stormwater sampling and reporting for rain events of .1 inches of rain or greater. Without adequate monitoring, the Facility, the regulators, and the public will be deprived of the information necessary to determine whether corrective actions must be taken to reduce pollution to the nearby creek, thus likely increasing the amount of such pollution above what would lawfully be permitted. Each day that the Facility failed to sample and report a qualifying rain event is a separate violation of the Permit and the Clean Water Act.

Part B.I.D. Proper Operation and Maintenance.⁵⁰ This condition requires the Facility to be operated and maintained properly to achieve compliance with the terms and conditions of the Permit.⁵¹ As demonstrated by repeated unpermitted discharges and other permit noncompliance it is evident that this Facility is not in proper operational order or properly maintained. This has resulted in continuous violations of this Permit condition from at least January 1, 2022 to present, likely causing additional pollution to run off the facility into surrounding waters. Each day that the Facility did not comply with this condition is a serious violation of the Permit and the CWA.

Part B.I.E. Duty to Mitigate.⁵² This condition requires the Facility “take all reasonable steps to minimize or prevent any discharge in violation of t[he] [P]ermit that has a reasonable likelihood of adversely affecting human health or the environment.” Riverkeeper’s sampling indicates that unpermitted metal pollutants are being discharged from the Facility and that there is likely an unpermitted discharge pipe. These unpermitted discharges and pollutants have a reasonable likelihood of adversely affecting human health or the environment and the Facility has continuously failed to prevent or minimize these unpermitted discharges of pollution to Codorus Creek. Each day the Facility failed to take reasonable steps to minimize or prevent unpermitted discharges is a violation of the Permit and the Clean Water Act.

As described above, the Facility has repeatedly and continuously failed to comply with numerous conditions of the Permit. Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. This includes conditions of NPDES permits. Riverkeeper

⁴⁸ *Id.*

⁴⁹ <https://www.ncdc.noaa.gov/cdo-web/> accessed 1/29/2025

⁵⁰ Permit PAS603505

⁵¹ *Id.*

⁵² *Id.*

is unaware of attempts by the Facility to cease or otherwise control the unauthorized discharges coming from the site. This demonstrates a pattern and practice of activity and operation of the Facility that continuously violates the Permit and State and Federal laws.

III. VIOLATION OF THE RESOURCE CONSERVATION AND RECOVERY ACT

Riverkeeper has taken soil samples of wetlands adjacent to the Facility and discovered metal and volatile organic contamination in the samples. A summary of the dates and sampling results is below:

- March 3, 2022
 - Aluminum, Total 30,000 mg/kg
 - Arsenic, Total 22.1 mg/kg
 - Boron, Total 83.4 mg/kg
 - Cadmium, Total 22.9 mg/kg
 - Chromium, Total 134 mg/kg
 - Iron, Total 58,800 mg/kg
 - Lead, Total 1,040 mg/kg
 - Manganese, Total 718 mg/kg
 - Mercury, Total 0.66mg/kg
 - Nickel, Total 108 mg/kg
- May 13, 2022
 - Aluminum, Total 2300 mg/kg
 - Boron 39.5 mg/kg
 - Cadmium, Total 10.4 mg/kg
 - Chromium, Total 26.4 mg/k
 - Cobalt. Total 4.5 mg/kg
 - Iron, Total 9500 mg/kg
 - Lead, Total 210 mg/kg
 - Manganese, Total 123 mg/kg
 - Mercury, Total 1.9 mg/kg
 - Nickel, Total 26.3 mg/kg
 - Nitrate-N 9.6 mg/kg
 - 1,2,4-Trimethylbenzene 34.7 ug/kg
 - Benzene 11.1 mg/kg
 - Ethylbenzene 13.2 mg/kg
 - Naphthalene 10.5 mg/kg
 - Toluene 32.4 mg/kg
 - Total Xylenes 50.5 mg/kg
- January 6, 2023
 - Aluminum, Total 4690 mg/kg
 - Arsenic, Total 5.0 mg/kg
 - Cadmium, Total 1.3 mg/kg
 - Chromium, Total 20.8 mg/kg
 - Iron, Total 19600 mg/kg
 - Lead, Total 108 mg/kg
 - Manganese, Total 179 mg/kg
 - Mercury, Total 0.11mg/kg
 - Nickel, Total 16.9 mg/kg

Many of these metals are the same metals identified in Codorus Creek immediately downstream of the Facility and in point source water pollution discharges from the Facility. It is likely that these metals are generated onsite and through various processes being deposited, disposed of, or otherwise coming into contact with and contaminating soil/wetlands that are adjacent to the Facility. This contamination of nearby soils/wetlands constitute violations of the Resource Conservation and Recovery Act. 42 U.S.C. § 6901 et seq (“RCRA”).

The metals generated onsite and contaminating soil and wetlands are “solids wastes” as defined in 42 U.S.C. § 6903(27) because they are “discarded material,” which includes liquid or semisolid material resulting from industrial or commercial operations. 42 U.S.C. § 6903(27). RCRA requires the proper disposal of solid waste. 42 U.S.C. §§ 6973 and 6928(e), *see also* 42 U.S.C. § 6902(b) which establishes the national policy and purpose of RCRA to “to minimize the present and future threat to human health and the environment.” On information and belief, the Facility generates solid waste at the facility that contains metals that have contaminated adjacent soils and wetlands and which have presented and continues to present an imminent and substantial endangerment to health or the environment in violation of RCRA and subject to suit by the public. 42 U.S.C. § 6972(a)(1)(B).

IV. VIOLATION OF STATE LAW

Pennsylvania law prohibits the unauthorized discharge of pollutants to waters of the State. As detailed in PA DEP inspection reports, the Facility has repeatedly and continuously violated multiple Pennsylvania Laws, including Sections 3, 401, 402, and 611 of the Pennsylvania Clean Streams Law, and 25 Pa. Code § 92a.1(b).

IV. PARTIES GIVING NOTICE

The Lower Susquehanna Riverkeeper Association, located at 338 S. Front Street Wrightsville, PA 17368, and with a phone number of 717-478-1780, is a 501(c)(3) nonprofit watershed association licensed by Waterkeeper® Alliance on September 6, 2007. The Lower Susquehanna Riverkeeper Association is dedicated to improving and protecting the ecological integrity of the Susquehanna Watershed and Chesapeake Bay by identifying sources of pollution and enforcing environmental laws. The Lower Susquehanna Riverkeeper Association also actively educates the public on current issues, works with decision-makers to emphasize the economic and social benefits of protecting our watershed, and, when necessary, enforces laws protecting communities and natural resources of the Susquehanna Watershed. Many of the Lower Susquehanna Riverkeeper Association’s members are avid kayakers, fishermen, bird-watchers, business owners, and other users of the Lower Susquehanna River and its tributaries, including Codorus Creek, and the Lower Susquehanna River watershed. These members have been injured and continue to be injured by JK Salvage’s pollution that violates environmental laws, as described herein, as these violations threaten members’ use and enjoyment of Codorus Creek and the Lower Susquehanna River and the groundwater and tributaries that flow into the Lower Susquehanna River.

V. CONCLUSION

J&K Salvage has continually violated and will continue to violate the Clean Water Act, Resource Conservation and Recovery Act, and Pennsylvania state law at 1099 Kings Mill Road

York, Pennsylvania, 17403-3485, Spring Garden Township, York County, unless the ongoing violations enumerated above are addressed. Accordingly, Riverkeeper intend to file suit to enjoin and abate the aforementioned violations, ensure future compliance with the CWA, RCRA, and Pennsylvania state law, obtain civil penalties, recover attorneys' fees and costs of litigation, and obtain other appropriate relief.

If you are prepared to remedy the violations discussed above, we welcome an opportunity to discuss a resolution of this matter prior to the initiation of litigation. If you have any questions regarding the allegations in this notice or would like to discuss a resolution, please have your attorney contact us at the phone numbers or email addresses listed below.

Sincerely,



Patrick DeArme
Senior Attorney
Chesapeake Legal Alliance
1212 West St.
Annapolis, MD 21401
patrick@chesapeakelegal.org
410-216-9441 ext. 206

David Reed
Executive Director
Chesapeake Legal Alliance
1212 West St.
Annapolis, MD 21401
david@chesapeakelegal.org
410-216-9441