

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
CIVIL ACTION NO. 10-0811-A

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

ALLIED RECYCLING CENTER, INC. and  
RECYCLING WALPOLE, LLC,

Defendants.

**COMPLAINT**



**INTRODUCTION**

1. The recycling and scrap yard owned and operated by the Defendants in Walpole is in violation of at least seven separate environmental statutes, including the Wetlands Protection Act (“WPA”) and the Wetlands Restriction Act (“WRA”), the Hazardous Waste Management Act (“HWMA”), the Clean Air Act (“CAA”), the Solid Waste Management Act (“SWMA”), the Environmental Endangerment Act (“EEA”), and the Massachusetts Oil and Hazardous Material Release Prevention Act (“c. 21E”). The Defendants have filled and altered wetlands, both on their own property and on neighboring conservation land owned by the Town of Walpole. In some places the wetlands have been destroyed to the point that they are now used as roads, parking, and/or storage space. Additionally, the Defendants have risked public and environmental health and welfare by storing and disposing of construction rubble, asbestos-containing material, cathode ray tube, and other debris at their property without obtaining required permits or complying with applicable regulations. The Defendants have also failed to comply with hazardous waste regulations

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concerning the storage of waste oil and gasoline at their property and have failed to report releases of oil and/or hazardous materials to the environment. The Commonwealth is seeking injunctive relief requiring the Defendants to restore the wetlands they have damaged and to bring themselves into compliance with each of these statutes. The Commonwealth is also seeking civil penalties for each of these violations.

### **JURISDICTION AND VENUE**

2. This court has jurisdiction over the subject matter of this action and the authority to grant the relief requested pursuant to G.L. c. 131, §§ 40 and 40A, G.L. c. 111, § 150A, G.L. c. 21C, § 10, G.L. c. 21E, § 11, G.L. c. 111, §§ 142A and 142B, G.L. c. 21L, § 4, and G.L. c. 214, § 1.

3. Venue lies in Suffolk Superior Court pursuant to G.L. c. 223, § 5.

### **PARTIES**

4. The Plaintiff is the Commonwealth, appearing by and through the Attorney General and the Massachusetts Department of Environmental Protection. (“MassDEP”).

5. The Attorney General, with an office at One Ashburton Place, Boston, Massachusetts, is the chief legal officer of the Commonwealth, and is authorized to bring this action under G.L. c. 12, §§ 3 and 11D.

6. MassDEP is an agency of the Commonwealth charged with administering and enforcing the WPA, WRA, HWMA, CAA, SWMA and G.L. c. 21E. MassDEP maintains its principal offices at One Winter Street, Boston, Massachusetts.

7. Allied Recycling Center, Inc. (“Allied”) is a Massachusetts Corporation with its principle office located at 1901 Main Street in Walpole (the “Property”). Allied has operated the Property since its organization in 1988.

8. Recycling Walpole, LLC (“RW”) is a Massachusetts Corporation with its principle office located at 1901 Main Street in Walpole. RW purchased the Property in two pieces. One part was transferred to it on or about March 1, 2004 and the other was transferred to it on or about June 4, 2004. True and accurate copies of the deeds recording these transfers are attached as “Exhibit A.”

## **FACTS**

### **The Property**

9. The Property comprises approximately seventeen (17) acres of land. It is bordered generally on the east and west by privately-owned land, and is bordered on parts of the north and south by property owned by the Town of Walpole for conservation purposes (“Conservation Land”). It has a small area of frontage on Route 1A to the southeast.

10. Portions of the Property consist of wet land where groundwater is at or near the surface and where plants indicative of “swamps” and “marshes,” as defined by the WPA, grow in significant amounts. The Conservation Land adjacent to the Property also displays these same characteristics (together, these portions of the Property and the Conservation Land referred to hereinafter as the “Property Swamps and Marshes.”)

11. An unnamed body of running water, which flows at some points during the year runs adjacent to a portion of the western boundary of the Property, out of, through, and/or adjacent to various swamps and marshes (the “Stream”).

### **Wetlands Violations**

12. On January 5, 1976, a wetlands restriction, pursuant to the WRA, was recorded at the Norfolk Registry of Deeds at Book 5191, Page 206 (“Restriction”). This Restriction prohibits any filling, draining, excavation, or other forms of alteration from being performed in the restricted area.

This area includes parts of the Property Swamps and Marshes. A true and accurate copy of the Restriction is attached as "Exhibit B."

13. Starting as early as 1988, Allied has been devegetating, excavating, placing fill in, grading, and otherwise changing the conditions of parts of the Property Swamps and Marshes, sections of the banks of the Stream, and areas of the 100-foot buffer zone ("the Buffer Zone") that extends from the Property Swamps and Marshes and the banks of the Stream.

14. Some of the activity described in the previous paragraph occurred within the area covered by the Restriction.

15. Allied has performed the activity described in paragraph 13 and RW has permitted the activity described in paragraph 13 to occur without obtaining and complying with a valid order of conditions issued pursuant to the WPA and in violation of the Restriction.

16. At least some of the activity described in paragraph 13 has occurred on the Conservation Land owned by the Walpole Conservation Commission.

17. This unauthorized activity has resulted in damage to the Conservation Land in an amount exceeding \$25,000 dollars.

#### Hazardous Waste Violations

18. On or about March 13, 2008, the Defendants were storing waste oil in at least one approximately 500-gallon, above-ground storage tank ("AST") at the Property.

19. The Defendants did not label this AST with the information specified at 310 C.M.R. 30.341(2) and 30.253(6)(a).

20. The Defendants did not close this AST.

21. On or about March 13, 2008, the Defendants were storing a mixture of gasoline and water in two approximately 275-gallon ASTs at the Property.

22. The Defendants did not clearly label these ASTs with the information specified at 310 C.M.R. 30.341(2) and 30.104(3)(e).

23. On or about March 13, 2008, the Defendants failed to post a sign stating: "Waste Oil" in the waste accumulation area at the Property.

24. The Defendants also failed to post an emergency phone list posted in the waste accumulation area on this date.

25. The Defendants offer hazardous materials, including waste oil, for transport from the Property.

26. On or about March 13, 2008, the Defendants failed to use the proper hazardous waste identification number on hazardous waste manifests located at the Property.

27. On or about December 8, 2008, the Defendants were accumulating waste oil in two approximately 250-gallon ASTs at the Property.

28. The Defendants failed to clearly label these ASTs with the information specified at 310 C.M.R. 30.341(2) and 30.253(6)(a).

29. On or about December 8, 2008, the Defendants were accumulating waste gasoline in an approximately 250-gallon AST at the Property.

30. The Defendants failed to clearly label this AST with the information specified at 310 C.M.R. 30.341(2).

31. On or about December 8, 2008, the Defendants were accumulating waste oil in an approximately 55-gallon steel drum at the Property.

32. The Defendants failed to clearly label this drum with the information specified at 310 C.M.R. 30.341(2) and 30.253(6)(a).

