



For a thriving New England

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April 10, 2024

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20 Harvard Road  
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CPF, Inc.  
25 Copeland Drive  
Ayer, MA 01432

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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice to Patriot Beverages, LLC; CPF, Inc.; and their agents and directors, (collectively, “Pepsi Beverages”), who manufacture and bottle Pepsi products, of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or the “Act”), 33 U.S.C. § 1365(a).

This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice Letter”) to the addressed persons of CLF’s intention to file suit in the United States District Court for the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than sixty days from the postmark date of this Notice Letter.

The subject of this action is Pepsi Beverages’ failure to comply with its National Pollutant Discharge Elimination System permit (the “Permit”).<sup>2</sup> Pepsi Beverages has discharged and

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<sup>1</sup> CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of New England’s waters and safeguarding the health and quality of life in New England communities facing the adverse effects of water pollution. CLF members live, recreate, and spend time near Reedy Meadow Brook and Mill Pond and are adversely affected by Pepsi Beverages’ violations of the Clean Water Act that contribute to poor water quality in Reedy Meadow Brook and Mill Pond.

<sup>2</sup> U.S. EPA, NPDES PERMIT MA0004936 (2013), <https://www3.epa.gov/region1/npdes/permits/2013/finalma0004936permit.pdf> [hereinafter the “Permit”].

continues to discharge reverse osmosis system (“RO”) reject water, RO backwash water, contact cooling water, non-contact cooling water, beverage product wastewater, and stormwater into Reedy Meadow Brook in a manner that violates its Permit. Reedy Meadow Brook drains into Mill Pond and is part of the Merrimack River watershed; all three waterbodies are “navigable waters” under the Clean Water Act.<sup>3</sup>

Pepsi Beverages’ violations include: 1) exceedances of numeric effluent limitations, including for phosphorus, total suspended solids, pH range, biochemical oxygen demand, temperature, and aluminum;<sup>4</sup> 2) violations of state water quality standards of receiving waters;<sup>5</sup> 3) violations of narrative effluent limitations;<sup>6</sup> 4) failure to minimize discharge of pollutants in stormwater;<sup>7</sup> 5) failure to take and document corrective action after violations of stormwater effluent limitations;<sup>8</sup> and 6) violations of monitoring and reporting requirements.<sup>9</sup>

### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Patriot Beverages, LLC; CPF, Inc.; and their agents and directors are the persons, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice Letter.

CPF, Inc. and its subsidiary Patriot Beverages, LLC operate a beverages manufacturing and bottling facility in Littleton, Massachusetts. CPF, Inc. is a member of Pepsi-Cola Bottlers’ Association, and Pepsi Beverages receives recipes to make Pepsi products from PepsiCo Inc.<sup>10</sup>

### **LOCATION OF THE ALLEGED VIOLATIONS**

The violations alleged in this Notice Letter have occurred and continue to occur at Patriot Beverages, LLC, 20 Harvard Road, Littleton, MA 01460 (the “Facility”).

### **THE FACILITY’S PERMIT**

The Facility discharges effluent pursuant to its NPDES Permit No. MA0004936, issued to Patriot Beverages, LLC by the U.S. Environmental Protection Agency (“EPA”).<sup>11</sup> The effective date of this permit is September 19, 2013. Under 40 C.F.R. § 122.6, the permit has been administratively continued and remains fully effective and enforceable. The Facility’s violations of its Permit, as

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<sup>3</sup> “Navigable waters” include tributaries to waters capable of use in interstate commerce. 33 U.S.C. § 1362(7); 40 C.F.R. § 120.2.

<sup>4</sup> *Infra* at 7–9.

<sup>5</sup> *Infra* at 9.

<sup>6</sup> *Infra* at 9–10.

<sup>7</sup> *Id.*

<sup>8</sup> *Infra* at 10.

<sup>9</sup> *Infra* at 10–11.

<sup>10</sup> Pepsi-Cola Bottlers’ Ass’n, *About Us* (last visited April 4, 2024), <https://pcba.net/about-us/history/>.

<sup>11</sup> In 2016, EPA originally issued the NPDES Permit (No. MA0004936) to Veryfine Products, Inc. In 2016, Veryfine Products, Inc. transferred ownership of the Facility to Patriot Beverages, LLC, and EPA authorized Patriot Beverages, LLC to discharge from the Facility. TRANSFER OF OWNERSHIP, NPDES PERMIT (No. MA0004936), <https://www3.epa.gov/region1/npdes/permits/2016/finalma0004936transferofownership.pdf>.

described below, are violations of the CWA. 33 U.S.C. §§ 1311(a), 1342.

The CWA prohibits: 1) the discharge of pollutants from a point source without a permit; and 2) non-compliant permitted discharges. *Id.* § 1311(a). NPDES permits contain, *inter alia*, pollutant limits, and monitoring and reporting requirements. *Id.* § 1342.

In addition, the CWA requires all states to adopt water quality standards for their waterbodies, subject to EPA review, which include designating uses for waterbodies. 33 U.S.C. § 1313; 40 C.F.R. §§ 131.10–131.12. Massachusetts’ water quality standards include: 1) designation of its waters for certain uses (e.g., protection of aquatic life and recreational uses); 2) water quality criteria, expressed as either narrative or numeric standards; and 3) an anti-degradation policy that protects existing uses.

## **BACKGROUND**

From Outfall 001, the Facility discharges reverse osmosis system (“RO”) reject water, RO backwash water, contact cooling water, non-contact cooling water, and beverage product wastewater into Reedy Meadow Brook that drains into Mill Pond.<sup>12</sup> The Facility also accepts and stores wastewater from three off-site facilities: 1) EPIC Enterprises, Inc., 2) CPF, Inc., and 3) Tate & Lyle.<sup>13</sup> EPIC (Enjoy Pepsi in Cans) Enterprises, Inc. is a subsidiary of PepsiCo, Inc. and manufactures canned beverages.<sup>14</sup> Tate & Lyle also manufactures food and beverage products.<sup>15</sup>

From Outfall 002, during wet weather, the Facility discharges stormwater that carries pollutants from its industrial activities, including phosphorus and total suspended solids, into Reedy Meadow Brook that drains into Mill Pond.<sup>16</sup>

The Facility is also required to implement a Stormwater Pollution Prevention Plan (“SWPPP”) that must use best management practices (“BMPs”) to minimize the discharge of pollutants in stormwater to waters of the U.S.<sup>17</sup>

### **A. The Facility Discharges Pollutants that Are Dangerous to Human Health and Aquatic Ecosystems.**

The Facility has violated the Permit’s effluent limitations on phosphorus, total suspended solids, pH range, biochemical oxygen demand, temperature, and aluminum. Violations of these parameters have harmed, are currently harming, and will continue to harm CLF’s members.

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<sup>12</sup> Permit, *supra* note 2, § I.A.1 at 2, 53, Permit Fact Sheet at 6.

<sup>13</sup> *Id.* § I.A.D at 12.

<sup>14</sup> Epic Enterprises, Inc., *Home* (last visited Apr. 2, 2024), <https://www.epicenterprisesinc.com/>; PEPSICO, INC., SEC FORM 10-K, EX. 21 (Dec. 31, 2023), <https://www.sec.gov/ix?doc=/Archives/edgar/data/77476/000007747624000008/pep-20231230.htm>.

<sup>15</sup> Tate & Lyle, *About Us* (last visited Apr. 2, 2024), <https://www.tateandlyle.com/about-us/what-we-do>

<sup>16</sup> Permit, *supra* note 2, § I.A.2 at 7. The Facility discharges stormwater from Outfall 002, which discharges to Outfall 001. *Id.*

<sup>17</sup> *Id.* § I.C at 9–12.

### 1. Phosphorus Pollution

Elevated phosphorus concentrations in effluent contributes to aquatic plants and cyanobacteria overgrowth, which decreases dissolved oxygen levels in waterways (called “eutrophication”).<sup>18</sup> Fish and other aquatic animals struggle to survive in low oxygen conditions, so eutrophication can result in fish die-offs.<sup>19</sup> Cyanobacteria are commonly referred to as blue-green algae, an algae-like bacteria.<sup>20</sup> Cyanobacteria produce and emit cyanotoxins.<sup>21</sup> Exposure to cyanotoxins can lead to abdominal pain, headache, sore throat, vomiting and nausea, numbness, drowsiness, incoherent speech, salivation, and respiratory paralysis leading to death.<sup>22</sup>

### 2. Total Suspended Solids Pollution

Total suspended solids (“TSS”) is a measurement of the amount of organic and inorganic particles in the water larger than 45 micrometers.<sup>23</sup> TSS obstructs sunlight from penetrating water and impairs aesthetic value of waterbodies.<sup>24</sup> Solids that settle out as bottom deposits can alter or destroy habitat for fish and other bottom-dwelling organisms.<sup>25</sup>

### 3. pH Pollution

The pH value of waterbodies is a critical indicator of water quality and healthy waterbodies.<sup>26</sup> High pH (basic) makes certain chemicals like ammonia toxic to aquatic life and cause the water to have an unpleasant smell and taste.<sup>27</sup> Ultimately, for aquatic life, pH pollution “may result in increased mortality, decreased reproductive success and changes in population and community structure and ecosystem function.”<sup>28</sup>

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<sup>18</sup> U.S. EPA, *Indicators: Phosphorus* (last updated June 9, 2023), <https://www.epa.gov/national-aquatic-resource-surveys/indicators-phosphorus>.

<sup>19</sup> U.S. EPA, *Nutrient Pollution: The Problem* (last updated Mar. 6, 2024), <https://www.epa.gov/nutrientpollution/problem>.

<sup>20</sup> Centers for Disease Control & Prevention, *Freshwater Cyanobacterial Blooms* (last updated May 2, 2022), <https://www.cdc.gov/habs/illness-symptoms-freshwater.html>.

<sup>21</sup> U.S. EPA, *Harmful Algal Blooms (HABs) in Water Bodies* (last updated Mar. 29, 2024), <https://www.epa.gov/habs/what-are-effects-habs>.

<sup>22</sup> *Id.*

<sup>23</sup> Daoliang Li & Shuangyin Liu, WATER QUALITY MONITORING AND MANAGEMENT, CH. 7: DETECTION OF RIVER WATER QUALITY 213 (2019), <https://www.sciencedirect.com/science/article/pii/B9780128113301000077>.

<sup>24</sup> *Id.*

<sup>25</sup> Minn. Pollution Control Agency, *Total Suspended Solids (TSS) in Stormwater* (last updated Oct. 30, 2023), [https://stormwater.pca.state.mn.us/index.php/Total\\_Suspended\\_Solids\\_\(TSS\)\\_in\\_stormwater](https://stormwater.pca.state.mn.us/index.php/Total_Suspended_Solids_(TSS)_in_stormwater).

<sup>26</sup> Daoliang Li & Shuangyin Liu, *supra* note 23, at 213–14.

<sup>27</sup> Saalidong et al., *Examining the Dynamics of the Relationship between Water pH and Other Water Quality Parameters in Ground and Surface Water Systems*, PLOS ONE (2022), <https://doi.org/10.1371/journal.pone.0262117>.

<sup>28</sup> U.S. EPA, *pH* (last updated Feb. 29, 2024), <https://www.epa.gov/caddis-vol2/ph>.

#### 4. Biochemical Oxygen Demand Pollution

Biochemical Oxygen Demand (“BOD”) measures the amount of oxygen consumed by microorganisms breaking down organic matter in effluent as well as the chemical oxidation of inorganic matter.<sup>29</sup> The greater the BOD, the more rapidly oxygen is depleted in a waterbody and the less oxygen is available to aquatic life for essential functions.<sup>30</sup> Elevated BOD can overly stress, suffocate, and kill aquatic life.<sup>31</sup>

#### 5. Thermal Pollution

When heated water is returned to the natural waterbody, the sudden change in temperature decreases oxygen supply and harms aquatic life.<sup>32</sup> Abrupt changes in water temperature can also kill fish and other aquatic life that are adapted to a specific temperature range.<sup>33</sup> Heated water can also increase the metabolic rate of aquatic life, making them consume more food in a shorter time and increasing competition for resources.<sup>34</sup> Higher water temperatures also increase plant growth rates and lead to overpopulation and algal blooms.<sup>35</sup>

#### 6. Aluminum Pollution

Heavy metals like aluminum are toxic, and exposure to aluminum in drinking water can cause serious health issues to vital organs such as neurological, central nervous, and respiratory systems.<sup>36</sup> Elevated levels of aluminum can also impair aquatic species’ ability to regulate nutrients and respiratory functions by accumulating on gills.<sup>37</sup>

### **B. The Facility is Discharging Pollutants to Impaired Waters of the U.S.**

The Facility discharges wastewater and stormwater into Reedy Meadow Brook, which drains into Mill Pond. Both are waters of the U.S. that are impaired because they fail to meet Massachusetts water quality standards. The Facility discharges directly into Reedy Meadow Brook, which empties into Mill Pond after a “short distance.”<sup>38</sup> Because the pollutants from the

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<sup>29</sup> U.S. EPA, *Dissolved Oxygen and Biochemical Oxygen Demand* (last visited Sept. 22, 2023), <https://archive.epa.gov/water/archive/web/html/vms52.html>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> James G. Speight, *NATURAL WATER REMEDIATION* 183–84 (2020), <https://www.sciencedirect.com/book/9780128038109/natural-water-remediation>.

<sup>33</sup> *Id.* at 184.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, *TOXICOLOGICAL PROFILE FOR ALUMINUM* (2008), <https://www.atsdr.cdc.gov/ToxProfiles/tp22.pdf>; Reema H. Alasfar & Rima J. Isaifan, *Aluminum Environmental Pollution: The Silent Killer*, 28 ENV’T SCI. POLLUTION RES. INT’L 44587 (2021), <https://doi.org/10.1007/s11356-021-14700-0>.

<sup>37</sup> U.S. EPA, *Aquatic Life Criteria – Aluminum* (last updated Jan. 31, 2024),

<https://www.epa.gov/wqc/aquatic-life-criteria-aluminum#:~:text=Aluminum%20can%20enter%20the%20water,with%20alum%2C%20an%20aluminu m%20compound>.

<sup>38</sup> Permit, *supra* note 2, at 61, Permit Fact Sheet at 14.

Facility travel a short distance to Mill Pond, EPA considered the water quality of Mill Pond to determine permit requirements for the Facility.<sup>39</sup>

### 1. The Facility Discharges to Reedy Meadow Brook.

Reedy Meadow Brook (Waterbody MA84B-01) runs 1.5 miles in Littleton, MA along Harvard Road and is part of the Merrimack River watershed.<sup>40</sup> Reedy Meadow Brook is designated a Class B waterbody under Massachusetts water quality standards.<sup>41</sup> Class B waters are waters designated as a habitat for fish, other aquatic life, and wildlife, including for their reproduction, migration, growth, and for primary and secondary contact recreation.<sup>42</sup> Examples of primary contact recreation include swimming, diving, surfing, and water skiing; examples of secondary contact recreation include fishing, consuming fish, and boating.<sup>43</sup> Class B waters must also have “consistently good aesthetic value.”<sup>44</sup>

Reedy Meadow Brook is impaired because it cannot be used for its designated uses: fish, other aquatic life, and wildlife habitat; primary contact recreation (swimming); and secondary contact recreation (fishing).<sup>45</sup> Pollutants responsible for impairment include chronic aquatic toxicity—to which the Facility contributes.<sup>46</sup>

### 2. The Facility Discharges to Mill Pond.

At the end of its 1.5 miles, Reedy Meadow Brook enters the North Basin of Mill Pond, “a hypereutrophic waterbody.”<sup>47</sup> The North Basin of Mill Pond (Waterbody MA 84038) spans thirty acres southeast of Reedy Meadow Brook and is part of the Merrimack River watershed.<sup>48</sup> Mill Pond is also designated a Class B waterbody under Massachusetts water quality standards.<sup>49</sup> The North Basin of Mill Pond into which Reedy Meadow Brook enters is also impaired because it cannot be used for its designated uses, which include primary and secondary contact recreation

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<sup>39</sup> See *id.* at 59–61, Permit Fact Sheet at 12–14.

<sup>40</sup> U.S. EPA, *How’s My Waterway*, Waterbody Report for Segment MA84B-01, [https://mywaterway.epa.gov/waterbody-report/MA\\_DEP/MA84B-01/2022](https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA84B-01/2022) (2022) [hereinafter Reedy Meadow Brook Waterbody Report]; U.S. EPA, *Merrimack River Watershed* (last visited Apr. 5, 2024), <https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=922e1c016c6e42b199f902d1c0fb84bbd> [hereinafter *Merrimack River Watershed*].

<sup>41</sup> 314 CMR 4.05.

<sup>42</sup> *Id.* 4.05(3)(b).

<sup>43</sup> *Id.* 4.02.

<sup>44</sup> *Id.* 4.05(3)(b).

<sup>45</sup> *Id.*; MASSACHUSETTS INTEGRATED LIST OF WATERS FOR THE CLEAN WATER ACT 2022 REPORTING CYCLE 184 (2023), <https://www.mass.gov/doc/final-massachusetts-integrated-list-of-waters-for-the-clean-water-act-2022-reporting-cycle/download> [hereinafter MASS. IMPAIRED WATERS LIST].

<sup>46</sup> MASS. IMPAIRED WATERS LIST, *supra* note 45, at 184; Reedy Meadow Brook Waterbody Report, *supra* note 40.

<sup>47</sup> Permit, *supra* note 2, at 59, Permit Fact Sheet at 12.

<sup>48</sup> U.S. EPA, *How’s My Waterway*, Waterbody Report for Segment MA84038, [https://mywaterway.epa.gov/waterbody-report/MA\\_DEP/MA84038/2022](https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA84038/2022) (2022) [hereinafter Mill Pond Waterbody Report]; *Merrimack River Watershed*, *supra* note 40.

<sup>49</sup> See Mill Pond Waterbody Report, *supra* note 48.

and consistently good aesthetic value.<sup>50</sup> Pollutants responsible for impairment include excessive phosphorus—which the Facility discharges—leading to overgrown aquatic plants and toxic cyanobacteria (commonly known as blue-green algae).<sup>51</sup> EPA specifically limited phosphorus discharges from the Facility because of Mill Pond’s “extensive growth of noxious weeds and degraded fish habitat” that phosphorus exacerbates.<sup>52</sup>

## **ACTIVITIES ALLEGED TO BE CLEAN WATER ACT VIOLATIONS**

The Facility’s violations of its NPDES Permit, as described below, are violations of Sections 301(a) and 402 of the CWA. 33 U.S.C. §§ 1311(a), 1342.

### **A. Pepsi Beverages Has Discharged, Is Discharging, and Will Continue to Discharge Effluent to Navigable Waters in Violation of the Permit’s Numeric Effluent Limits.**

The facility has discharged, is discharging, and will continue to discharge effluent into Reedy Meadow Brook and Mill Pond in violation of the Permit’s numeric effluent limits on phosphorus, total suspended solids, pH range, biochemical oxygen demand, temperature, and aluminum.

1. Pepsi Beverages has violated, is violating, and will continue to violate the Permit’s limitation for phosphorus.

For Outfall 001, the Permit contains a daily maximum and average monthly effluent limitations on total phosphorus. The Permit limits total phosphorus to 1.25 pounds per day (lbs/day).<sup>53</sup> During April 1–October 31, the average monthly effluent limitation on total phosphorus is 0.23 lbs/day.<sup>54</sup> During November 1–March 31, the average monthly effluent limitation on total phosphorus is 0.46 lbs/day.<sup>55</sup>

Over the last five years, the Facility’s own monitoring data has documented that Pepsi Beverages exceeded the Permit’s effluent limitation for phosphorus at least 49 times, as high as 402% over the Permit limitation.

2. Pepsi Beverages has violated, is violating, and will continue to violate the Permit’s effluent limitation for total suspended solids.

The Permit contains effluent limitations for total suspended solids (“TSS”). For Outfall 001, the Permit imposes an average monthly effluent limitation for TSS of 10 milligrams per liter (mg/L) and a maximum daily effluent limitation for TSS of 20 milligrams per liter (mg/L).<sup>56</sup> For Outfall 002, the Permit imposes a maximum daily effluent limitation of 100 milligrams per liter

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<sup>50</sup> *Id.*; MASS. IMPAIRED WATERS LIST, *supra* note 45, at 183.

<sup>51</sup> MASS. IMPAIRED WATERS LIST, *supra* note 45, at 183; Mill Pond Waterbody Report, *supra* note 48.

<sup>52</sup> Permit, *supra* note 2, at 59–62, Permit Fact Sheet at 12–15.

<sup>53</sup> *Id.* § I.A.1 at 2.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

(mg/L).<sup>57</sup>

Over the last five years, the Facility's own monitoring data has documented that Pepsi Beverages exceeded the Permit's effluent limitation for TSS at least 13 times, as high as 113% over the Permit limitation. Pepsi Beverages exceeded the Permit's effluent limitation for TSS at least 8 times from Outfall 001 and at least 5 times from Outfall 002.

3. Pepsi Beverages has violated, is violating, and will continue to violate the Permit's effluent limitation for pH range.

For Outfall 001, the Permit contains an effluent limitation on the pH range of wastewater of 6.5–8.3 standard units (s.u.).<sup>58</sup>

Over the last five years, the Facility's own monitoring data has documented that Pepsi Beverages violated the Permit's effluent limitation for pH at least 9 times.

4. Pepsi Beverages has violated, is violating, and will continue to violate the Permit's effluent limitation for biochemical oxygen demand.

For Outfall 001, the Permit contains effluent limitations for biochemical oxygen demand. The Permit imposes an average monthly effluent limitation of 10 milligrams per liter (mg/L) and a maximum daily effluent limitation of 20 milligrams per liter (mg/L).<sup>59</sup>

Over the last five years, the Facility's own monitoring data has documented that Pepsi Beverages exceeded the Permit's effluent limitation for biochemical oxygen demand at least 7 times, as high as 930%.

5. Pepsi Beverages has violated, is violating, and will continue to violate the Permit's effluent limitation on temperature.

For Outfall 001, the Permit contains a maximum daily effluent limitation for temperature of 83°F.<sup>60</sup>

Over the last five years, the Facility's own monitoring data has documented that Pepsi Beverages exceeded the Permit's effluent limitation for temperature at least 4 times.

6. Pepsi Beverages has violated, is violating, and will continue to violate the Permit's limitation for aluminum.

For Outfall 001, the Permit contains a monthly maximum effluent limitation for total recoverable aluminum of 0.1 milligrams per liter (mg/L).<sup>61</sup>

Over the last five years, the Facility's own monitoring data has documented that Pepsi Beverages

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<sup>57</sup> *Id.* § I.A.2 at 7.

<sup>58</sup> *Id.* § I.A.1 at 2.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*



exceeded the Permit's effluent limitation for aluminum at least 3 times, as high as 34% above the Permit limitation.

**B. Pepsi Beverages Has Discharged, Is Discharging, and Will Continue to Discharge Effluent to Navigable Waters in Violation of the Permit's Prohibition Against Violating State Water Quality Standards.**

The Permit requires that "discharge shall not cause a violation of the state water quality standards of the receiving waters."<sup>62</sup>

Pepsi Beverages' wastewater and stormwater discharges have caused or contributed to the violation of the above-referenced Massachusetts water quality standards.<sup>63</sup> Pepsi Beverages' discharges contain unlawful quantities of toxic pollutants, like phosphorus, total suspended solids, and aluminum. These pollutants are responsible for the impairment of the receiving waters.<sup>64</sup> Pollutants in Pepsi Beverages' discharges also contain aesthetically objectionable taste and odor; high concentrations of toxins; and suspended solids, in violation of Massachusetts water quality standards.<sup>65</sup>

**C. Pepsi Beverages Has Violated, Is Violating, and Will Continue to Violate the Permit's Narrative Effluent Limitations.**

Pepsi Beverages' Permit contains discharge prohibitions relating to: 1) objectionable discoloration; 2) oil sheen, foam, and floating solids; 3) discharges in toxic amounts; and 4) toxic components of effluent resulting in demonstrable harm to aquatic life.<sup>66</sup>

Upon information and belief, Pepsi Beverages has discharged and continues to discharge, pollutants (including but not limited to phosphorus, total suspended solids, and aluminum), that contribute to objectionable discoloration; oil sheen, foam, and floating solids; discharges in toxic amounts; and toxic components of effluent resulting in harm to aquatic life.

**D. Pepsi Beverages Has Failed, Is Failing, and Will Continue to Fail to Minimize the Discharge of Pollutants in Stormwater to Reedy Meadow Brook and Mill Pond.**

The Permit requires Pepsi Beverages to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") that must implement "best management practices (BMPs) . . . to minimize the discharge of pollutants in stormwater."<sup>67</sup> The SWPPP must be "prepared in accordance with good engineering practices and shall be consistent with the general provisions for SWPPPs included in

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<sup>62</sup> *Id.* §§ I.A.1-2 at 3, 7.

<sup>63</sup> *Supra* at 7-8.

<sup>64</sup> Permit, *supra* note 2, at 59-60, Permit Fact Sheet at 12-13; MASS. IMPAIRED WATERS LIST, *supra* note 45, at 183-84; Reedy Meadow Brook Waterbody Report, *supra* note 40; Mill Pond Waterbody Report, *supra* note 48.

<sup>65</sup> 314 CMR 4.05.

<sup>66</sup> Permit, *supra* note 2, §§ I.A.1-2 at 3, 7-8.

<sup>67</sup> *Id.* § I.C.4 at 10.

the most recent version of the MSGP [Multi-Sector General Permit].”<sup>68</sup> The BMPs must also be “consistent with the control measures described in the most recent version of the MSGP.”<sup>69</sup>

The Facility’s Permit imposes non-numeric effluent limitations, which the Facility must satisfy through BMPs, including: 1) minimizing exposure of manufacturing, processing, and material storage areas to stormwater discharges; 2) good housekeeping measures designed to maintain areas that are potential sources of pollutants; 3) preventative maintenance programs in place to avoid leaks, spills, and other releases of pollutants in stormwater; 4) spill prevention and response procedures to ensure effective response to spills and leaks if and when they occur; and 5) runoff management practices to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff.<sup>70</sup>

Upon information and belief, Pepsi Beverages has failed to select and implement BMPs that minimize the discharge of pollutants in stormwater. For example, Pepsi Beverages leaves uncovered tea, teabags, and waste oil outside, which is carried by stormwater—untreated—into Reedy Meadow Brook and Mill Pond through stormwater drains. The Facility’s exceedances of numerical stormwater effluent limitations and the MSGP benchmark thresholds from Outfall 002 are also evidence of Pepsi Beverages’ failure to minimize the discharge of pollutants in its stormwater.<sup>71</sup>

**E. Pepsi Beverages Has Failed, Is Failing, and Will Continue to Fail to Take and Document Corrective Action After Violations of Stormwater Effluent Limitations.**

The Permit requires Pepsi Beverages to take corrective action after a violation of a numerical or non-numerical stormwater effluent limitation and document such corrective action in the SWPPP.<sup>72</sup>

Upon information and belief, Pepsi Beverages has failed to take and document corrective action in its SWPPP even though there have been multiple violations of numerical or non-numerical stormwater effluent limitations.<sup>73</sup>

**F. Pepsi Beverages Has Failed, Is Failing, and Will Continue to Fail to Comply with the Permit’s Monitoring and Reporting Requirements.**

The Permit requires that Pepsi Beverages monitor and report samples for pollutants it can discharge.<sup>74</sup> Pepsi Beverages must also report the quantity of off-site wastewater it receives

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<sup>68</sup> *Id.* § I.C.3 at 10. The most recent version of the MSGP is the 2021 version. EPA, NPDES MGSP FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (2021),

[https://www.epa.gov/sites/default/files/2021-01/documents/2021\\_msgp\\_-\\_permit\\_parts\\_1-7.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2021_msgp_-_permit_parts_1-7.pdf).

<sup>69</sup> Permit, *supra* note 2, § I.C.4 at 10.

<sup>70</sup> *Id.* § I.C.4 at 10–11.

<sup>71</sup> *See supra* at 8.

<sup>72</sup> Permit, *supra* note 2, § I.C.7 at 12.

<sup>73</sup> *Supra* at 8, 10.

<sup>74</sup> Permit, *supra* note 2, §§ I.A.1–2. at 2–3, 7.

every month.<sup>75</sup> The Facility is required to submit the results to EPA and MassDEP as part of its monthly DMR submission.<sup>76</sup>

Upon information and belief, Pepsi Beverages failed to monitor and report at least 16 monitoring values relating to the following pollutants: aluminum, chlorine, *E. coli*, nitrogen, Fecal *streptococci*, and total suspended solids. Pepsi Beverages also failed to report off-site wastewater at least 9 times in violation of the Permit. Without knowing the quantity of various toxic pollutants that Pepsi Beverages discharges, EPA, the public, and CLF's members do not know if Pepsi Beverages' discharges comply with its Permit.

### **DATES OF THE VIOLATIONS**

Each day that Pepsi Beverages operates the Facility while failing to comply with the terms of the Permit constitutes a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Pepsi Beverages has not been in compliance with the Permit since at least January 2019. Pepsi Beverages' CWA violations are ongoing and continuous. Barring a change in the wastewater and stormwater management controls at the Facility and full compliance with the permitting requirements of the CWA, Pepsi Beverages' violations will continue indefinitely and harm CLF's members who live, recreate, and spend time near Reedy Meadow Brook and Mill Pond.

CLF hereby provides this notice for past and continuing violations outlined above and for continuing violations after this notice. Additional information, including information in CLF's possession, may reveal further details and violations. This letter covers all such violations.

### **RELIEF REQUESTED**

Pepsi Beverages is liable for the above-described violations. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$66,712 per day per violation for all violations occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023, pursuant to sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d), 1365(a); and 40 C.F.R. §§ 19.1–19.4. CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act, pursuant to Sections 505(a), 33 U.S.C. § 1365(a), and such other relief as permitted by law. CLF will seek an order from the Court requiring Pepsi Beverages to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance. Pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), CLF will also seek recovery of costs and fees associated with this matter.

### **CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such

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<sup>75</sup> *Id.* § I.A.1 at 4.

<sup>76</sup> *Id.*

discussions, please have your attorney contact Erica Kyzmir-McKeon by June 10, 2024 so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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