

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CONSERVATION LAW FOUNDATION,
INC.,

Plaintiff,

v.

PATRIOT BEVERAGES, LLC; and
CPF, INC.,

Defendants.

Case No. 24-_____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251–1388)

INTRODUCTION

1. Plaintiff Conservation Law Foundation, Inc. (“CLF”) brings this citizen suit under Section 505(a) of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. § 1365(a) for civil penalties, declaratory and injunctive relief, and such relief as may be necessary to address CWA violations by Defendant Patriot Beverages, LLC and Defendant CPF, Inc. (collectively, “Defendants”).
2. Defendants own and operate a Pepsi-product manufacturing and bottling facility (the “Facility”) and are subject to a National Pollutant Discharge Elimination System Permit (the “Permit”), Permit No. MA0004936.¹
3. Defendants have discharged and continue to discharge wastewater and stormwater into Reedy Meadow Brook and Mill Pond in violation of their CWA permit by: 1) exceeding

¹ U.S. EPA, NPDES PERMIT NO. MA0004936 (2013), <https://www3.epa.gov/region1/npdes/permits/2013/finalma0004936permit.pdf> [hereinafter the “Permit”].

numerical effluent limitations, including for phosphorus, total suspended solids, pH, biochemical oxygen demand, temperature, and aluminum; 2) violating the Massachusetts' state water quality standards; 3) violating narrative effluent limitations; 4) failing to minimize discharge of pollutants in stormwater; 5) failing to take and document corrective action after violations of stormwater effluent limitations; and 6) violating monitoring and reporting requirements.

4. Defendants discharge pollutants that are harmful to human health and aquatic life and diminish CLF's members' use and enjoyment of Reedy Meadow Brook and Mill Pond.

5. Upon information and belief, Defendants have not taken any actions sufficient to prevent future violations of the type alleged in this Complaint.

6. Absent an appropriate order from this Court, Defendants are likely to repeat their violations of the CWA.

JURISDICTION AND VENUE

7. Plaintiff invokes this Court's subject matter jurisdiction under 33 U.S.C. § 1365 (citizen suit provision), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 2201 (declaratory judgment); and 15 U.S.C. § 1116 (injunctive relief).

8. Plaintiff seeks relief that the Court has authority to grant. 33 U.S.C. § 1365(a); 28 U.S.C. §§ 2201–02; 15 U.S.C. § 1116.

9. Defendants' violations of the CWA are subject to enforcement under the citizen suit of the CWA. 33 U.S.C. § 1365(a)(2).

10. Plaintiff is a "citizen" under the CWA citizen suit provision and has authority to bring this lawsuit. *Id.* §§ 1365(g), 1362(5).

11. On April 10, 2024, Plaintiff, by and through their counsel, notified Defendants and their agents of CLF's intent to file suit under the CWA in a letter via certified mail ("Notice Letter"). 33 U.S.C. § 1365(b)(1); 40 C.F.R. §§ 135.2, 135.3.

12. A true and accurate copy of Plaintiff's Notice Letter is attached as Exhibit 1. The Notice Letter is incorporated by reference herein.

13. Each Defendant received the Notice Letter. Copies of the return receipts are attached as Exhibit 2.

14. Plaintiff also sent copies of the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"); the Regional Administrator of EPA Region 1; the Massachusetts Department of Environmental Protection ("MassDEP"); and the Citizen Suit Coordinator.

15. Each entity identified in the preceding paragraph received the Notice Letter. Copies of the return receipts are attached as Exhibit 3.

16. More than sixty days have elapsed since Plaintiff mailed Defendants the Notice Letter, during which time neither EPA nor the Commonwealth of Massachusetts has commenced an action to redress the violations alleged in this Complaint. 33 U.S.C. § 1365(b)(1)(B).

17. The CWA violations alleged in the Notice Letter are of a continuing nature, ongoing, or reasonably likely to reoccur. Defendants remain in violation of the CWA.

18. Venue is proper in the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1391(e) and 33 U.S.C. § 1365(c) because the sources of the violations are located within this judicial district.

PARTIES

Plaintiff

19. Plaintiff CLF is a nonprofit, member-supported environmental advocacy organization dedicated to protecting New England's environment. CLF works on behalf of its New England-wide membership and with other environmental and community-based organizations to enforce environmental laws, including the CWA.

20. Since 1966, CLF has worked to protect the health of New England's water resources, including addressing sources of wastewater and stormwater pollution.

21. CLF has over 5,700 members in New England. CLF members live, work, recreate, and spend time near Reedy Meadow Brook and Mill Pond in Littleton, MA.

22. The Facility's wastewater and stormwater discharges impair the recreational and aesthetic uses of Reedy Meadow Brook and Mill Pond by harming fish, birds, and other wildlife; contributing to objectionable discoloration; unpleasant scum, foam, and odor; increasing toxic pollution; and reducing the use and enjoyment of the waterbodies by CLF members.

23. CLF members use Reedy Meadow Brook and Mill Pond to kayak, canoe, fish, walk, irrigate, and observe wildlife. They value the waterways' scenic beauty, wildlife, avian and aquatic habitat, and natural resources.

Defendants

24. Defendant Patriot Beverages, LLC is a corporation incorporated under the laws of Massachusetts.

25. Defendant Patriot Beverages, LLC owns and operates a Pepsi-product beverage manufacturing and bottling facility at 20 Harvard Road, Littleton, MA 01460 (the "Facility").

26. Defendant CPF, Inc. is a corporation incorporated under the laws of Massachusetts.

27. Defendant CPF, Inc. is the parent company of Defendant Patriot Beverages, LLC and controls the Facility.

28. CPF, Inc. maintains several manufacturing, production, shipping, and bottling facilities in Massachusetts.

29. CPF, Inc. is a member of Pepsi-Cola Bottlers' Association.

30. Defendants, and their agents, and directors, are persons as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

31. Defendants are responsible for ensuring that the Facility operates in compliance with the CWA.

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

32. The purpose of the CWA is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” *Id.* § 1251(a). This purpose includes the elimination of “the discharge of pollutants into the navigable waters” and attainment of “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” *Id.* §§ 1251(a)(1), (2).

33. The CWA prohibits the addition of any pollutant to navigable waters from any point source except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit applicable to that point source. *Id.* §§ 1311(a), 1342.

34. Under the CWA and its implementing regulations, the “discharge of a pollutant” is defined as “[a]ny addition of any ‘pollutant’ or combination of ‘pollutants’ to ‘waters of the United States’ from any ‘point source.’” 40 C.F.R. § 122.2; *see* 33 U.S.C. § 1362(12).

35. A “pollutant” is any “solid waste,” “chemical wastes, biological materials,” “wrecked or discarded equipment, rock, sand,” and “industrial . . . waste” discharged into water. 33 U.S.C. § 1362(6); *see* 40 C.F.R. § 122.2.

36. The CWA defines “navigable waters” as “waters of the United States.” 33 U.S.C. § 1362(7). “Waters of the United States” are defined by EPA regulations that include, *inter alia*, all tributaries to interstate waters. 40 C.F.R. § 120.2(a).

37. “Point source” is defined broadly to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

38. Section 402 of the CWA requires NPDES permits to be issued for wastewater and certain stormwater discharges. *Id.* §§ 1342(a)(1), (p)(2), (p)(3)(A), (p)(4), (p)(6).

39. To discharge pollutants into waters of the U.S. lawfully, Section 402 requires industrial facilities to obtain coverage under a NPDES permit and comply with its terms. *Id.* § 1342.

Citizen Enforcement Suits Under the Clean Water Act

40. The CWA authorizes citizen enforcement actions against any “person” who is alleged to be in violation of an “effluent standard or limitation. . . or an order issued by the Administrator or State with respect to such a standard or limitation.” *Id.* § 1365(a)(1).

41. An “effluent limitation” is “any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.” *Id.* § 1362(11).

42. Such enforcement action under Section 505(a)(1) of the CWA includes an action seeking remedies for unauthorized discharges under Section 301 of the CWA, *id.* § 1311, as well as for violations of a permit condition under Section 505(f), *id.* § 1365(f).

43. Each separate violation of the CWA subjects the violator to a penalty of up to the maximum amount allowed pursuant to Sections 309(d) and 505(a) of the CWA. *Id.* §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.

STATEMENT OF FACTS

The Facility’s Operations

44. The Facility manufactures Pepsi beverages from raw ingredients and materials and bottles such beverages, including Gatorade products, Propel Water, LifeWTR, and Pure Leaf teas. PepsiCo, Inc. provides the recipes for such products.

45. Beverages are mixed in a tank in accordance with PepsiCo, Inc. recipes. The manufacturing process includes reverse osmosis, which removes certain chemicals from manufactured beverages.
46. The beverages are bottled on bottling lines that are cleaned by clean-in-place systems, which is an automated method of cleaning equipment.
47. After filling, the bottled beverages run through spray cooling and disinfection tunnels.
48. After the spray cooling and disinfection tunnels, the bottled beverages are palletized, shrink-wrapped and stored.
49. The Facility discharges wastewater and stormwater to Reedy Meadow Brook at waterbody segment MA84B-01. Permit at 48, Fact Sheet at 1.
50. Reedy Meadow Brook drains into the North Basin of Mill Pond 0.7 miles downstream from the Facility at waterbody segment MA84038. *See id.* at 53, Fact Sheet at 6.

Wastewater Discharges

51. The Facility discharges reverse osmosis reject water, reverse osmosis backwash water, contact cooling water, non-contact cooling water, process wastewaters from the cooling tunnels, vessel and line clean-in-place rinses, floor wash-downs, waste beverage batches, and cooling tower blow-downs (collectively, “wastewater”). *Id.* §§ I.A.1–2 at 2, 7.
52. There is a tank farm at the Facility with fourteen aboveground, steel tanks ranging in size from 12,000–50,000 gallons in size that store liquid ingredients and wastewater.
53. Upon information and belief, at least as of March 31, 2024, Defendants receive off-site beverage wastewater from EPIC Enterprises, Inc. and Defendant CPF, Inc. *Id.* §§ I.A.1 n.1, I.A.D at 4, 12.

54. EPIC (Enjoy-Pepsi-In-Cans) Enterprises, Inc. is a subsidiary of PepsiCo, Inc. and manufactures and cans Pepsi beverages. EPIC's facility is located at 11 Copeland Drive, Ayer, MA 01432.

55. The Permit identifies the following pollutants in the Facility's wastewater discharges, *inter alia*: phosphorus, total suspended solids, excess pH, biochemical oxygen demand, thermal pollution, and aluminum.

Stormwater Discharges

56. The Facility's stormwater drainage system consists of 1) a retention basin in the yard, and 2) stormwater catch basins near the tank farm.

57. The Facility's retention basin in the yard holds water from building roofs and parking lot drains, including stormwater associated with materials storage, processing, handling, blending, loading, and unloading of product, and lawn maintenance. The retention basin discharges stormwater directly to Reedy Meadow Brook.

58. The Facility has stormwater catch basins near the tank farm, which drain to the wastewater treatment plant.

59. The Permit identifies the following pollutants in the Facility's stormwater discharges, *inter alia*: phosphorus and total suspended solids.

60. Upon information and belief, during every measurable precipitation event and every instance of snow melt, water flows onto and over exposed materials and accumulated pollutants at the Facility, generating stormwater runoff.

61. Defendants have discharged and continue to discharge stormwater associated with industrial activities.

62. Upon information and belief, the Facility spills manufacturing waste and products that enter the retention basin, which is discharged—untreated—to Reedy Meadow Brook.

63. Upon information and belief, the Facility is exposed to precipitation or stormwater, requiring the Facility to implement and maintain a Stormwater Pollution Prevention Plan (“SWPPP”). Permit § I.C at 9.

The Wastewater Treatment Plant

64. The Facility’s wastewater treatment plant contains an equalization tank into which wastewater and some stormwater flow, which controls the flow rate of the waters.

65. Wastewater and some stormwater are treated at the wastewater treatment plant. Wastewater stored at the tank farm drains into the wastewater treatment plant. Stormwater catch basins near the tank farm drain into the wastewater treatment plant.

66. The wastewater and stormwater then flow into an anaerobic digester where bacteria break down organic matter.

67. From the anaerobic digester, the wastewater flows into uncovered batch reactors for aeration.

68. After aeration, the wastewater is decanted (the transfer of liquid without settled solids) to a covered clarifier.

69. From the clarifier, the wastewater drains to sand filters where polymers are added, which are substances that react with solids suspended in water to form clumps.

70. The Facility then discharges the effluent into a final aeration basin, through a UV light disinfecting unit, to Reedy Meadow Brook.

The Facility’s NPDES Permit

71. On December 7, 2016, the Facility became subject to NPDES Permit No. MA 0004936 for its wastewater and stormwater discharges.²

² TRANSFER OF OWNERSHIP, NPDES PERMIT (No. MA0004936), <https://www3.epa.gov/region1/npdes/permits/2016/finalma0004936transferofownership.pdf>.

72. Pursuant to 40 C.F.R. § 122.6, the Permit has been administratively continued and remains fully effective.

The Facility's Monitoring and Reporting Requirements Under the Permit

73. Defendants are required to submit discharge monitoring reports (“DMRs”) to EPA and MassDEP by the 15th day of each month. Permit § I.F at 13. The DMRs are required to summarize the monitoring results obtained during each calendar month, including effluent limitation exceedances.

74. Defendants must also report the amount of off-site beverage wastewater the Facility receives and uses in its wastewater treatment plant. *Id.* §§ I.A.1 n.1, I.A.D at 4, 12.

The Facility's Numerical Effluent Limitations for Wastewater Discharges Under the Permit

75. The Permit places limits on the quantity and concentration of pollutants that the Facility is legally permitted to discharge into Reedy Meadow Brook and Mill Pond from Outfall 001 by setting wastewater effluent limitations for phosphorus, total suspended solids, pH, biochemical oxygen demand, temperature, and aluminum. *Id.* § I.A.1 at 2.

76. The Permit requires that the phosphorus effluent discharged from the Facility not exceed a daily maximum of 1.25 pounds per day (lbs/day). *Id.* During April 1–October 31, the Permit requires that the phosphorus effluent discharged from the Facility not exceed a monthly average of 0.23 lbs/day. *Id.* During November 1–March 31, the Permit requires that the phosphorus effluent discharged from the Facility not exceed a monthly average of 0.46 lbs/day. *Id.* This limit is expressed as a sixty-day rolling average limit. *Id.* § I.A.1 n.6 at 5.

77. The Permit requires that the total suspended solids effluent discharged from the Facility not exceed a daily maximum of 20 milligrams per liter (mg/L) and not exceed a monthly average of 10 mg/L. *Id.* § I.A.1 at 2.

78. The Permit requires that the pH effluent discharged from the Facility not fall below or exceed the range of 6.5–8.3 standard units (s.u.). *Id.*

79. The Permit requires that the biochemical oxygen demand effluent discharged from the Facility not exceed a daily maximum of 20 mg/L and not exceed a monthly average of 10 mg/L. *Id.*

80. The Permit requires that the effluent discharged from the Facility not exceed a daily maximum temperature of 83 degrees Fahrenheit (°F). *Id.*

81. The Permit requires that the aluminum effluent discharged from the Facility not exceed a monthly average of 0.1 mg/L. *Id.*

The Facility’s Numerical Effluent Limitations for Stormwater Discharges Under the Permit

82. The Facility discharges stormwater associated with industrial activity. *Id.* § I.C at 9–12.

83. The Facility’s industrial activities include the manufacture and bottling of Pepsi beverages.

84. The Permit places limits on the quantity and concentration of pollutants that the Facility is legally permitted to discharge into Reedy Meadow Brook and Mill Pond from Outfall 002 by setting stormwater effluent limitations for total suspended solids. *Id.* § I.A.2 at 7.

85. The Permit requires that the total suspended solids effluent discharged from the Facility not exceed a maximum daily of 100 mg/L. *Id.*

The Facility’s State Surface Water Quality Standards Requirements Under the Permit

86. The Permit requires that “discharge shall not cause a violation of the water quality standards of the receiving waters.” *Id.* §§ I.A.1–2 at 3, 7.

87. Massachusetts’ state surface water quality standards require that for all surface waters, “existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” 314 CMR 4.04(1).

88. Massachusetts’ Class B waters, including Reedy Meadow Brook and Mill Pond, are “designated as a habitat for fish, other aquatic life, and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation.” *Id.* 4.05(3)(b).

89. Primary contact recreation means “[a]ny recreation or other water use in which there is prolonged and intimate contact with the water,” including wading, swimming, diving, surfing, and water skiing. *Id.* 4.02.

90. Secondary contact recreation means “[a]ny recreation or other water use in which contact with the water is either incidental or accidental,” including fishing, human consumption of fish, and boating. *Id.*

91. Massachusetts’ state surface water quality standards require that all surface waters shall:

- a. “[B]e free from pollutants in concentrations or combinations that settle to form objectionable deposits; float as debris, scum or other matter to form nuisances; produce objectionable odor, color, taste or turbidity; or produce undesirable or nuisance species of aquatic life.” *Id.* 4.05(5)(a);
- b. “[B]e free from pollutants in concentrations or combinations or from alterations that adversely affect the physical or chemical nature of the bottom, interfere with the propagation of fish or shellfish, or adversely affect populations of non-mobile or sessile benthic organisms.” *Id.* 4.05(5)(b);

- c. “[B]e free from nutrients in concentrations that would cause or contribute to impairment of existing or designated uses,” unless naturally occurring. *Id.* 4.05(5)(c); and
- d. “[B]e free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.” *Id.* 4.05(5)(e).

92. Massachusetts’ state surface water quality standards require that Class B waters, including Reedy Meadow Brook and Mill Pond, shall:

- a. “[N]ot be less than 6.0 mg/L [of dissolved oxygen] in cold water fisheries and not less than 5.0 mg/L in warm water fisheries.” *Id.* 4.05(3)(b)(1);
- b. “Not exceed [a temperature of] 83°F (23.8°C) in warm water fisheries.” *Id.* 4.05(3)(b)(2);
- c. “[B]e in the [pH] range of 6.5 through 8.3 standard units and not more than 0.5 units outside of the natural background range.” *Id.* 4.05(3)(b)(3);
- d. “[B]e free from floating, suspended and settleable solids in concentrations and combinations that would impair any use assigned to this Class, that would cause aesthetically objectionable conditions, or that would impair the benthic biota or degrade the chemical composition of the bottom.” *Id.* 4.05(3)(b)(5);
- e. “[B]e free from color and turbidity in concentrations or combinations that are aesthetically objectionable or would impair any use assigned to this Class.” *Id.* 4.05(3)(b)(6); and
- f. “[B]e free from oil, grease and petrochemicals that produce a visible film on the surface of the water, impart an oily taste to the water or an oily or other undesirable taste to the edible portions of aquatic life, coat the banks or bottom of

the water course, or are deleterious or become toxic to aquatic life.” *Id.*

4.05(3)(b)(7).

The Facility’s Narrative Limitations Under the Permit

93. The Permit requires that the Facility’s discharges “shall not cause objectionable discoloration of the receiving waters.” Permit §§ I.A.1–2 at 3, 7.

94. The Permit requires that the Facility’s effluent “shall contain neither a visible oil sheen, foam, nor floating solids at any time.” *Id.*

95. The Permit requires that the Facility “shall not discharge any pollutant or combination of pollutants in toxic amounts.” *Id.* § I.A.3 at 8.

96. The Permit requires that the toxic components of the Facility’s effluent “shall not result in any demonstrable harm to aquatic life or violate any state or federal water quality standard which has been or may be promulgated.” *Id.*

The Facility’s Best Management Practices and Stormwater Control Measures Requirements Under the Permit

97. The Permit requires Defendants to “implement and maintain a Stormwater Pollution Prevention Plan (SWPPP) designed to reduce, or prevent, the discharge of pollutants in stormwater to the receiving waters identified in this permit.” *Id.* § I.C.1 at 9.

98. The Permit requires that the SWPPP be consistent with permit requirements and “shall serve as a tool to document the permittee’s compliance with the terms of this permit.” *Id.*

99. The Permit requires that the SWPPP shall document the selection, design, and installation of control measures, and shall contain: a pollution prevention team; a site description; a summary of all pollutant sources; a description of all stormwater controls; and a schedule and procedure for implementation and maintenance of control measures, quarterly inspections, and best management practices (“BMPs”). *Id.* § I.C.3 at 10.

100. The Permit requires Defendants to prepare the SWPPP “in accordance with good engineering practices and shall be consistent with the general provisions for SWPPPs included in the most recent version of the MSGP [Multi-Sector General Permit].” *Id.*³

101. The Permit requires the SWPP to implement BMPs to “minimize the discharge of pollutants in stormwater.” *Id.* § I.C.4 at 10. The BMPs must also be “consistent with the control measures described in the most recent version of the MSGP.” *Id.*

102. The Permit imposes non-numeric effluent limitations, which the Facility must satisfy through BMPs, including:

- a. “Minimizing exposure of manufacturing, processing, and material storage areas to stormwater discharges.” *Id.*;
- b. Providing “[g]ood housekeeping measures designed to maintain areas that are potential sources of pollutants.” *Id.*;
- c. Implementing “[p]reventative maintenance programs” and “[s]pill prevention and response procedures” to “avoid leaks, spills and other releases of pollutants in stormwater discharged to receiving waters” and “ensure effective responses to spills and leaks if or when they occur.” *Id.* § I.C.4 at 11; and
- d. Implementing “[r]unoff management practices to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff.” *Id.*

103. The Permit requires Defendants to take corrective action after a violation of a numerical or non-numerical stormwater effluent limitation and document such corrective action in the SWPPP. *Id.* § I.C.7 at 12.

³ 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 [hereinafter “MSGP Permit”].

Waterbodies Affected by the Facility's Wastewater and Stormwater Discharges

104. The Facility is located on Harvard Road, 200 feet from Reedy Meadow Brook.

105. The Facility is located 0.7 miles from Mill Pond, into which Reedy Meadow Brook drains.

Reedy Meadow Brook

106. Reedy Meadow Brook is a Class B waterbody under 314 CMR 4.05(3)(b). Permit at 53, Fact Sheet at 6.

107. Reedy Meadow Brook is part of the Merrimack River watershed and is a navigable water within the meaning of the CWA. 33 U.S.C. § 1362(7); 40 C.F.R. § 120.2(a).

108. Reedy Meadow Brook is designated for primary and secondary contact recreation, including swimming, diving, surfing, water skiing, fishing, human consumption of fish, and boating.

109. Reedy Meadow Brook is a warm water fishery and designated habitat for fish, other aquatic life, and wildlife.

110. Reedy Meadow Brook is impaired because it cannot be used for its designated uses: fish, other aquatic life, and wildlife habitat; primary contact recreation; and secondary contact recreation.

Mill Pond

111. Mill Pond is a Class B waterbody under 314 CMR 4.05(3)(b). *See* Permit at 53, Fact Sheet at 6.

112. Mill Pond is part of the Merrimack River watershed and is a navigable water within the meaning of the CWA. 33 U.S.C. § 1362(7); 40 C.F.R. § 120.2(a).

113. Mill Pond is designated for primary and secondary contact recreation, including swimming, diving, surfing, water skiing, fishing, human consumption of fish, and boating.

114. Mill Pond is a warm water fishery and designated habitat for fish, other aquatic life, and wildlife.

115. Mill Pond is impaired because it cannot be used for its designated uses: primary contact recreation; secondary contact recreation; and consistently good aesthetic value.

Communities Affected by the Facility's Water Pollutants

116. According to the 2020 Census, 10,141 individuals, including CLF members, live in the town of Littleton.

117. Littleton High School is located 0.4 miles from the Facility.

118. Koerper Field is located 0.4 miles from the Facility.

119. The Blessed Trinity Parish – St. Anne Church is located 0.5 miles from the Facility.

120. Veterans of Foreign Wars Littleton Post 6556 is located 0.2 miles from the Facility.

121. Life Care Center of Nashoba Valley is located one mile from the Facility.

122. Oak Hill Reservation and Lookout Rock Trailhead are located less than 500 feet from the Facility.

123. Mill Hill Conservation Area is located one mile from the Facility.

The Facility's Violations of the Clean Water Act

Violations of the Permit's Effluent Limitations for Phosphorus

124. Since April 2019, Defendants have discharged and continue to discharge effluent in violation of the Permit's daily maximum of 1.25 lbs/day at least twenty-five times and the Permit's monthly average of 0.23 or 0.46 lbs/day at least twenty-three times, as detailed in the tables below.

Table 1. Phosphorus Daily Maximum Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
125.	11/30/2021	001	1.25 lbs/d	1.34 lbs/d	Daily Maximum	7%
126.	12/31/2021	001	1.25 lbs/d	1.7 lbs/d	Daily Maximum	36%
127.	3/31/2022	001	1.25 lbs/d	2.03 lbs/d	Daily Maximum	62%
128.	4/30/2022	001	1.25 lbs/d	2.41 lbs/d	Daily Maximum	93%
129.	5/31/2022	001	Unknown	Unknown	Daily Maximum	Unknown
130.	5/31/2022	001	1.25 lbs/d	2.04 lbs/d	Daily Maximum	63%
131.	12/31/2022	001	Unknown	Unknown	Daily Maximum	Unknown
132.	12/31/2022	001	Unknown	Unknown	Daily Maximum	Unknown
133.	12/31/2022	001	Unknown	Unknown	Daily Maximum	Unknown
134.	2/28/2023	001	1.25 lbs/d	3.93 lbs/d	Daily Maximum	214%
135.	3/31/2023	001	1.25 lbs/d	1.85 lbs/d	Daily Maximum	48%
136.	4/30/2023	001	Unknown	Unknown	Daily Maximum	Unknown
137.	4/30/2023	001	Unknown	Unknown	Daily Maximum	Unknown
138.	4/30/2023	001	Unknown	Unknown	Daily Maximum	Unknown
139.	5/31/2023	001	Unknown	Unknown	Daily Maximum	Unknown
140.	5/31/2023	001	Unknown	Unknown	Daily Maximum	Unknown
141.	5/31/2023	001	Unknown	Unknown	Daily Maximum	Unknown
142.	6/30/2023	001	Unknown	Unknown	Daily Maximum	Unknown
143.	8/31/2023	001	Unknown	Unknown	Daily Maximum	Unknown
144.	9/30/2023	001	Unknown	Unknown	Daily Maximum	Unknown

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
145.	10/31/2023	001	Unknown	Unknown	Daily Maximum	Unknown
146.	10/31/2023	001	Unknown	Unknown	Daily Maximum	Unknown
147.	10/31/2023	001	Unknown	Unknown	Daily Maximum	Unknown
148.	1/31/2024	001	1.25 lbs/d	3.74 lbs/d	Daily Maximum	199%
149.	3/31/2024	001	1.25 lbs/d	1.67 lbs/d	Daily Maximum	34%

Table 2. Phosphorus Monthly Average Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
150.	11/30/2021	001	0.46 lbs/d	0.55 lbs/d	Monthly Average	20%
151.	12/31/2021	001	0.46 lbs/d	0.75 lbs/d	Monthly Average	63%
152.	3/31/2022	001	0.46 lbs/d	0.98 lbs/d	Monthly Average	113%
153.	4/30/2022	001	0.23 lbs/d	0.44 lbs/d	Monthly Average	91%
154.	5/31/2022	001	0.23 lbs/d	0.96 lbs/d	Monthly Average	317%
155.	5/31/2022	001	0.23 lbs/d	0.5 lbs/d	Monthly Average (rolling average)	117%
156.	6/30/2022	001	0.23 lbs/d	0.3 lbs/d	Monthly Average	30%
157.	8/31/2022	001	0.23 lbs/d	0.56 lbs/d	Monthly Average	143%
158.	10/31/2022	001	0.23 lbs/d	0.53 lbs/d	Monthly Average	130%
159.	11/30/2022	001	0.46 lbs/d	0.53 lbs/d	Monthly Average	15%
160.	12/31/2022	001	0.46 lbs/d	0.69 lbs/d	Monthly Average	50%

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
161.	1/31/2023	001	0.46 lbs/d	0.54 lbs/d	Monthly Average	17%
162.	2/28/2023	001	0.46 lbs/d	1.93 lbs/d	Monthly Average	320%
163.	3/31/2023	001	0.46 lbs/d	1.23 lbs/d	Monthly Average	167%
164.	4/30/2023	001	0.23 lbs/d	0.43 lbs/d	Monthly Average	87%
165.	5/31/2023	001	0.23 lbs/d	0.73 lbs/d	Monthly Average	217%
166.	6/30/2023	001	0.23 lbs/d	0.69 lbs/d	Monthly Average	200%
167.	7/31/2023	001	0.23 lbs/d	0.67 lbs/d	Monthly Average	191%
168.	8/31/2023	001	0.23 lbs/d	0.62 lbs/d	Monthly Average	170%
169.	9/30/2023	001	0.23 lbs/d	0.62 lbs/d	Monthly Average	170%
170.	10/31/2023	001	0.23 lbs/d	0.62 lbs/d	Monthly Average	170%
171.	1/31/2024	001	0.46 lbs/d	2.31 lbs/d	Monthly Average	402%
172.	3/31/2024	001	0.46 lbs/d	0.57 lbs/d	Monthly Average	24%

Violations of the Permit's Effluent Limitations for Total Suspended Solids

173. Since April 2019, Defendants have discharged and continue to discharge effluent in violation of the Permit's 1) daily maximum of 20 mg/L at least four times and the Permit's monthly average of 10 mg/L at least five times from Outfall 001; and 2) daily maximum of 100 mg/L at least four times from Outfall 002, as detailed in the tables below.

Table 3. Total Suspended Solids Daily Maximum Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
174.	4/30/2019	002	100 mg/L	212.7 mg/L	Daily Maximum	113%

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
175.	11/30/2019	001	20 mg/L	35 mg/L	Daily Maximum	75%
176.	1/31/2020	002	100 mg/L	139.6 mg/L	Daily Maximum	40%
177.	3/31/2020	002	100 mg/L	110.2 mg/L	Daily Maximum	10%
178.	6/30/2020	002	100 mg/L	131.8 mg/L	Daily Maximum	32%
179.	12/31/2022	001	Unknown	Unknown	Daily Maximum	Unknown
180.	12/31/2022	001	20 mg/L	36 mg/L	Daily Maximum	80%
181.	5/31/2023	001	20 mg/L	29 mg/L	Daily Maximum	45%

Table 4. Total Suspended Solids Monthly Average Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
182.	11/30/2019	001	10 mg/L	15 mg/L	Monthly Average	50%
183.	12/31/2022	001	10 mg/L	19 mg/L	Monthly Average	90%
184.	2/28/2023	001	10 mg/L	13 mg/L	Monthly Average	30%
185.	3/31/2023	001	10 mg/L	11 mg/L	Monthly Average	10%
186.	5/31/2023	001	10 mg/L	14 mg/L	Monthly Average	40%

Violations of the Permit's Effluent Limitation for pH

187. Since April 2019, Defendants have discharged and continue to discharge effluent in excess of the Permit's daily maximum of 8.3 s.u. at least eighteen times, as detailed in the table below.

Table 5. pH Limit Daily Maximum Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
188.	9/30/2019	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
189.	9/30/2019	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
190.	12/31/2019	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
191.	2/29/2020	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
192.	4/30/2020	001	8.3 s.u.	8.5 s.u.	Daily Maximum	2%
193.	4/30/2020	001	8.3 s.u.	8.5 s.u.	Daily Maximum	2%
194.	5/31/2020	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
195.	5/31/2020	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
196.	5/31/2020	001	8.3 s.u.	8.5 s.u.	Daily Maximum	2%
197.	6/30/2020	001	8.3 s.u.	8.5 s.u.	Daily Maximum	2%
198.	7/31/2020	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
199.	9/30/2021	001	8.3 s.u.	8.5 s.u.	Daily Maximum	2%
200.	9/30/2021	001	8.3 s.u.	8.5 s.u.	Daily Maximum	2%
201.	9/30/2021	001	8.3 s.u.	8.5 s.u.	Daily Maximum	2%
202.	9/30/2021	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
203.	9/30/2021	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
204.	9/30/2021	001	8.3 s.u.	8.4 s.u.	Daily Maximum	1%
205.	11/30/2021	001	8.3 s.u.	8.6 s.u.	Daily Maximum	4%

Violations of the Permit's Effluent Limitations for Biochemical Oxygen Demand

206. Since April 2019, Defendants have discharged and continue to discharge effluent in violation of the Permit's daily maximum of 20 mg/L at least four times and the Permit's monthly average of 10 mg/L at least three times, as detailed in the tables below.

Table 6. Biochemical Oxygen Demand Daily Maximum Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
207.	6/30/2019	001	20 mg/L	24 mg/L	Daily Maximum	20%
208.	3/31/2021	001	20 mg/L	66 mg/L	Daily Maximum	230%
209.	12/31/2022	001	20 mg/L	194 mg/L	Daily Maximum	870%
210.	3/31/2024	001	20 mg/L	56 mg/L	Daily Maximum	180%

Table 7. Biochemical Oxygen Demand Monthly Average Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
211.	3/31/2021	001	10 mg/L	20 mg/L	Monthly Average	100%
212.	12/31/2022	001	10 mg/L	103 mg/L	Monthly Average	930%
213.	3/31/2024	001	10 mg/L	14 mg/L	Monthly Average	40%

Violations of the Permit's Effluent Limitation for Temperature

214. Since April 2019, Defendants have discharged and continue to discharge effluent in violation of the Permit's daily maximum temperature of 83°F at least four times, as detailed in the table below.

Table 8. Temperature Daily Maximum Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
215.	7/31/2020	001	83°F	84°F	Daily Maximum	1%
216.	7/31/2020	001	83°F	84°F	Daily Maximum	1%
217.	6/30/2023	001	83°F	85°F	Daily Maximum	2%
218.	6/30/2023	001	83°F	Unknown	Daily Maximum	Unknown

Violations of the Permit's Effluent Limitation for Aluminum

219. Since April 2019, Defendants have discharged and continue to discharge effluent in violation of the Permit's monthly average of 0.1 mg/L at least three times, as detailed in the table below.

Table 9. Aluminum Monthly Average Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Permit Allowance</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
220.	2/28/2023	001	0.1 mg/L	0.108 mg/L	Monthly Average	8%
221.	4/30/2023	001	0.1 mg/L	0.134 mg/L	Monthly Average	34%
222.	10/31/2023	001	0.1 mg/L	0.11 mg/L	Monthly Average	10%

Violations of the Prohibition Against Violating State Surface Water Quality Standards

223. On numerous occasions since April 2019, Defendants have discharged and continue to discharge pollutants (including but not limited to phosphorus, total suspended solids, excess pH, biochemical oxygen demand, thermal pollution, and aluminum) that, *inter alia*, 1) impair the use(s) of the Reedy Meadow Brook or Mill Pond; 2) are aesthetically objectionable; 3) harm

aquatic life; 4) adversely affect the physical or chemical nature of the bottom of Reedy Meadow Brook or Mill Pond; and/or 5) are toxic to humans, aquatic life, or wildlife.

224. The discharge of such pollutants causes or contributes to violations of Massachusetts' surface water quality standards referenced in paragraphs 86–92 above, in violation of the Facility's Permit.

Violations of Narrative Effluent Limitations

225. On numerous occasions since April 2019, Defendants have discharged and continue to discharge pollutants (including but not limited to phosphorus, total suspended solids, excess pH, biochemical oxygen demand, thermal pollution, and aluminum) that, *inter alia*, 1) cause objectionable discoloration; 2) contain oil sheen, foam, or floating solids; 3) impair designated uses of Reedy Meadow Brook or Mill Pond; and/or 4) are hazardous or toxic to human health and aquatic life.

226. The discharge of such pollutants violates the narrative effluent limitations referenced in paragraphs 93–96 above, in violation of the Facility's Permit.

Violations of the Requirement to Minimize the Discharge of Pollutants in Stormwater

227. Since April 2019, on numerous occasions, Defendants have failed and continue to fail to identify and implement best management practices (“BMPs”) that minimize the discharge of pollutants in stormwater referenced in paragraphs 97–103 above by 1) causing industrial materials to be exposed to precipitation; and 2) exceeding the MSGP numerical stormwater effluent limitations, in violation of the Permit.

228. Defendants leave uncovered manufacturing waste, tea, teabags, tea grounds, and waste oil outside, which enter or are carried by stormwater—untreated—into Reedy Meadow Brook and Mill Pond.

229. Defendants have exceeded and continue to exceed numerical stormwater effluent limitations referenced in Table 3, paragraphs 174–181 above, and the MSGP benchmark threshold for phosphorus,⁴ as detailed in the table below.

Table 10. MSGP Phosphorus Benchmark Exceedances

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Outfall</u>	<u>Benchmark Threshold</u>	<u>Measured Value</u>	<u>Type of Limit</u>	<u>Percent Exceedance</u>
230.	2/29/2020	002	2 mg/L	8.51 mg/L	Daily Maximum	326%
231.	8/31/2021	002	2 mg/L	10 mg/L	Daily Maximum	400%
232.	9/30/2023	002	2 mg/L	3.7 mg/L	Daily Maximum	85%

Violations of the Requirement to Take and Document Corrective Action After Violations of Stormwater Effluent Limitations

233. Since April 2019, on numerous occasions, Defendants have failed and continue to fail to take and document corrective action after stormwater effluent limitations, in violation of the Permit.

234. Defendants have violated and continue to violate stormwater effluent limitations referenced in Table 3, paragraphs 174–181; paragraphs 227–229; and Table 10, paragraphs 230–232 above.

235. Upon information and belief, Defendants have neither taken nor documented corrective action after such stormwater effluent limitations, in violation of the Permit.

⁴ MSGP Permit, *supra* note 3, at 38 (setting 2.0 mg/L as the benchmark threshold for phosphorus).

Violations of Monitoring and Reporting Requirements

236. Since April 2019, Defendants have failed and continue to fail to comply with their monitoring and reporting requirements at least thirty-seven times, in violation of the Permit, as detailed in the table below.

Table 11. Monitoring and Reporting Failures

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Monitoring and Reporting Requirement</u>
237.	10/31/2019	Monthly Off-site Wastewater Amount
238.	3/31/2020	Daily Maximum, Total Suspended Solids
239.	3/31/2020	Monthly Average, Total Suspended Solids
240.	5/31/2021	Monthly Off-site Wastewater Amount
241.	9/30/2021	Daily Maximum, Aluminum
242.	9/30/2021	Monthly Average, Aluminum
243.	9/30/2021	Daily Maximum, Chlorine
244.	9/30/2021	Monthly Average, Chlorine
245.	9/30/2021	Daily Maximum, <i>E. Coli</i>
246.	9/30/2021	Monthly Average, <i>E. Coli</i>
247.	9/30/2021	Daily Maximum (lbs/day), Ammonia Nitrogen
248.	9/30/2021	Monthly Average (lbs/day), Ammonia Nitrogen
249.	9/30/2021	Daily Maximum (mg/L), Ammonia Nitrogen
250.	9/30/2021	Monthly Average (mg/L), Ammonia Nitrogen
251.	9/30/2021	Daily Maximum, pH
252.	9/30/2021	Daily Maximum, Fecal <i>Streptococci</i>
253.	9/30/2021	Monthly Average, Fecal <i>Streptococci</i>

<u>Paragraph #</u>	<u>Monitoring Period End Date</u>	<u>Monitoring and Reporting Requirement</u>
254.	9/30/2021	Daily Maximum, Total Suspended Solids
255.	9/30/2021	Monthly Average, Total Suspended Solids
256.	6/30/2022	Monthly Off-site Wastewater Amount
257.	7/31/2022	Monthly Off-site Wastewater Amount
258.	8/31/2022	Monthly Off-site Wastewater Amount
259.	9/30/2022	Monthly Off-site Wastewater Amount
260.	10/31/2022	Monthly Off-site Wastewater Amount
261.	11/30/2022	Monthly Off-site Wastewater Amount
262.	3/31/2023	Monthly Off-site Wastewater Amount
263.	5/31/2023	Monthly Off-site Wastewater Amount
264.	6/30/2023	Monthly Off-site Wastewater Amount
265.	7/31/2023	Monthly Off-site Wastewater Amount
266.	8/31/2023	Monthly Off-site Wastewater Amount
267.	9/30/2023	Monthly Off-site Wastewater Amount
268.	10/31/2023	Monthly Off-site Wastewater Amount
269.	11/30/2023	Monthly Off-site Wastewater Amount
270.	12/31/2023	Monthly Off-site Wastewater Amount
271.	1/31/2024	Monthly Off-site Wastewater Amount
272.	2/29/2024	Monthly Off-site Wastewater Amount
273.	4/30/2024	Monthly Off-site Wastewater Amount

The Harms of the Facility's Discharges

274. Excess phosphorus contributes to aquatic plants and cyanobacteria overgrowth, which decreases dissolved oxygen levels in waterways (called “eutrophication”). Fish and other aquatic animals struggle to survive in low oxygen conditions, leading to fish die-offs.

275. Human exposure to cyanotoxins from cyanobacteria can lead to abdominal pain, headache, sore throat, vomiting and nausea, numbness, drowsiness, incoherent speech, salivation, neurodegenerative diseases (like amyotrophic lateral sclerosis (“ALS”), and respiratory paralysis leading to death.

276. Total suspended solids are organic and inorganic particles. Total suspended solids obstruct sunlight from penetrating water and impair aesthetic value of waterbodies. Solids that settle out as bottom deposits can alter or destroy habitat for aquatic life.

277. The pH value of waterbodies is a critical indicator of water quality. High pH (basic) makes certain chemicals like ammonia toxic to aquatic life and cause the water to have an unpleasant smell and taste. For aquatic life, pH pollution can result in increased mortality, decreased reproductive success, and stresses on community structure and ecosystem function.

278. 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. 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. Elevated BOD can overly stress, suffocate, and kill aquatic life.

279. Fish, insects, and other aquatic species all have specific temperature ranges necessary for their survival and can die when temperature shifts outside a species’ required range. Heated water increases the metabolic rate of aquatic life, making them consume more food in a shorter

time and increasing competition for resources. Higher water temperatures also increase plant growth rates, and lead to overpopulation and algal blooms.

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

The Facility's Harms to CLF Members

281. CLF members use Reedy Meadow Brook and Mill Pond for aesthetic and recreational enjoyment and observing wildlife.

282. CLF members cherish Reedy Meadow Brook and Mill Pond as places of natural importance, historical interest, and personal significance.

283. CLF members use Reedy Meadow Brook and Mill Pond to kayak, canoe, fish, walk, irrigate, and observe wildlife.

284. CLF members own real property abutting Mill Pond.

285. The Facility's discharges of pollutants into Reedy Meadow Brook and Mill Pond have degraded the health of the waterbodies and contributed to their impairments in a way that diminishes the use and enjoyment of the waterbodies by CLF members.

286. CLF members are concerned about the health impacts of pollution from direct contact with waterbodies downstream from the Facility.

287. CLF members worry about the potential health effects of being exposed to cyanobacteria from excess phosphorus, heavy metals, and other pollutants in Reedy Meadow Brook and Mill Pond.

288. CLF members worry about the negative impact of excess phosphorus, heavy metals, and other pollutants on their ability to enjoy observing wildlife in Reedy Meadow Brook and Mill Pond.

289. The presence of odor, unnatural color, scum, foam, and diminished water clarity adversely affect the aesthetic enjoyment of Reedy Meadow Brook and Mill Pond by CLF members.

290. The Facility's contribution to water pollution in Mill Pond degrades CLF members' use and enjoyment of their properties near Mill Pond.

291. The actual and threatened harm to CLF's members would be redressed by a declaration, injunction, civil penalties, and other relief that prevents or deters future violations of the Facility's Permit, and that requires Defendants to offset their pollution from these violations by reducing its pollution, or otherwise remediating harm that has already been caused to CLF members and their local communities.

CLAIMS FOR RELIEF

Count I: Violations of Phosphorus Effluent Limitations Under the Clean Water Act

292. Each paragraph above is incorporated by reference as if fully set forth herein.

293. Since April 2019, Defendants have discharged effluent in violation of the Permit's effluent limitations for phosphorus at least forty-eight times referenced in Tables 1 and 2, paragraphs 125–172 above, in violation of Section I.A.1 of the Permit.

294. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

295. Each day that Defendants have violated or continue to violate the Permit's effluent limitation for phosphorus is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count II: Violations of Total Suspended Solids Effluent Limitations Under the Clean Water Act

296. Each paragraph above is incorporated by reference as if fully set forth herein.

297. Since April 2019, Defendants have discharged effluent in violation of the Permit's effluent limitations for total suspended solids at least thirteen times referenced in Tables 3 and 4, paragraphs 174–186 above, in violation of Sections I.A.1–2 of the Permit.

298. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

299. Each day that Defendants have violated or continue to violate the Permit's effluent limitation for total suspended solids is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count III: Violations of the pH Effluent Limitation Under the Clean Water Act

300. Each paragraph above is incorporated by reference as if fully set forth herein.

301. Since April 2019, Defendants have discharged effluent in violation of the Permit's effluent limitations for pH at least eighteen times referenced in Table 5, paragraphs 188–205 above, in violation of Section I.A.1 of the Permit.

302. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

303. Each day that Defendants have violated or continue to violate the Permit's effluent limitation for pH is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count IV: Violations of Biochemical Oxygen Demand Effluent Limitations Under the Clean Water Act

304. Each paragraph above is incorporated by reference as if fully set forth herein.

305. Since April 2019, Defendants have discharged effluent in violation of the Permit's effluent limitations for biochemical oxygen demand at least seven times referenced in Tables 6 and 7, paragraphs 207–213 above, in violation of Section I.A.1 of the Permit.

306. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

307. Each day that Defendants have violated or continue to violate the Permit's effluent limitation for biochemical oxygen demand is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count V: Violations of the Temperature Effluent Limitation under the Clean Water Act

308. Each paragraph above is incorporated by reference as if fully set forth herein.

309. Since April 2019, Defendants have discharged effluent in violation of the Permit's effluent limitation for temperature at least four times referenced in Table 8, paragraphs 215–218 above, in violation of Section I.A.1 of the Permit.

310. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

311. Each day that Defendants have violated or continue to violate the Permit's effluent limitation for temperature is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count VI: Violations of the Aluminum Effluent Limitation Under the Clean Water Act

312. Each paragraph above is incorporated by reference as if fully set forth herein.

313. Since April 2019, Defendants have discharged effluent in violation of the Permit's effluent limitation for aluminum at least three times referenced in Table 9, paragraphs 220–222 above, in violation of Section I.A.1 of the Permit.

314. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

315. Each day that Defendants have violated or continue to violate the Permit's effluent limitation for aluminum is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count VII: Violations of the Prohibition Against Violating State Surface Water Quality Standards Under the Clean Water Act

316. Each paragraph above is incorporated by reference as if fully set forth herein.

317. On numerous occasions since April 2019, Defendants have discharged and continue to discharge pollutants (including but not limited to phosphorus, total suspended solids, excess pH, biochemical oxygen demand, thermal pollution, and aluminum) that, *inter alia*, 1) impair any use of the Reedy Meadow Brook or Mill Pond; 2) are aesthetically objectionable; 3) harm aquatic life; 4) adversely affect the physical or chemical nature of the bottom of Reedy Meadow Brook or Mill Pond; and/or 5) are toxic to humans, aquatic life, or wildlife, referenced in paragraphs 223–224 above, in violation of Sections I.A.1–2 of the Permit.

318. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

319. Each day that Defendants have violated or continue to violate the Permit's prohibition against violating Massachusetts' surface water quality standards is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count VIII: Violations of Narrative Effluent Limitations Under the Clean Water Act

320. Each paragraph above is incorporated by reference as if fully set forth herein.

321. On numerous occasions since April 2019, Defendants has discharged and continue to discharge pollutants (including but not limited to phosphorus, total suspended solids, excess pH, biochemical oxygen demand, thermal pollution, and aluminum) that, *inter alia*, 1) cause objectionable discoloration; 2) contain oil sheen, foam, or floating solids; 3) impair designated uses of Reedy Meadow Brook or Mill Pond; and/or 4) are hazardous or toxic to human health and aquatic life, referenced in paragraphs 225–226 above, in violation of Sections I.A.1–3 of the Permit.

322. In light of Defendants' history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

323. Each day that Defendants have violated or continue to violate the Permit's narrative effluent limitations is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count IX: Violations of the Requirement to Minimize the Discharge of Pollutants in Stormwater Under the Clean Water Act

324. Each paragraph above is incorporated by reference as if fully set forth herein.

325. On numerous occasions since April 2019, Defendants have failed and continue to fail to identify and implement best management practices (“BMPs”) that minimize the discharge of pollutants in stormwater referenced in Tables 3 and 10, paragraphs 174–181 and 230–232, respectfully, and paragraphs 227–229 above, in violation of Section I.C.4 of the Permit.

326. In light of Defendants’ history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

327. Each day that Defendants have violated or continue to violate the Permit’s requirement to minimize the discharge of pollutants in stormwater is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count X: Violations of the Requirements to Take and Document Corrective Action After Violations of Stormwater Effluent Limitations Under the Clean Water Act

328. Each paragraph above is incorporated by reference as if fully set forth herein.

329. On numerous occasions since April 2019, Defendants have failed and continue to fail to take and document corrective action after violating stormwater effluent limitations referenced in Tables 3 and 10, paragraphs 174–181 and 230–232, respectfully, and paragraphs 227–229 above, in violation of Section I.C.7 of the Permit.

330. In light of the Defendants’ history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

331. Each day that Defendants have violated or continue to violate the requirement to take and document corrective action after violations of stormwater effluent limitations is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count XI: Violations of Monitoring and Reporting Requirements Under the Clean Water Act

332. Each paragraph above is incorporated by reference as if fully set forth herein.

333. Since April 2019, Defendants have failed and continue to fail to comply with their monitoring and reporting requirements at least thirty-seven times referenced in Table 11, paragraphs 237–273 above, in violation of Section I.F of the Permit.

334. In light of Defendants’ history of violations, and their failure to take corrective action, Defendants will continue to violate this provision of the Permit in the future unless enjoined from doing so.

335. Each day that Defendants have violated or continue to violate the Permit’s monitoring and reporting requirements is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

RELIEF REQUESTED

Plaintiff respectfully requests that this Court grant the following relief:

336. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201(a), that Defendants violated and remain in violation of, the Permit, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and applicable regulations as alleged in Counts I, II, III, IV, V, VI, VII, VIII, IX, X, and XI of this Complaint;

337. Enjoin Defendants from violating the requirements of the NDPES Permit, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and applicable regulations;

338. Impose civil penalties on Defendants up to \$66,712 per day per violation for all violations occurring after November 2, 2015, and where penalties are assessed on or after December 27, 2023, pursuant to Sections 505(a) and 309(d) of the CWA, 33 U.S.C. §§ 1365(a), 1319(d), and its implementing regulations, 40 C.F.R. § 19.4;

339. Award Plaintiff's costs of litigation, including reasonable attorney and expert witness fees, as provided under Section 505(d) of the CWA, 33 U.S.C. § 1365(d); and

340. Grant such other relief as this Court may deem appropriate.

Dated: June 10, 2024

Respectfully submitted,

/s/ Ameya Gehi

Ameya Gehi

BBO No. 709194

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ATTORNEYS FOR PLAINTIFF

EXHIBIT 1



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April 10, 2024

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20 Harvard Road
Littleton, MA 01460

CPF, Inc.
25 Copeland Drive
Ayer, MA 01432

Dan Gray
Registered Agent for Patriot Beverages, LLC and CPF, Inc.
25 Copeland Drive
Ayer, MA 01432

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”)¹ 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”).² Pepsi Beverages has discharged and

¹ 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.

² 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.³

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

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.¹⁰

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”).¹¹ 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

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

⁴ *Infra* at 7–9.

⁵ *Infra* at 9.

⁶ *Infra* at 9–10.

⁷ *Id.*

⁸ *Infra* at 10.

⁹ *Infra* at 10–11.

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

¹¹ 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.¹² The Facility also accepts and stores wastewater from three off-site facilities: 1) EPIC Enterprises, Inc., 2) CPF, Inc., and 3) Tate & Lyle.¹³ EPIC (Enjoy Pepsi in Cans) Enterprises, Inc. is a subsidiary of PepsiCo, Inc. and manufactures canned beverages.¹⁴ Tate & Lyle also manufactures food and beverage products.¹⁵

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.¹⁶

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.¹⁷

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.

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

¹³ *Id.* § I.A.D at 12.

¹⁴ 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>.

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

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

¹⁷ *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”).¹⁸ Fish and other aquatic animals struggle to survive in low oxygen conditions, so eutrophication can result in fish die-offs.¹⁹ Cyanobacteria are commonly referred to as blue-green algae, an algae-like bacteria.²⁰ Cyanobacteria produce and emit cyanotoxins.²¹ 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.²²

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.²³ TSS obstructs sunlight from penetrating water and impairs aesthetic value of waterbodies.²⁴ Solids that settle out as bottom deposits can alter or destroy habitat for fish and other bottom-dwelling organisms.²⁵

3. pH Pollution

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

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

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

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

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

²² *Id.*

²³ 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>.

²⁴ *Id.*

²⁵ 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).

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

²⁷ 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>.

²⁸ 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.²⁹ 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.³⁰ Elevated BOD can overly stress, suffocate, and kill aquatic life.³¹

5. Thermal Pollution

When heated water is returned to the natural waterbody, the sudden change in temperature decreases oxygen supply and harms aquatic life.³² Abrupt changes in water temperature can also kill fish and other aquatic life that are adapted to a specific temperature range.³³ 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.³⁴ Higher water temperatures also increase plant growth rates and lead to overpopulation and algal blooms.³⁵

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.³⁶ Elevated levels of aluminum can also impair aquatic species’ ability to regulate nutrients and respiratory functions by accumulating on gills.³⁷

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.”³⁸ Because the pollutants from the

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

³⁰ *Id.*

³¹ *Id.*

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

³³ *Id.* at 184.

³⁴ *Id.*

³⁵ *Id.*

³⁶ 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>.

³⁷ 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%20aluminum%20compound.>

³⁸ 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.³⁹

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.⁴⁰ Reedy Meadow Brook is designated a Class B waterbody under Massachusetts water quality standards.⁴¹ 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.⁴² Examples of primary contact recreation include swimming, diving, surfing, and water skiing; examples of secondary contact recreation include fishing, consuming fish, and boating.⁴³ Class B waters must also have “consistently good aesthetic value.”⁴⁴

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).⁴⁵ Pollutants responsible for impairment include chronic aquatic toxicity—to which the Facility contributes.⁴⁶

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.”⁴⁷ 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.⁴⁸ Mill Pond is also designated a Class B waterbody under Massachusetts water quality standards.⁴⁹ 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

³⁹ See *id.* at 59–61, Permit Fact Sheet at 12–14.

⁴⁰ U.S. EPA, *How’s My Waterway*, Waterbody Report for Segment MA84B-01, 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=922e1c016c6e42b199f902d1cfb84bbd> [hereinafter *Merrimack River Watershed*].

⁴¹ 314 CMR 4.05.

⁴² *Id.* 4.05(3)(b).

⁴³ *Id.* 4.02.

⁴⁴ *Id.* 4.05(3)(b).

⁴⁵ *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].

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

⁴⁷ Permit, *supra* note 2, at 59, Permit Fact Sheet at 12.

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

⁴⁹ See Mill Pond Waterbody Report, *supra* note 48.

and consistently good aesthetic value.⁵⁰ 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).⁵¹ 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.⁵²

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).⁵³ During April 1–October 31, the average monthly effluent limitation on total phosphorus is 0.23 lbs/day.⁵⁴ During November 1–March 31, the average monthly effluent limitation on total phosphorus is 0.46 lbs/day.⁵⁵

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).⁵⁶ For Outfall 002, the Permit imposes a maximum daily effluent limitation of 100 milligrams per liter

⁵⁰ *Id.*; MASS. IMPAIRED WATERS LIST, *supra* note 45, at 183.

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

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

⁵³ *Id.* § I.A.1 at 2.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

(mg/L).⁵⁷

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.).⁵⁸

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).⁵⁹

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.⁶⁰

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).⁶¹

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

⁵⁷ *Id.* § I.A.2 at 7.

⁵⁸ *Id.* § I.A.1 at 2.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *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.”⁶²

Pepsi Beverages' wastewater and stormwater discharges have caused or contributed to the violation of the above-referenced Massachusetts water quality standards.⁶³ 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.⁶⁴ 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.⁶⁵

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.⁶⁶

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.”⁶⁷ The SWPPP must be “prepared in accordance with good engineering practices and shall be consistent with the general provisions for SWPPPs included in

⁶² *Id.* §§ I.A.1–2 at 3, 7.

⁶³ *Supra* at 7–8.

⁶⁴ 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.

⁶⁵ 314 CMR 4.05.

⁶⁶ Permit, *supra* note 2, §§ I.A.1–2 at 3, 7–8.

⁶⁷ *Id.* § I.C.4 at 10.

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

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.⁷⁰

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.⁷¹

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.⁷²

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.⁷³

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.⁷⁴ Pepsi Beverages must also report the quantity of off-site wastewater it receives

⁶⁸ *Id.* § I.C.3 at 10. The most recent version of the MSGP is the 2021 version. EPA, NPDES MSGP 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.

⁶⁹ Permit, *supra* note 2, § I.C.4 at 10.

⁷⁰ *Id.* § I.C.4 at 10–11.

⁷¹ *See supra* at 8.

⁷² Permit, *supra* note 2, § I.C.7 at 12.

⁷³ *Supra* at 8, 10.

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

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

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

⁷⁵ *Id.* § I.A.1 at 4.

⁷⁶ *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,

A handwritten signature in black ink that reads "Erica Kyzmir-McKeon". The signature is written in a cursive, flowing style.

Erica Kyzmir-McKeon
Ameya Gehi
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
ekyzmir-mckeon@clf.org
617-850-1763

cc:

Michael S. Regan, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

David W. Cash, EPA Region 1 Administrator
Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108-4746

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

EXHIBIT 2

U.S. POSTAGE PAID

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY															
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature X <u>[Signature]</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>															
<p>1. Article Addressed to:</p> <p>Daniel Gray Reg. Agent - Patriot Beverages, LLC & CPF, Inc. 25 Copeland Drive Ayer, MA 01432</p> <p>9590 9402 4761 8344 3647 65</p>		<p>B. Received by (Printed Name) <u>Enid Z Luna</u></p> <p>C. Date of Delivery <u>4/16/24</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>															
<p>2. Article Number (Transfer from service label)</p> <p>7018 1830 0000 3181 5022</p>		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Insured Mail																	

PS Form 3811, July 2015 PSN 7530-02-000-9053

U.S. Postal Service™
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For delivery information, visit our website at www.usps.com®

Ayer, MA 01432

OFFICIAL USE

Certified Mail Fee \$4.40 0009 2

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$9.21

Total Postage and Fees \$9.21

Sent To **Daniel Gray - Reg. Agent - Patriot Bev. & CPF, Inc.**

Street and Apt. No., or PO Box No. **25 Copeland Drive**

City, State, ZIP+4® **Ayer, MA 01432**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT 3

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Citizen Suit Coordinator
 Environment & Natural Resources
 Division
 Law & Policy Section
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530-0001

2. Article Number (Transfer from service label)
 7018 1830 0000 3181 5039

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
 APR 18 2024

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature ☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery ☐ Registered Mail™
☒ Certified Mail® ☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise
☐ Collect on Delivery ☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery

INSPECTED 22

Domestic Return Receipt

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For delivery information, visit our website at www.usps.com®.

Washington, DC 20530

OFFICIAL USE

Certified Mail Fee \$4.40 0009 2

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Postmark Here 04/10/2024

Sent To
 Citizen Suit Coordinator
 Street and Apt. No., or PO Box No.
 950 Pennsylvania Avenue, NW
 City, State, ZIP+4®
 Washington D.C. 20530-0001

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Michael S. Regan
 Administrator
 U.S. Environmental Protection
 Agency
 206 Pennsylvania Avenue,
 NW (Mail Code 3204A)
 Washington, DC 20460-0001

2. Article Number
 (Transfer from service label)
 7018 1830 0000 3181 5077

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
 APR 16 2024

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Domestic Return Receipt

U.S. Postal Service™
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For delivery information, visit our website at www.usps.com®.

Washington, DC 20460

OFFICIAL USE

Certified Mail Fee \$4.40 0009 2

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.92

Total Postage and Fees \$5.32

Postmark Here 04/10/2024

Sent To
 Michael S. Regan
 Street and Apt. No., or PO Box No.
 1200 Pennsylvania Ave, NW (Mail Code 3204A)
 City, State, ZIP+4®
 Washington, DC 20460-0001

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 1830 0000 3181 5107

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Certified Mail Fee \$4.40 0009
 2

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$1.92
 \$6.32

Total Postage and Fees \$6.32

Sent To David Cash
 Street and Apt. No., or PO Box No. 5 Post office Sq Ste. 100
 City, State, ZIP+4® Boston, MA 02108-3912

Postmark Here 04/10/2024

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 1830 0000 3181 5091

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OFFICIAL USE

Certified Mail Fee \$4.40 0009
 2

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.92
 \$5.32

Total Postage and Fees \$5.32

Sent To Bonnie Maple
 Street and Apt. No., or PO Box No. 1 Winter St.
 City, State, ZIP+4® Boston, MA 02108-4746

Postmark Here 04/10/2024

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



FAQs >

Tracking Number:

Remove X

70181830000031815107

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)



Latest Update

Your item was delivered to an individual at the address at 1:30 pm on April 15, 2024 in BOSTON, MA 02109.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered
Delivered, Left with Individual
BOSTON, MA 02109
April 15, 2024, 1:30 pm

See All Tracking History

Feedback

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

Text & Email Updates



USPS Tracking Plus®



Product Information



See Less ^

Track Another Package

Enter tracking or barcode numbers



FAQs >

Tracking Number:

Remove X

70181830000031815091

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)



Latest Update

Your item was delivered to the front desk, reception area, or mail room at 11:07 am on April 15, 2024 in BOSTON, MA 02114.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Front Desk/Reception/Mail Room

BOSTON, MA 02114
April 15, 2024, 11:07 am

See All Tracking History

Feedback

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

Text & Email Updates



USPS Tracking Plus®



Product Information



See Less ^

Track Another Package

Enter tracking or barcode numbers

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Conservation Law Foundation, Inc.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ameya Gehi
62 Summer Street
Boston, MA 02110

DEFENDANTSPatriot Beverages, LLC
CPF, Inc.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Jessica Wall
Anderson & Kreiger LLP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
33 U.S.C. s. 1365(a)

Brief description of cause:

Citizen Suit brought under Section 505(a) of the Federal Water Pollution Control Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Conservation Law Foundation v. Patriot Beverages, LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).



I. 160, 400, 410, 441, 535, 830*, 835*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.



II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.



III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES



NO



5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES



NO



If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES



NO



6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES



NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES



NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division



Central Division



Western Division



B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division



Central Division



Western Division



8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES



NO



(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Ameya GehiADDRESS 62 Summer St. Boston, MA 02110TELEPHONE NO. 617-850-1795