

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF  
MASSACHUSETTS,

Plaintiff,

v.

CARGILL, INC. and SALT CITY, INC.,

Defendants.

Case No.

**COMPLAINT**

**INTRODUCTION**

1. Cargill, Inc. (“Cargill”) and Salt City, Inc. (“Salt City”) discharge polluted industrial stormwater from a facility at 163 Union Street, Westfield, Massachusetts (the “Facility”), where they stockpile road salt and transfer it to vehicles for further distribution. Cargill owns all the real property, buildings, fixtures, and machinery located at the Facility, including a salt conveyer system. Salt City operates the Facility. Cargill and Salt City (jointly “Defendants”) discharge polluted stormwater from the Facility into the Westfield municipal storm drain system, which flows to Powdermill Brook, a tributary of the Westfield River. Defendants are not controlling these discharges as is required by the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act” or “the Act”). Defendants never applied for nor received a federal industrial stormwater discharge permit for these discharges, as is required by the Act.

2. Defendants store road salt in large piles at the Facility and move it around and off the Facility with heavy equipment and vehicles. Defendants and persons that visit the Facility in the ordinary course of business scatter road salt around the Facility, including on its ground

surface. Rain and snow melt (jointly “stormwater”) that lands on and runs over the Facility comes into contact with road salt and mobilizes it. The stormwater then runs down from the Facility into catch basins on Union Street, where it is carried by Westfield’s municipal storm drain system to Powdermill Brook, a tributary of the Westfield River.

3. The area where Westfield’s municipal storm sewer system empties into Powdermill Brook is near a potential source of drinking water for Westfield and is just downstream from the city’s number two drinking water well.<sup>1</sup> Sodium in drinking water is a health concern for people with hypertension because it can increase blood pressure and cannot be removed by carbon filtration.

4. Elevated concentrations of salt in fresh water has detrimental effects on the growth, reproduction, and survival of a large range of plants, invertebrates, fish, and amphibians. When salt dissolves, it may disrupt the ability of freshwater organisms to regulate how fluid passes in and out of their bodies.

5. Animals, including mammals, may be harmed by elevated concentrations of salt in runoff or surface waters that they rely on for hydration. Birds are especially sensitive to salt. Consumption of very small amounts of salt can result in toxicosis and death within the bird population.

6. The addition of salt to Powdermill Brook has the potential to harm the aquatic environment and aquatic organisms and to alter important species habitat. Powdermill Brook and the Westfield River have been designated by the Commonwealth as Coldwater Fish Resources because fish that require coldwater to survive or reproduce occur in these water bodies or their tributaries. The Facility is less than a mile upstream of designated habitat for state-listed rare

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<sup>1</sup> Westfield’s number 2 drinking water well is currently inactive.

species, known as “Creeper,” a freshwater mussel. The Creeper’s habitat may be impacted by Cargill’s unlawful stormwater discharges.

7. Defendants’ discharges of stormwater to Powdermill Brook via the Westfield municipal separate storm drain system are in violation of the Clean Water Act. The Commonwealth of Massachusetts (the “Commonwealth”) brings this civil suit to enforce the requirements of the Act. The Commonwealth seeks injunctive relief, civil penalties, and other relief the Court deems appropriate to redress Defendants’ illegal discharges of pollution.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).

9. On August 9, 2019, the Commonwealth provided notice of Defendants’ violations of the Clean Water Act, and of its intention to file suit against Defendants (the “Notice Letter”), to the Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region 1; the Commissioner of the Massachusetts Department of Environmental Protection (“MassDEP”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

10. More than sixty days have passed since notice was served.

11. This action is not barred by any prior state or federal enforcement action addressing the violations alleged in this Complaint.

12. The Commonwealth has an interest in protecting for its residents the integrity of Massachusetts waters, and the related health, safety, economic, recreational, aesthetic, and environmental benefits those waters provide. The interests of the Commonwealth have been, are

being, and will continue to be adversely affected by Defendants' failure to comply with the Clean Water Act, as alleged in this Complaint. The requested relief will redress the harms to the Commonwealth caused by Defendants' activities. Defendants' continuing acts and omissions, as alleged in this Complaint, will irreparably harm the Commonwealth, for which harm it has no plain, speedy, or adequate remedy at law.

13. Venue is proper in the District Court of Massachusetts pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1) because the source of the violations is located within this judicial district.

### **PARTIES**

14. Plaintiff is the Commonwealth, appearing by and through the Attorney General.

15. The Attorney General is the chief law officer of the Commonwealth, with offices at One Ashburton Place, Boston, Massachusetts. She is authorized to bring this action and to seek the requested relief under G.L. c. 12, §§ 3 and 11D.

16. Defendant Cargill, Inc. is a corporation organized under the state of Delaware. Cargill owns the Facility. Cargill's principal address is listed as 15407 McGints Road, Wayzata, Minnesota.

17. Defendant Salt City, Inc. is a domestic corporation that operates Cargill's road salt distribution and warehousing facility at the Facility, and that has its principle address listed as 163 Union Street, Westfield.

### **STATUTORY BACKGROUND**

#### **Federal Clean Water Act Requirements**

18. The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including

the requirement that the discharge be permitted by EPA under the National Pollutant Discharge Elimination System (“NPDES”). *See* Sections 301(a), 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

19. Stormwater is the leading cause of water quality impairment in Massachusetts. During every rain or snowmelt event, runoff flows over the land surface, picking up potential pollutants such as salt, sediment, organic matter, nutrients, metals and petroleum by-products. Polluted stormwater runoff can be harmful to plants, animals, and people.

20. To minimize polluted stormwater discharges from industrial facilities, EPA has issued a general industrial stormwater permit (“Stormwater Permit”) under the NPDES program. EPA first issued the Stormwater Permit in 1995 and reissued the permit in 2000, 2008, and 2015. *See* 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 80 Fed. Reg. 34403 (June 4, 2015).

21. Motor freight transportation and warehousing facilities that discharge industrial stormwater to waters of the United States directly or through separate storm sewer systems are subject to the requirements of this Stormwater Permit. Stormwater Permit, Appendix D, pg. D-4.

22. The Stormwater Permit requires these facilities to, among other things:
- a. prepare a stormwater pollution prevention plan (“SWPPP”) that, among other things, describes the facility and identifies all stormwater outfalls, Stormwater Permit, pg. 31;
  - b. submit to EPA a Notice of Intent (“NOI”) to be covered by the Stormwater Permit that lists all stormwater outfalls by a unique 3-digit code and corresponding latitude and longitude coordinates, Stormwater Permit, Appendix G;

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