



quickly and over a short distance by groundwater to the surface waters of the Lewis Bay Watershed System, including to Lewis Bay, Hyannis Inner Harbor, Snows Creek, Stewarts Creek and Halls Creek, among other waterbodies.

6. Historically, the bays and estuaries of the Lewis Bay Watershed System had teemed with diverse aquatic life, and many of these waterbodies were carpeted with meadows of eelgrass—one of nature’s most valuable and productive marine habitats.

7. These waterbodies and the natural systems they support are treasured by the residents of and visitors to Cape Cod, including CLF members.

8. Today, the Lewis Bay Watershed System suffers from a severe nitrogen-pollution crisis. As a result of nitrogen pollution, invasive algae have experienced population explosions, eelgrass meadows have been extirpated, rotting detritus starves the seafloor of sunlight, and algal blooms offer only putrid smells and unsightly scums.

9. According to the Massachusetts Department of Environmental Protection (MassDEP), failure to reduce and control nitrogen pollution to these waters could result in complete replacement of eelgrass by macro-algae, a higher frequency of extreme decreases in dissolved oxygen concentrations and fish kills, widespread occurrence of unpleasant odors and visible scum, and a complete loss of benthic macroinvertebrates throughout most of the system.

10. Indeed, according to MassDEP, as a result of nitrogen pollution, many commercial and recreational uses of the Lewis Bay Watershed System will be greatly reduced and could cease altogether.

11. Defendant’s discharge from the Hyannis Facility is the largest individual source of nitrogen polluting the waters of the Lewis Bay Watershed System: Defendant discharges 12,947 kilograms of nitrogen into these waters annually.

12. Under the Clean Water Act, no person may discharge pollutants from a point source to the waters of the United States unless so authorized by the Environmental Protection Agency under a National Pollutant Discharge Elimination Scheme permit.

13. Defendant does not have—and has never had—authorization from EPA to discharge pollutants from the Hyannis Facility to the waters of the Lewis Bay Watershed System.

14. Without an order from this Court, the ecological toll of Barnstable’s unlawful pollution of the Nation’s waters will only grow. Barnstable has plans dramatically to expand the Hyannis Facility in coming years, increasing the flow of effluent through its sand beds, and thus the load of nitrogen it will discharge into the rivers, creeks, ponds, bays, and estuaries of the Lewis Bay Watershed System.

15. To address this unlawful and ongoing damage to this Nation’s waters, CLF respectfully requests declaratory, injunctive, and other relief the Court deems just and appropriate, to remedy Barnstable’s violations of the Clean Water Act.

### **JURISDICTION AND VENUE**

16. CLF brings this civil suit under the citizen suit provision of the Clean Water Act. 33 U.S.C. § 1365.

17. The Court has subject matter jurisdiction as CLF’s action arises under the laws of the United States, namely the Federal Water Pollution Control Act (“Clean Water Act” or “the Act”). 33 U.S.C. § 1365(a)(1); 28 U.S.C. § 1331 (federal question).

18. The Court also has jurisdiction to declare the rights and other legal relations of the Parties with the force and effect of a final judgment or decree, to enjoin Defendant to abate its unlawful acts and remediate past violations of federal law, and award further necessary or proper

relief. 28 U.S.C. §§ 2201-02 (declaratory judgment); 33 U.S.C. § 1365(a) (injunctive relief and civil penalties); *id.* § 1365(d) (litigation costs).

19. CLF has satisfied the Clean Water Act's notice requirement. On August 5, 2020, CLF notified Defendant of its intention to file suit for violations of the Clean Water Act. 33 U.S.C. § 1365(a)(1); 40 C.F.R. § 135.2.

20. A true and accurate copy of Plaintiff's Notice Letter (the "Notice Letter") is appended as Exhibit A.

21. More than 60 days have elapsed since CLF's notice to Defendant.

22. During the intervening time, neither the 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).

23. As the source of the violations is located within this judicial district, venue is proper. 33 U.S.C. § 1365(c)(1).

#### **THE PARTIES**

24. Plaintiff, CLF, is a nonprofit, member-supported, regional organization dedicated to protecting New England's environment.

25. CLF is incorporated under the laws of Massachusetts with a principal place of business at 62 Summer Street, Boston, Massachusetts.

26. For fifty years, CLF has worked to protect the health of New England's waterways, including addressing the significant water quality impacts of sewage pollution. CLF has a history of working to protect the waters of Cape Cod.

27. CLF actively seeks federal and state agency implementation of the Clean Water Act and, where necessary, directly initiates actions on behalf of itself and its members to enforce the Act.

28. CLF has over 5,400 members, including more than 2,900 members in Massachusetts.

29. CLF members use and enjoy New England's waterways for recreational and aesthetic purposes, including boating, swimming, fishing, hunting, and sightseeing.

30. The waters used and enjoyed by CLF's members include, but are not limited to, the waters of the United States adversely affected by Defendant's unpermitted discharges of pollutants.

31. Defendant is a municipality and therefore a person under the Clean Water Act.

32. Defendant owns and/or operates the Barnstable Water Pollution Control Facility in Hyannis, Massachusetts.

## LEGAL BACKGROUND

### **The Clean Water Act's NPDES Regime:**

33. In 1972, Congress passed the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

34. In service of this purpose, the Clean Water Act forbids the "discharge of a pollutant" from a "point source" to "navigable waters" without the appropriate permit from the Environmental Protection Agency (EPA). 33 U.S.C. § 1311(a); 33 U.S.C. § 1362(12)(A).

35. "Navigable waters" refer to "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7); 40 C.F.R. § 120.2.

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