

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

<p>CONSERVATION LAW FOUNDATION, INC.,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>MASSACHUSETTS WATER RESOURCES AUTHORITY,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. _____</p> <p><b>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES</b></p>
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**INTRODUCTION**

1. The Massachusetts Water Resources Authority (“MWRA”) is responsible for monitoring and treating the polluted wastewater of over 5,500 hospitals, manufacturers, and other industrial users in Greater Boston before it is discharged into Massachusetts Bay.

2. MWRA’s responsibility, conferred by the United States Environmental Protection Agency (“EPA”), is essential to water quality protection under the National Pretreatment Program.

3. Over 200 times, MWRA failed to issue the required enforcement responses to its industrial users that violated pollutant parameters like cyanide, lead, and mercury, and other permit conditions.

4. MWRA’s failures to enforce are even more extensive and pervasive than publicly-available information shows.

5. MWRA’s noncompliance with its EPA-approved Enforcement Response Plan and its federal permit violates the Clean Water Act, contributes to water quality degradation, and harms Conservation Law Foundation’s (“CLF”) members.

6. CLF seeks declaratory judgment, injunctive relief, issuance of a civil penalty, and other relief with respect to MWRA's violations of the Clean Water Act, 33 U.S.C. §§ 1251, 1311(a), 1342, 40 CFR § 403, and its National Pollutant Discharge Elimination System ("NPDES") permit.

### **JURISDICTION AND VENUE**

7. Plaintiff brings this civil suit under the citizen suit provision of Section 505 of the Clean Water Act, 33 U.S.C. § 1365.

8. This Court has subject matter jurisdiction over the parties and this action pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1); 28 U.S.C. § 1331 (an action arising under the Constitution and laws of the United States); and 28 U.S.C. §§ 2201 and 2202 (declaratory judgment).

9. On February 23, 2022, Plaintiff notified MWRA and its agents of its intention to file suit for violations of the Clean Water Act, in compliance with the statutory notice requirements of Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), and the corresponding regulations located at 40 C.F.R. § 135.2. A true and accurate copy of Plaintiff's Notice Letter ("Notice Letter") is attached as Exhibit 1. The Notice Letter is incorporated by reference herein.

10. Defendant received the Notice Letter. Return receipts attached as Exhibit 2.

11. Plaintiff also sent copies of the Notice Letter to the Administrator of the EPA, the Regional Administrator of EPA Region 1, the Citizen Suit Coordinator, and the Massachusetts Department of Environmental Protection ("MassDEP").

12. Each of the addressees identified in paragraph 11 received the Notice Letter. Ex. 2.

13. More than sixty days have elapsed since Plaintiff mailed its 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).

14. The Clean Water Act violations alleged in the Notice Letter are of a continuing nature, ongoing, or reasonably likely to re-occur. The Defendant remains in violation of the Clean Water Act.

15. Venue is proper in the United States District Court for the District of Massachusetts pursuant to Section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial district.

## **PARTIES**

### **PLAINTIFF**

16. CLF is a nonprofit, member-supported, regional environmental advocacy organization dedicated to protecting New England's environment.

17. CLF has a long history of working to protect the health of New England's water resources, including addressing sources of wastewater pollution.

18. CLF has over 6,300 members in New England.

19. CLF members use and enjoy the beaches and waters of Boston Harbor and Massachusetts Bay for recreational and aesthetic purposes, including but not limited to swimming, boating, fishing, and observing wildlife.

20. CLF members use the waters of Boston Harbor and Massachusetts Bay for scientific and occupational purposes, including but not limited to studying marine ecology, metals, microbes, and marine mammals.

## DEFENDANT

21. MWRA is a Massachusetts public authority established by an enabling act passed in 1984. Mass. Gen. Laws Chapter 372, (1984).

22. MWRA provides wholesale water and sewer services to 3.1 million customers and over 5,500 large industrial users throughout eastern and central Massachusetts. MWRA, “Comprehensive Annual Financial Report,” available at [https://www.mwra.com/finance/documents/CAFR/CAFR\\_20-21-FINAL.pdf](https://www.mwra.com/finance/documents/CAFR/CAFR_20-21-FINAL.pdf).

23. In fiscal year 2021, MWRA’s customer service revenues were approximately \$781.4 million, and MWRA’s total operating expenses were approximately \$291.4 million.<sup>1</sup> *Id.*

24. MWRA’s total assets as of June 30, 2021 were approximately \$7.1 billion. *Id.*

25. MWRA is the authority that oversees and coordinates the preliminary primary and secondary treatment to its wastewater flows at the Deer Island and Clinton Treatment Plants.

26. MWRA is the “person,” as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Complaint.

27. An “Industrial User” is “...a source of discharge of Industrial Waste to a Sewerage System.” 360 CMR 10.004.

28. MWRA’s Deer Island Treatment Plant, located at 190 Tafts Ave., Winthrop, MA 02152, is a Publicly Owned Treatment Works (“POTW”) as defined by the Clean Water Act and federal regulations. 33 U.S. Code § 1292(2)(A) (defining POTW); 40 CFR § 403.3(q) (same).

29. EPA issued NPDES Permit No. MA0103284 to MWRA for the operation of the Deer Island Treatment Plant. NPDES Permit attached as Exhibit 3.

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<sup>1</sup> The operating expenses exclude depreciation.

## **STATUTORY AND REGULATORY BACKGROUND**

### **THE CLEAN WATER ACT**

30. The objective of the Clean Water Act is “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a) (1972).

31. The Clean Water Act prohibits the addition of any pollutant to navigable waters from any point source except as authorized by a NPDES permit applicable to that point source. 33 U.S.C. §§ 1311(a) and 1342.

32. The Clean Water Act’s implementing regulations define the “discharge of a pollutant” 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 also* 33 U.S.C. § 1362(12).

33. A “pollutant” is any “solid waste,” “chemical wastes, biological materials,” “wrecked or discarded equipment, rock, sand,” or “industrial ... waste” discharged into water. 33 U.S.C. § 1362(6).

34. The Clean Water Act defines navigable waters as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). “Waters of the United States” are further defined by EPA regulations. 40 C.F.R. § 120.2.

35. Massachusetts Bay is a “Water of the United States” as defined by the Clean Water Act and EPA regulations. *See* 33 U.S.C. § 1362(7); 40 C.F.R. § 120.2.

36. “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).



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