

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

CONSERVATION LAW FOUNDATION, INC. Plaintiff, v. NYLON CORPORATION OF AMERICA, INC; and WEMBLY ENTERPRISES, LLC, Defendants. Case No. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

INTRODUCTION

1. This action is a citizen suit brought under Section 505 of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA,") 33 U.S.C. § 1365(a), to address Clean Water Act violations by Nylon Corporation of America, Inc. ("NYCOA"), and Wembly Enterprises, LLC ("Wembly Enterprises") (collectively, "Nylon," or "Defendants").

2. Nylon is discharging pollutants into the Merrimack River in violation of its National Pollutant Discharge Elimination System ("NPDES") wastewater and stormwater permits. Nylon's discharge of pollutants into the Merrimack River degrades the river's health and diminishes the use and enjoyment of the river by CLF members.

3. Nylon's wastewater discharges have been subject to the 2008 and 2019 NPDES individual wastewater permit No. NH0000116 (the "2008 Wastewater Permit" and the "2019 Wastewater Permit," collectively, the "Wastewater Permits"). Nylon has discharged, and continues to discharge, wastewater into waters of the United States in violation of the Wastewater Permits by: (1) violating the Wastewater Permits' effluent limitation and the State's

Certification requirement for pH; (2) violating the Wastewater Permits' effluent limitation for temperature; (3) contributing to the receiving waters' failure to meet water quality standards, and interfering with its assigned use; (4) violating the Wastewater Permits' narrative effluent limitations; and (5) failing to comply with monitoring and reporting requirements.

4. Nylon's stormwater discharges have been subject to the 2015 and 2021 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2015 Stormwater Permit" and the "2021 Stormwater Permit," collectively, the "Stormwater Permits"). Nylon has discharged, and continues to discharge, stormwater associated with its industrial activities into waters of the United States in violation of the Stormwater Permits by: (1) failing to take required corrective actions; (2) failing to follow required procedures for minimizing pollutant discharges; (3) contributing to the receiving waters' failure to meet water quality standards and their impairments; and (4) failing to comply with monitoring and reporting requirements.

5. Conservation Law Foundation ("CLF") seeks declaratory judgment, injunctive relief, and other relief with respect to the Facility's violations of the Wastewater Permits, Stormwater Permits, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and applicable regulations, as well as the State's Certification requirement pertaining to pH discharges.

### **JURISDICTION AND VENUE**

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

7. 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).

8. On February 1, 2022, Plaintiff notified Nylon 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.

9. Each Defendant received the Notice Letter. A copy of a return receipt is attached as Exhibit 2.

10. Plaintiff also sent copies of the Notice Letter to the Administrator of the United States Environmental Protection Agency ("EPA"), the Acting Regional Administrator of EPA Region 1, the Citizen Suit Coordinator, and the New Hampshire Department of Environmental Services ("NH DES").

11. Each of the addressees identified in the preceding paragraph received the Notice Letter. A copy of a return receipt is attached as Exhibit 3.

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

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

14. Venue is proper in the United States District Court for the District of New Hampshire 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**

15. Plaintiff, Conservation Law Foundation (“CLF”), is a nonprofit, member-supported, regional environmental advocacy organization dedicated to protecting New England’s environment.

16. CLF has a long history of working to protect the health of New England’s water resources, including addressing sources of wastewater and industrial stormwater pollution.

17. CLF has over 6,300 members in New England. Members of CLF use and enjoy the waters of New Hampshire, including the Merrimack River, for drinking water and for recreational and aesthetic purposes, including but not limited to boating, swimming, fishing, and observing wildlife.

18. CLF members live and spend time near the Merrimack River. CLF members use and enjoy the Merrimack River downstream from Defendants’ facility for recreational purposes, including swimming, rowing, kayaking, birdwatching, and observing wildlife; as well as aesthetic purposes.

19. CLF members live in the Merrimack River Watershed and currently source their drinking water from the Merrimack River.

20. CLF members have been, and continue to be, directly and adversely affected by discharges from Defendants’ Facility degrading water quality in the Merrimack River, in violation of the Clean Water Act.

21. CLF members are harmed by low-pH and high temperature wastewater discharge to the Merrimack River from Defendants’ Facility, in violation of the Clean Water Act.

22. CLF members are harmed by stormwater discharge of zinc and other pollutants to the Merrimack River from Defendants’ Facility, in violation of the Clean Water Act.

23. Nylon’s wastewater and stormwater discharges impair the recreational and aesthetic uses of the Merrimack River by harming fish, birds, and other wildlife, contributing to unpleasant scum, foam, and/or odor, increasing toxic pollution, and reducing the use and enjoyment of the river by CLF members.

**Defendants**

24. Defendant Nylon Corporation of America (“NYCOA”) is a corporation incorporated under the laws of Delaware.

25. Defendant Wembly Enterprises, LLC (“Wembly Enterprises”) is a corporation incorporated under the laws of New Jersey.

26. Defendant Wembly Enterprises is the parent company of NYCOA.

27. Defendant Wembly Enterprises has control over its subsidiary NYCOA.

28. Defendant Wembly Enterprises is liable for the Clean Water Act violations of NYCOA.

29. Defendant Wembly Enterprises and its subsidiary NYCOA own and/or operate a nylon production facility located at 333 Sundial Avenue in Manchester, New Hampshire, 03103 (the “Facility”).

30. Defendant NYCOA has owned and/or operated the Facility since at least 1994.

31. Defendant Wembly Enterprises has owned and/or operated the Facility since at least 2013.

32. Defendants Wembly Enterprises and NYCOA are responsible for ensuring that the Facility operates in compliance with the Clean Water Act.

33. Defendants Wembly Enterprises and NYCOA are both persons as defined by Section 502(5) of the Clean Water Act, 33 U.S.C. 1362(5).

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