

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

CONNECTICUT FUND FOR THE
ENVIRONMENT, INC., d/b/a SAVE THE SOUND,
FRIENDS OF THE LAKE, INC.,
RIVERS ALLIANCE OF CONNECTICUT, INC.

Plaintiff

v.

THE CITY OF DANBURY

Defendant

CIVIL ACTION NO.
3:16-cv-02045-MPS

March 3, 2016

AMENDED COMPLAINT

NATURE OF THE ACTION

1. Plaintiffs Connecticut Fund for the Environment, Inc., d/b/a Save the Sound, Friends of the Lake, Inc., and Rivers Alliance of Connecticut, Inc. bring this "citizen suit" pursuant to Section 505(a)(1) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1365(a)(1), against the City of Danbury to address and abate its continuing violations of the Act.

PARTIES

2. Plaintiff Connecticut Fund for the Environment, Inc. ("CFE") was founded in 1978 to protect and improve the land, air, and water of Connecticut using advocacy and scientific expertise to achieve results that benefit our environment for current and future generations. CFE is a 501(c)(3) not-for-profit corporation, incorporated under the laws of the State of Connecticut,

with its principal place of business at 900 Chapel Street, New Haven, CT 06510. CFE represents more than 4,700 members in Connecticut and New York. CFE has represented the interests of its membership in legal proceedings before trial and appellate courts and federal and state administrative agencies in various proceedings in which CFE sought to protect the environment and natural resources for its members and the citizens of Connecticut. Save the Sound was founded in 1972 as the Long Island Sound Taskforce to preserve and protect Long Island Sound. In 2004, CFE merged with Save the Sound and Save the Sound was incorporated as a program within CFE. As a program within CFE, Save the Sound seeks to protect, conserve and protect the environmental health and natural resources of the Long Island Sound.

3. Hereinafter, the plaintiff is referred to in this complaint as CFE/ Save the Sound.

4. Plaintiff Friends of the Lake, Inc. was founded in 2003 as a citizen advocacy group for Lake Lillinonah. The Friends of the Lake, Inc. seek to preserve, protect, and improve the environment of Lake Lillinonah, for the recreational enjoyment for those who use the lake, to improve the water quality of Lake Lillinonah to the standards set forth in the federal Clean Water Act, and to protect the environment of this beautiful section of the Housatonic River and its watershed for the long term. Friends of the Lake, Inc. is a 501(c)(3) not-for-profit corporation, incorporated under the laws of the State of Delaware, with its principal place of business at 100 Benson Road, Bridgewater, Connecticut 06752. Friends of the Lake, Inc. has over 100 families residing in Bridgewater, New Milford, Newtown, Southbury, Roxbury, and Brookfield as members.

5. Hereinafter, the plaintiff is referred to in this complaint as Friends of the Lake.

6. Plaintiff Rivers Alliance of Connecticut, Inc. is a 501(c)(3) not-for-profit organization, incorporated under the laws of the State of Connecticut, with its principal place of business at 7 West Street, Litchfield, Connecticut 06759. Rivers Alliance of Connecticut, Inc. was founded in 1992 to assist local watershed organizations, to provide educational programs on the value of water resources, and to work to establish sound policies and practices for water management in Connecticut. Rivers Alliance of Connecticut, Inc. has 480 members, including individuals, businesses, and approximately 40 environmental groups with hundreds of members. Rivers Alliance of Connecticut, Inc. was given a leadership role in the comprehensive statewide water planning pursuant to Public Act No. 14-163.

7. Hereinafter, the plaintiff is referred to in this complaint as Rivers Alliance.

8. Members of CFE/Save the Sound, Friends of the Lake, and Rivers Alliance use the rivers and waterways of the state, including Limekiln Brook, the Still River, the Housatonic River, Lake Lillinonah, and Long Island Sound and its beaches and embayments for various recreational uses including, but not limited to, swimming, fishing and boating, and for aesthetic enjoyment. The violations alleged herein cause or contribute to pollution in waters used and enjoyed by plaintiffs' members, and are injurious to human health, wildlife, recreational and commercial activities in or around these rivers and waterways and Long Island Sound, and other uses pursued and enjoyed by plaintiffs' members. The violations alleged herein result in public health risks to plaintiffs' members and negative impacts to waterways, threaten the health and welfare of plaintiffs' members, impair and threaten their use and enjoyment of rivers and waterways of the state, Long Island Sound, and other waters, and deny them the level of water quality to which

they are entitled under the CWA. Plaintiffs' and their members have an interest that is adversely affected by Defendant's illegal discharges, by-passes, and violations of the CWA.

9. Defendant City of Danbury is a political subdivision of the State of Connecticut, is a municipality within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. Defendant operates a wastewater pollution control facility ("WPCF") located at Newtown Road, Danbury, Connecticut and operates a sewage collection system that transports sewage to the WPCF.

11. Plaintiffs are "citizens" for purposes of Section 505 of the CWA, 33 U.S.C. § 1365, and file this "citizen suit" on behalf of themselves and their members.

JURISDICTION AND VENUE

12. Jurisdiction is conferred upon this court pursuant to Section 501(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C. § 1331.

13. On September 26, 2016, Plaintiff CFE/Save the Sound gave notice of the CWA violations known to it at that time and its intent to file suit to the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA Region 1, and to the Defendant, as required by Section 505(b)(1) of the CWA, 33 U.S.C. § 1365(b)(1).

14. More than sixty (60) days have passed since notice was served pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A).

15. As of the date of the filing of the complaint, neither EPA nor CT DEEP had commenced or diligently prosecuted a court action to redress violations under Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B), nor an administrative penalty action that would preempt this action pursuant to Section 309(g)(6)(A) of the CWA, 33 U.S.C. § 1319(g)(6)(A).

16. After issuance of CFE/Save the Sound's sixty day notice letter on September 26, 2016, CFE/Save the Sounds, Friends of the Lake, and Rivers Alliance became aware of additional unauthorized discharges of raw or partially treated sewage that Defendant had not reported to CT DEEP.

17. On December 13, 2016, CFE/Save the Sound issued a second notice containing these additional violations of the CWA and of its intent to file suit to the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA Region 1, and to the Defendant, as required by Section 505(b)(1) of the CWA, 33 U.S.C. § 1365(b)(1).

18. On December 13, 2016, Friends of the Lake and Rivers Alliance issued a separate notice of the same CWA violations contained in CFE/Save the Sound's September 26, 2016 notice and these additional CWA violations discovered after September 26, 2016, and of their intent to file suit to the Connecticut Department of Energy and Environmental Protection ("CT DEEP"), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA Region 1, and to the Defendant, as required by Section 505(b)(1) of the CWA, 33 U.S.C. § 1365(b)(1).

19. More than sixty (60) days have passed since the December 13, 2016 notices were served pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A).

20. As of the date of the filing of this amended complaint, neither EPA nor CT DEEP has commenced or diligently prosecuted a court action to redress violations under Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B), nor an administrative penalty action that would preempt this action pursuant to Section 309(g)(6)(A) of the CWA, 33 U.S.C. § 1319(g)(6)(A).

21. Venue is appropriate in this district pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365-(c)(1), because the source of the violations are located within this judicial district.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

22. The Still River is a 25.4 mile tributary to the Housatonic River. It flows out of New York State east of the Connecticut-New York border and travels through Danbury where it intersects with Limekiln Brook, which is a tributary to the Still River. At the intersection with Limekiln Brook, the Still River changes direction to a northerly trajectory towards New Milford. At this point, the Still River is a favorite location for canoeing and kayaking and it runs through the Housatonic Valley River Trail and the Still River Greenway Trail. The Still River enters the Housatonic River at New Milford.

23. Lake Lillinonah is the second largest lake in Connecticut. It was formed in 1955 by the impoundment of the Housatonic River and the Shepaug River by the Connecticut Light and Power Company. Lake Lillinonah is bordered by six towns: Brookfield, Bridgewater, Newtown,

New Milford, Roxbury, and Southbury. Lake Lillinonah is 12 to 14 miles in length, has a surface area of approximately 1900 acres, and has 45 miles of shore Line.

24. The Housatonic River flows into Long Island Sound at Milford.

25. Long Island Sound is a unique estuary that has two connections to the sea and receives the flow of several major rivers that drain fresh water from New England and as far as the U.S. border with Quebec. The Sound provides feeding, breeding, nesting, and nursery areas for a diversity of plant and animal life, including 1200 species of invertebrates, 170 species of fish, and dozens of species of migratory birds. In 1987, Congress designated Long Island Sound as an Estuary of National Significance.

26. As a result of pollution, Long Island Sound is suffering from increased degradation in water quality, leading to low shellfish harvests and the closure of shellfish beds, depletion of fishing stocks and fish consumption advisories, periodic beach closures, restrictions on recreational activities, low dissolved oxygen (hypoxia), pathogen contamination, toxic contamination, and floatable debris, adversely impacting businesses, public health, recreation, and aesthetics.

27. A source of pollution in Limekiln Brook, the Still River, the Housatonic River, Lake Lillinonah and Long Island Sound comes from raw and partially treated sewage from poorly maintained sanitary sewer pipes which are supposed to transport sanitary wastewater from homes, businesses, public toilet facilities, and other locations to wastewater treatment plants for removal of pollutants in order to make the wastewater safe for discharge into the environment. Sewage collection systems consist of sewer pipes, along with associated facilities including, pumping stations, power and other equipment, and wastewater treatment facilities. Sewage

collection systems are generally owned and operated by municipalities or regional authorities comprised of several municipalities. Neglect of basic maintenance and failure to perform routine and preventative maintenance of the various components of sewage collection systems allows the discharge of raw or partially treated sewage into streams and rivers, which ultimately discharge into Long Island Sound causing pollution and impairing the water quality of these streams, rivers, and Long Island Sound.

28. The CWA was enacted by Congress in 1972 and it, along with its amendments over the years, mandates that our nation's water bodies be made clean. For Limekiln Brook, the Still River, the Housatonic River, Lake Lillinonah, and Long Island Sound, this means that these water bodies must meet water quality standards that make it safe for fish, shellfish, humans, and all other species that live on it, in it and near it.

29. In order to meet the mandate of the CWA, the entire sanitary sewage system, including not only the sewage treatment plants, but also the pipes that transport sanitary sewage effluent to the treatment plants, must be maintained in good working order. In a well maintained system only wastewater from homes and businesses would be transported through the sanitary sewer pipes for effective treatment at the sewage treatment plant, which would then discharge cleansed water into receiving water. When a system is not well maintained, pipes become blocked by fats, oils, and grease (FOG) from wastewater discharged from food service establishments into the municipal wastewater collection system and by other substances and materials such as, roots, rocks, and other objects. These blockages of FOG and other substances and materials in the pipes transporting sanitary sewage result in the discharge of raw sewage into receiving water bodies causing pollution and conditions detrimental to the public health and to the health and

environment of the water bodies. Additionally, failure to perform routine and preventative maintenance of the electrical and mechanical equipment in the wastewater collection system can result in discharges of raw and partially treated sewage at various locations in the wastewater collection and treatment system.

CLEAN WATER ACT STATUTORY SCHEME

30. The CWA is a comprehensive statute designed to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Section 101(a) of the CWA, 33 U.S.C. § 1251(a). To achieve that goal, Section 301(a) of the CWA, U.S.C § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with the terms and conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The term “pollutant” is defined in Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include “sewage”; and “discharge of a pollutant” is defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12) as “any addition of any pollutant to navigable waters from any point source.”

31. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES permit program, and authorizes the Administrator of EPA to issue permits for the discharge of pollutants into navigable waters. Administration of the federal NPDES permit program was duly delegated to the State of Connecticut in 1973, pursuant to Section 402(b) of the CWA, 33 U.S.C § 1342(b). The Connecticut authority for the issuance of permits is established at Section 22a-430 of Chapter 446k of the Connecticut General Statutes.

32. The Defendant discharges pollutants to navigable waters pursuant to NPDES Permit No. CT0100145 (“Permit”). Defendant’s Permit was reissued by the State of Connecticut on October 30, 2014.

33. The Permit authorizes the Defendant to discharge wastewater to Limekiln Brook, which converges with the Still River in Danbury. The Still River flows into the Housatonic River in New Milford, which then flows through Lake Lillinonah and ultimately into Long Island Sound. Long Island Sound, and the rivers, streams, bays, and other waters that flow into it are navigable waters of the United States.

34. The Permit authorizes the Defendant to discharge treated sanitary sewage from Discharge Serial Number (DSN) 001-1 into Limekiln Brook at its WPCF on Newtown Road in Danbury. The permit does not authorize the discharge of untreated or partially treated effluent from any point sources.

FIRST CLAIM FOR RELIEF
UNAUTHORIZED DISCHARGES

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), provides that the “discharge of any pollutant” by any “person” is unlawful, unless the discharge complies with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by a valid permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

37. Section 502(12) of the Clean Water Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

38. Section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, chemical wastes, biological materials, rock, sand, and industrial waste discharged into water.

39. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14) defines “point source” broadly to include “any discernable, confined and discrete conveyance, included but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

40. Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including territorial seas.” Long Island Sound, and the rivers, streams, bays, and other waters that flow into it are navigable waters of the United States.

41. On numerous occasions, and continuing to the present date, the Defendant has discharged untreated or partially treated wastewater to navigable waters through point sources within its wastewater collection system other than the discharge point authorized by the Permit.

42. The City of Danbury is required pursuant to the Permit to report to CT DEEP any bypasses of the treatment plant or any component of the sewage collection system.

43. Beginning in January, 2011, the Defendant has reported numerous unauthorized discharges of raw or partially treated sewage in violation of the Permit and the CWA. Danbury had

unauthorized discharges on the following dates: 10/25/11, 11/3/11, 1/9/12, 2/14/12, 3/5/12, 3/30/12, 4/9/12, 4/12/12, 4/23/12, 7/22/12, 2/4/13, 2/16/13, 9/6/13, 9/26/13, 9/29/13, 10/15/13, 10/16/13, 11/9/13, 11/11/13, 11/29/13, 12/24/13, 1/1/14, 2/27/14, 3/2/14, 3/4/14, 3/13/14, 3/23/14, 4/11/14, 9/22/14, 10/2/14, 10/3/14, 10/30/14, 11/3/14, 12/2/14, 12/4/14, 12/7/14, 12/9/14, 1/11/15, 1/14/15, 1/17/15, 3/3/15, 3/11/15, 3/16/15, 3/25/15, 4/3/15, 6/12/15, and 2/19/16. The majority of these reported unauthorized discharges of raw or partially treated sewage were caused by blockages in sanitary sewer pipes and by electrical and mechanical equipment failures.

44. The discharge of these pollutants affects the public health and safety, the health of marine life, causes degradation of water quality, and adversely affects the aesthetic quality and enjoyment of Limekiln Brook, the Still River, the Housatonic River, Lake Lillinonah, and Long Island Sound.

45. As a result of these unauthorized discharges, Defendant has discharged pollutants in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for each day that it discharged untreated wastewater through point sources not authorized by the Permit.

46. Based upon information and belief, Defendant's violations of the CWA are ongoing and continuous.

SECOND CLAIM FOR RELIEF
UNAUTHORIZED AND UNREPORTED DISCHARGES

47. Paragraphs 1 through 34 and paragraphs 36 through 42 are incorporated herein by reference.

48. Section 8 (C) of Defendant's NPDES Permit No. CT0100145, which incorporates Section 22a-430-3(k) of the Regulations of Connecticut State Agencies, requires the Defendant in all instances of bypasses of the treatment system or a component of the sewage collection system to notify CT DEEP by telephone within 2 hours of learning of any bypass event during normal business hours or if not during normal business hours, then within 2 hours of the Defendant learning of the bypass event. The Defendant is further required to submit a written report of each occurrence within 5 days of Defendant learning of each occurrence.

49. Beginning in April, 2012, the Defendant has had additional unauthorized discharges of raw and partially treated sewage that Defendant failed to report to CT DEEP. These additional, unreported bypasses occurred on the following dates: 4/23/12, 4/25/12, 1/8/13, 3/19/13, 6/16/13, 3/19/14, 6/2/14, 6/17/14, 10/21/14, 1/11/15, 2/20/15, 2/27/15, 10/9/15, 10/10/15, 11/13/15, 11/14/15, 1/10/16, 1/22/16, 2/3/16, and 3/18/16. The majority of these unauthorized, unreported discharges of raw or partially treated sewage were caused by blockages in sanitary sewer pipes. Only the unauthorized discharges that occurred on 4/25/12 and 6/17/14 were not caused by the actions or inactions of the Defendant but were caused by private property owners. The Defendant, however, failed to report these discharges as required by its NPDES Permit.

50. Paragraphs 44 through 46 are incorporated herein by reference.

THIRD CLAIM FOR RELIEF
PERMIT EXCEEDANCES

51. Paragraphs 1 through 34 and paragraphs 36 through 40 are incorporated herein by reference.

52. The Permit authorizes the Defendant to discharge certain chemicals and other substances within specific parameters in the final effluent discharged from the treatment plant.

53. The City of Danbury is required pursuant to the Permit to monitor for certain chemicals and other substances during specific monitoring periods and report to CT DEEP any exceedances of specific permit effluent limitations.

54. On numerous occasions, and continuing to the present date, the Defendant has discharged certain chemicals and other substances in excess of the Permit parameters in the final effluent discharged from its WPCF in to navigable waters.

55. The Defendant has reported the following exceedances of permit parameters for the following chemicals or other substances during the following monitoring periods: exceedances of Lead, total (as Pb) during the monitoring periods 9/01/15 to 9/30/15, 1/1/16- to 1/31/16, and 2/01/16 to 2/29/26; exceedances of Copper, total (as Cu) and Zinc, total (as Zn) during the monitoring period 6/01/15 to 6/30/15; and exceedances of Coliform, fecal general during the monitoring period 7/01/15 to 7/31/15.

56. As a result of these exceedances of the Permit, Defendant has discharged pollutants in violation of its Permit and in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

57. Based upon information and belief, Defendant's violations of the CWA are ongoing and continuous.

RELIEF SOUGHT


Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

1. Permanently enjoin the defendant from discharging pollutants through point sources not authorized by the Permit;
2. Order the Defendant to take all steps necessary to eliminate the discharge of pollutants through point sources not authorized by the Permit;
3. Permanently enjoin the Defendant from discharging chemicals and other substances in amounts exceeding the parameters required by the Permit during monitoring periods required by the Permit.
4. Order the Defendant to pay a civil penalty not to exceed \$37,500 per day, per violation, for all violations of the CWA occurring after January 12, 2009, 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;
5. Award Plaintiff costs of litigation, including, reasonable attorney fees and expert witness fees pursuant to Section 505(d), 33 U.S.C. §1365(d); and,
6. Award such other relief as the Court deems just and fair.

PLAINTIFFS

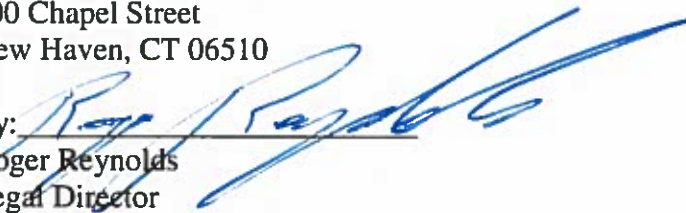
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