

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

CONNECTICUT FUND FOR THE :
ENVIRONMENT, INC., d/b/a SAVE THE SOUND :

Plaintiff

V.

THE CITY OF DANBURY

Defendant

CIVIL ACTION NO.

December 14, 2016

COMPLAINT

NATURE OF THE ACTION

1. Plaintiff Connecticut Fund for the Environment, Inc. d/b/a Save the Sound, brings 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.

JURISDICTION AND VENUE

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

3. On September 26, 2016, Plaintiff gave notice of the violations and Plaintiff's 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).

4. 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).

5. As of the date of the filing of this 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).

6. 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.

PARTIES

7. 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.

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

9. CFE/Save the Sound is a “citizen” for purposes of Section 505 of the CWA, 33 U.S.C. § 1365, and files this “citizen suit” on behalf of itself and its members.

10. Members of CFE/Save the Sound 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 CFE/Save the Sound 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 CFE/Save the Sound members. The violations alleged herein result in public health risks and negative impacts to waterways, threaten the health and welfare of CFE/Save the Sound 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. CFE/Save the Sound members have an interest that is adversely affected by Defendant’s illegal discharges, by-passes, and violations of the CWA.

11. 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).

12. 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.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

13. 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.

14. 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.

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

16. 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.

17. 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.

18. 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.

19. The Clean Water Act 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 Long Island Sound, this means that the Sound 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.

20. In order to meet the mandate of the Clean Water Act, 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. 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

21. 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.”

22. 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.

23. 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.

24. 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.

25. 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

26. Paragraphs 1 through 25 are incorporated herein by reference.

27. 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.

28. 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.”

29. 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.

30. 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.”

31. 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.

32. 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.

33. 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.

34. 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, 1/8/13, 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, 3/19/14, 3/23/14, 4/11/14, 6/2/14, 9/22/14, 10/2/14, 10/3/14, 10/21/14, 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, 4/14/15, 6/12/15, 11/13/15, 11/14/15, 1/10/16, 1/22/16, 2/3/16, 2/19/16 and 3/18/16. 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.

35. 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.

36. 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.

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

SECOND CLAIM FOR RELIEF
PERMIT EXCEEDANCES

38. Paragraphs 1- 31 are incorporated herein by reference.

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

40. 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.

41. 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.

42. 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.

43. 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).


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

RELIEF SOUGHT

Wherefore, Plaintiff respectfully requests 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.

CONNECTICUT FUND FOR THE ENVIRONMENT
SAVE THE SOUND

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