

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

and

COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff-Intervenor,

v.

CITY OF GLOUCESTER,
MASSACHUSETTS,

Defendant.

CIVIL ACTION NO.

COMPLAINT

Plaintiff, the United States of America, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

NATURE OF ACTION

1. This is a civil action brought against the City of Gloucester, Massachusetts (“Gloucester,” the “City” or the “Defendant”) pursuant to Sections 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and (d).

2. The claims arise from the Defendant’s failure to comply with the CWA in the operation of the Gloucester Water Pollution Control Facility (“WPCF”) located at 50 Essex

Avenue, Gloucester, Massachusetts.

JURISDICTION/VENUE/NOTICE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and pursuant to 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395.

5. Notice of the commencement of this action has been given to the Commonwealth of Massachusetts (the “Commonwealth”) pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

6. The Defendant is a municipality within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

INTERVENING PLAINTIFF

7. Section 309(e) of the Act, 33 U.S.C. § 1319(e), provides:

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment or any expenses incurred as a result of complying with any such judgment entered against the municipality in such action, to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

8. The Commonwealth of Massachusetts has committed to join this action pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e), as an intervening plaintiff. The United States reserves all claims which it may have against the State under Section 309(e).

STATUTORY BACKGROUND

9. Section 301(a) of the CWA, 33 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.

10. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the navigable waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

11. Section 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), authorize the commencement of an action for civil penalties and injunctive relief against any person who violates Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

12. Section 402 of the CWA, 33 U.S.C. § 1342, provides that the Administrator may issue permits under the NPDES program for the discharge of pollutants into navigable waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

13. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.”

14. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” to include, *inter alia*, “sewage . . . , biological materials . . . , and . . . municipal . . . waste discharged into water.”

15. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “the waters of the United States, including the territorial seas.” Waters of the United States” has been further defined to include, among other things, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries of such waters. 40 C.F.R. § 122.2 (1993).

16. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged.”

17. Section 402 of the CWA, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants into navigable waters upon such specific terms and conditions as the Administrator of EPA may prescribe.

GENERAL ALLEGATIONS

18. EPA issued NPDES Permit No. MA0100625 (“the Permit”) to the City of Gloucester for the WPCF with effluent limits based on primary treatment, pursuant to a modification it granted to the City under Section 301(h) of the CWA, 33 U.S.C. § 1311(h) (hereinafter, “Section 301(h) modification”), on June 26, 1985. EPA thereafter reissued the Permit, again with a Section 301(h) modification, on August 28, 2001, which became effective on October 27, 2001, and expired on October 27, 2006. The Section 301(h) modification allowed the Permit to include effluent limits based on primary rather than secondary treatment standards. Primary treatment is the practice of removing some portion of the suspended solids and organic matter in a wastewater through sedimentation.

19. The City applied for renewal of its Permit and Section 301(h) modification on May 26, 2006, and the Permit was administratively continued under 40 C.F.R. §122.6.

20. On November 5, 2010, EPA issued a Tentative Denial of the application for renewal of the Permit's Section 301(h) modification under 40 C.F.R. § 125.59(h), together with a Draft NPDES permit with effluent limits based on secondary treatment. In the absence of a Section 301(h) modification, the WPCF is subject to the CWA's secondary treatment requirements that generally apply to publicly owned treatment works. 33 U.S.C. § 1311(b)(1)(B); 40 C.F.R. § 125.3(a)(1)(i). Secondary treatment is the removal of pollutants such as suspended solids and organic matter from wastewater, typically through physical and biological processes, in order to meet technology-based standards for biological oxygen demand (BOD) and total suspended solids (TSS).

21. After consideration of the issues and public comment, EPA decided both to deny the City's application for renewal of its Section 301(h) modification and to issue the City the Final NPDES Permit ("Final Permit") with effluent limits based on secondary treatment. *See* 33 U.S.C. § 1311(b)(1)(B); 40 C.F.R. Part 133. EPA issued and signed the Final Permit on June 30, 2022, and it became effective as of September 1, 2022. On July 1, 2022, EPA also signed a document memorializing its final denial of the City's request for renewal of its Section 301(h) modification.

22. The Final Permit authorizes the City to discharge pollutants from Outfall 001 of the WPCF subject to the effluent limitations, monitoring requirements, and other conditions specified in the Final Permit, such as, among other requirements, limits for biological oxygen demand (BOD) (30 mg/L monthly average and 45 mg/L weekly average), BOD % removal ($\geq 85\%$), total suspended solids (TSS) (30 mg/L monthly average and 45 mg/L weekly average), TSS % removal ($\geq 85\%$), whole effluent toxicity (WET) ($LC_{50} \geq 100\%$), oil and grease (non-detect), total petroleum hydrocarbons (TPH) (non-detect), fecal coliform (14 MPN/100 mL

monthly average and 28 MPN/100 mL), and enterococci bacteria (35 MPN/100 mL monthly average and 130 MPN/100 mL).

23. Information provided by the City demonstrates that, as currently configured, the WPCF's discharge is unable to meet BOD, TSS, WET, oil and grease, TPH, or bacteria limits set by the Final Permit until such time as WPCF upgrades are completed.

24. At all times relevant to this action, the Final Permit has authorized the City to discharge wastewater from Outfall 001 at the WPCF to Massachusetts Bay. Outfall 001 is a point source within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

25. Massachusetts Bay is a navigable water of the United States within the meaning of Section 503(7), 33 U.S.C. § 1362(7).

26. The effluent discharged from the Outfall 001 contains "pollutants" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12). Effluent discharged from the WPCF adds pollutants to Massachusetts Bay and, therefore, constitutes a "discharge of pollutants" as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

27. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action to obtain appropriate relief, including a permanent or temporary injunction, when any person violates Section 301 of the CWA, 33 U.S.C. § 1311, or any condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The United States Department of Justice has authority to bring this action on behalf of EPA pursuant to Section 506 of the CWA, 33 U.S.C. § 1366.

28. Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), together with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, and 40 C.F.R. § 19.4, any person who violates

Section 301 of the CWA, 33 U.S.C. § 1311, or any condition or limitation contained in a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$59,973 per day for each violation which takes place after November 2, 2015. *See* 87 Fed. Reg. 1676 (Jan. 12, 2022).

COUNT ONE
(NPDES Permit Violations)

29. The United States realleges and incorporates by reference the allegations of paragraphs 1 through 28 above.

30. Upon information and belief, the City has violated, and will continue to violate one or more of the effluent limits for the pollutants described in Paragraph 22 above, until construction of secondary treatment at the WPCF is complete, in violation of Section 301(a) of the CWA, 33 U.S.C § 1311(a). Each violation of a permit condition, and each day of discharge, is a separate violation of the NPDES permit and the CWA.

31. Pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, the City is liable for injunctive relief and for civil penalties not to exceed \$59,973 per day for each violation.

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that the Court grant the following relief:

1. Permanently enjoin the City, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), from any and all future violations of the CWA and from discharges of pollutants except as authorized by a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342;

2. Order the City to comply with all requirements of the 2022 Permit;
3. Order the City to pay a civil penalty not to exceed \$59,973 per day per violation;
4. Award the United States its costs in this action; and
5. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

Dated: March 6, 2023

/s/ Henry Friedman
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RACHAEL ROLLINS
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District of Massachusetts

Dated: March 6, 2023

/s/ Annapurna Balakrishna
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OF COUNSEL:
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U.S. Environmental Protection Agency, Region 1

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Annapurna Balakrishna, Assistant United States Attorney One Courthouse Way, Suite 9200, Boston, MA 02210

DEFENDANTS

City of Gloucester, Massachusetts

County of Residence of First Listed Defendant Essex (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Suzanne Egan, General Counsel City of Gloucester City Hall

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b) and (d) Brief description of cause: Defendant's failure to comply with the CWA in the operation of the Gloucester Water Pollution Control Facility ("WPCF") located at 50 Essex Av

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

March 6, 2023 /s/ Annapurna Balakrishna

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) United States of America v. City of Gloucester

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 400, 410, 441, 535, 830*, 835*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.

III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Annapurna Balakrishna

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