SUPER LAW GROUP, LLC

November 1, 2018

Via Certified Mail, Return Receipt Requested

Granite Shore Power LLC
c/o CCI
2200 Atlantic Street, Suite 800
Stamford, CT 06902

RECEIVED
NOV 05 2018
OFFICE OF THE REGIONAL ADMINISTRATOR

GSP Merrimack LLC
431 River Road
Bow, NH 03301

GSP Merrimack LLC
c/o CCI
2200 Atlantic Street, Suite 800
Stamford, CT 06902

Public Service Company of New Hampshire
780 N Commercial Street
Manchester, NH 03101

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

We write on behalf of the Sierra Club, Inc. and Conservation Law Foundation, Inc. (together, the "Notifiers") to notify you of their intent to file suit against Granite Shore Power LLC, GSP Merrimack LLC and Public Service Company of New Hampshire d/b/a Eversource Energy (collectively the "Operators") pursuant to Section 505(a) of the federal Clean Water Act ("CWA").[1] The Notifiers intend to file suit in the United States District Court for the District of New Hampshire seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark of this letter.[2]

The Notifiers intend to take legal action against the Operators due to their ownership and operation of the Merrimack Station (the "Station"), a power plant on the banks of the Merrimack River in Bow, New Hampshire. The Merrimack Station is engaged in ongoing and continuous violations of the Clean Water Act. Namely, the Station has for decades discharged heated wastewater in a manner that is deleterious to the environmental and ecological health of the Merrimack River, and not in compliance with the National Pollutant Discharge Elimination

[1] 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.
[2] *See* 40 C.F.R. § 135.2(a)(3)(c) (CWA notice of intent to file suit is deemed to have been served on the postmark date).

180 MAIDEN LANE, SUITE 603 · NEW YORK, NEW YORK 10038
TEL: 212-242-2355 FAX: 855-242-7956 www.superlawgroup.com

System ("NPDES") permit for the Merrimack Station, (Permit NH0001465), which went into effect in 1992.[3] This conduct violates CWA § 301(a).[4]

I.

BACKGROUND

A. The Merrimack Station and Its Thermal Discharges

Merrimack Station is one of New England's oldest and, with a total capacity of approximately 520 megawatts, most polluting coal-fired power plants. Merrimack Station is located on approximately 230 acres of land in Bow, New Hampshire. The Station sits on the western bank of the Merrimack River in the middle of a 5.8 mile stretch known as the Hooksett Pool. The Hooksett Pool is a relatively shallow part of the river, ranging in depth from six to ten feet, bounded by the upstream Garvin's Falls Dam and the downstream Hooksett Dam.

For decades, the Station has drawn about 287 million gallons per day (design flow) of cooling water from the Merrimack River, killing, maiming, or poisoning fish, fish larvae, and other aquatic organisms that become trapped on the plant's intake screens, or are pulled into the existing once-through cooling system.[5] Power plants like the Station, that utilize "once-through" cooling systems, are capable of heating large volumes of water. These facilities withdraw water from a water body, heat that water up as a result of the cooling process, and then discharge the heated water (or "thermal effluent") to a receiving water body. Heated discharges can have a significant effect on the temperature of the receiving water, which in turn can cause great ecological harm.

The Merrimack Station discharges thermal effluent into the Hooksett Pool at temperatures above natural ambient levels. Indeed, the Station's thermal discharges frequently reach temperatures in excess of 90° Fahrenheit at downstream monitoring points, well in excess of what is tolerable for native species. Due to the relatively shallow depths in the Hooksett Pool, the thermal plume can extend far and wide, with elevated water temperatures observed at the Hooksett Dam, nearly three miles downstream. The thermal plume is most expansive in the warmer months when, during low-flow conditions, Merrimack Station may divert up to sixty-two percent of the entire River flow to cool the plant.[6] In the cooler months, warm temperatures in

90° downstream

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[3] Authorization to Discharge Under the National Pollutant Discharge Elimination System, Merrimack Station (Permit No. NH0001465) (June 25, 1992) (hereinafter the "NPDES Permit"); EPA, Region 1, Permit Modification for Transfer of Ownership (Permit No. NH0001465) (Jan. 16, 2018) (authorizing GSP Merrimack LLC to operate under the Stations' NPDES Permit)

[4] *See* 33 U.S.C. §1311(a).

[5] *See* EPA Region 1, 2011 Fact Sheet, Attachment D, Clean Water Act NPDES Permitting Determinations for Thermal Discharge and Cooling Water Intake Structures at Merrimack Station in Bow, New Hampshire ("Attachment D") at 31. Available at: https://www3.epa.gov/region1/npdes/merrimackstation/pdfs/MerrimackStationAttachD.pdf.

[6] *See* Attachment D at 38.

the discharges harm native fish species by negatively affecting development and reproduction and harm the biological integrity of the Merrimack River by supporting a population of Asian clams, an invasive species.

The Merrimack River is an important public resource, prized by communities in New Hampshire and Massachusetts for its wildlife, aesthetic values, prominent role in the history of the region, and for the fishing, boating and other recreational opportunities it affords. However, as a result of operating in the same manner for decades, the Merrimack Station's operations have contributed to a *nearly 95 percent decline* in resident fish species in the Hooksett Pool, while allowing for certain harmful, non-native, heat tolerant species to upset the ecological balance in the river.[7] To someone who only knew the environment and biota of the Hooksett Pool in 1960, when the Station was placed in service, the population of fish, shellfish and wildlife in and on this stretch of river would be unrecognizable.

B. Relevant Statutory and Regulatory Background

Congress passed the CWA in 1972 "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[8] The CWA's goal is to eliminate all discharges of pollution into navigable waters.[9] To that end, the CWA prohibits point sources from discharging pollutants into waters of the United States, except in compliance with a NPDES permit.[10]

Heat is defined as a pollutant under the Clean Water Act.[11] Permit limits for thermal discharges must, at a minimum, satisfy federal technology-based requirements, as well as any more stringent requirements based on state water quality standards that may apply.[12] CWA § 316(a) provides for a variance from the general requirement that NPDES permits include effluent limits that, at a minimum, satisfy federal technology-based standards, and that also satisfy any more stringent requirements based on state water quality standards. Section 316(a) authorizes the permitting agency to impose less stringent thermal discharge limits if the permittee can demonstrate that "any effluent limitation proposed for the control of the thermal component of any discharges . . . will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife."[13] Any 316(a) variance must "assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water."[14]

C. The Merrimack Station's NPDES Permit

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[7] *See* Attachment D at 117.
[8] 33 U.S.C. § 1251(a).
[9] *See id.* § 1251(a)(1)
[10] *See* 33 U.S.C. §§ 1311(a), 1342(a).
[11] 33 U.S.C. § 1362(6).
[12] *See* 33 U.S.C. § 1311(b)(1)(C)
[13] 33 U.S.C. § 1326(a).
[14] *Id.*; 40 C.F.R. § 125.70.

The Merrimack Station's NPDES permit, which the United States Environmental Protection Agency ("EPA") issued in 1992, includes a section 316(a) variance that permits Merrimack to operate without complying with numeric effluent limitations on thermal discharge based on the level of control achievable through use of the best available technology. Instead the permit specifies that discharges shall not violate any applicable water quality standards.[15] In addition, the NPDES Permit also requires that thermal plumes from the station shall not block the zone of fish passage, shall not change the balanced indigenous population of the receiving water, and shall have minimal contact with the surrounding shorelines.[16] The NPDES permit importantly requires continuous monitoring of Temperature and Dissolved Oxygen.[17]

EPA proposed a new draft permit for Merrimack Station on September 30, 2011. The comment period for the draft permit ended on February 28, 2012. After reviewing comments, EPA proposed a revised draft permit on April 18, 2014. In the draft permit, EPA tentatively rejected Eversource's request for a CWA § 316(a) thermal discharge variance. EPA concluded that Eversource had not demonstrated that the Merrimack Station's thermal discharge has not caused prior appreciable harm to Hooksett Pool's balanced indigenous population of fish.[18] To the contrary, EPA found that "the evidence as a whole indicates that Merrimack Station's thermal discharge has caused, or contributed to, appreciable harm to Hooksett Pool's balanced, indigenous population of fish."[19] EPA has not finalized the Draft permit, and therefore the 1992 NPDES permit remains in effect. Nevertheless, EPA's finding of "appreciable harm" to the balanced indigenous population is pertinent to the noticed violations below.

II.

MERRIMACK STATION IS ENGAGED IN ONGOING AND CONTINUOUS VIOLATIONS OF THE CLEAN WATER ACT

The CWA prohibits the discharge of pollutants to the waters of the United States except in compliance with a NPDES permit.[20] The discharge of thermal pollution from Merrimack Station has violated and continues to violate the terms of the Station's NPDES permit in the following ways.

A. Violations of Thermal Effluent Limits

The NDPES Permit requires that:

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[15] NPDES Permit at I.A.1.b. (pg. 2)
[16] *Id.* at Part I.A.1.g (pg. 3).
[17] NPDES Permit at I.A.11.a. (pg. 16) & 12.a, b (pg. 17).
[18] To the contrary, EPA found that the evidence as a whole indicates that Merrimack Station's thermal discharge has caused, or contributed to, appreciable harm to Hooksett Pool's BIP of aquatic organisms.
[19] *Id.*
[20] *See* CWA §§ 301(a) and 402.

> The combined thermal plumes for the station shall: (a) not block the zone of fish passage, (b) not change the balanced indigenous population of the receiving water, and (c) have minimal contact with the surrounding shorelines.[21]

The Merrimack Station's discharges to the Merrimack River create a thermal plume that violates all three of these limitations.

1. The Station's Thermal Plume Blocks the Zone of Fish Passage.

Based on a review of publicly available data and reports, the Notifiers allege that the Merrimack Station's thermal plume blocks the zone of fish passage in the Hookset Pool. The Station's thermal plume can affect most of the water column because of the shallow depths in the Hooksett Pool, while also extending laterally to reach critical shoreline habitat. Blockage is most pronounced during summer months when, during typical low flow conditions, the Station's water withdrawals can divert and heat 62 percent of the water passing through the Hooksett Pool.[22] Also, the Station's thermal plume can extend downstream below the Hooksett Dam, creating unnaturally warm temperatures in large swaths of the River. These temperatures exceed fish tolerance thresholds for native species at times, including American Shad and Yellow Perch, further indicating that the thermal plume blocks the zone of fish passage. The Station violates the conditions of its NPDES permit at least on each occasion that the Station's thermal plume blocks the zone of fish passage in the Hooksett Pool by causing temperatures that exceed fish tolerance thresholds for any life stage of any native species.[23] Such incidents have recurred in many recent years including, for example, the summer of 2016 – the last summer for which data are available to the Notifiers.

2. The Station's Thermal Plume Has Changed the Balanced Indigenous Population of the Merrimack River and Perpetuated Such Conditions.

The Merrimack Station's thermal plume has over the course of decades changed and degraded the balanced indigenous population of aquatic species in the Hooksett Pool. To this day, the Merrimack Station continues to change the balanced indigenous population in the Hooksett Pool. The impacts of the Station's thermal discharges on the balanced indigenous population are most acute during spring and summer conditions. As EPA concluded in 2014, after exhaustive study, "the evidence as a whole indicates that Merrimack Station's thermal discharge has caused, or contributed to, appreciable harm to Hooksett Pool's balanced, indigenous community of fish."[24]

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[21] NPDES Permit at Part I.A.1.g (pg. 3).

[22] Attachment D at 38. And sometimes more – EPA reports that peak day withdrawals of 75% of the flow have been recorded during severe low flow days in July, and even greater proportions in August. *See id.* at xiv.

[23] Examples of such temperature thresholds for certain species in different months of the year can be found in EPA's supporting analysis for the 2011 draft permit. *See, e.g.*, Attachment D at, Tables 8-2, 8-3, 8-4 and 8-5 (pages 196, 208, 209-10).

[24] Attachment D at 121; *see id.* at 118-19 (summarizing "[s]ome of the more notable evidence of Merrimack Station's thermal effects, or the plant's capacity to affect, the balanced, indigenous community[.]")

For example, publicly available temperature data and reports reveal that high spring and summer temperatures in the Hooksett Pool surpass important survival thresholds for native fish species, including American Shad and Yellow Perch, as well as for native freshwater mussels. In the cooler months, warm temperatures in the discharge canal attract native fish species, negatively affecting development and reproduction. In addition, the presence of a strong population of non-native Asian Clams in the area affected by the thermal plume is further evidence that the plume is changing the balanced indigenous population in the Hooksett Pool.

Since 2014, EPA has conducted field investigations confirming the presence of Asian clams and noting that they are abundant in and near the Merrimack plume, rarer downstream, and not observed upstream of Merrimack's plume. These findings are consistent with scientific literature showing that Asian Clams have higher winter survival rates within the influence of power plants' thermal discharge than in ambient areas, and that the elevated temperatures appear to support the invasive clam's reproductive success, growth, and abundance.

In addition, the Notifiers note that, in recent years, the Station's episodic operating pattern has created rapid and significant temperature changes that adversely affect aquatic organisms.

The Station contributes to changes in the balanced and indigenous population of aquatic organisms in the Hooksett Pool through its discharges of waste heat.

3. The Merrimack Station's Thermal Plume Has More Than Minimal Contact with the Shoreline.

Publicly available data and reports indicate that the Merrimack Station thermal plume has been and is regularly in contact with both the east and west shoreline during summer conditions, and therefore the thermal plume does not "have minimal contact with the surrounding shorelines." Temperature data from summer months show completely-mixed lower Hooksett Pool waters can be 3.6 ° to 7.2° Fahrenheit warmer, and at times more than 10 ° Fahrenheit warmer, than upstream waters. Elevated water temperatures in the entire lower reach of the Hooksett Pool strongly suggest a shoreline-to-shoreline plume.

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For the reasons set forth in Part A of this letter, the Merrimack Station has violated and is engaged in ongoing and continuous violations of the NPDES permit's thermal effluent limitations and thus the Clean Water Act.

B. The Merrimack Station Has Violated and is Violating Water Quality Standards

The Merrimack Station has violated and is engaged in ongoing and continuous violations of New Hampshire state water quality standards, which are incorporated as terms of the NPDES permit.

The NPDES permit provides that the Merrimack Station's discharges "shall not jeopardize any Class B use of the Merrimack River and shall not violate applicable water quality standards."[25]

For Class B waters, New Hampshire state law dictates that: "[t]here shall be no disposal of sewage or waste into said waters . . . [where] such disposal of sewage or waste [would] be inimical to aquatic life or to the maintenance of aquatic life in said receiving waters . . . . "[26]

In addition,

> "[a]ny stream temperature increase associated with the discharge of treated sewage, waste or cooling water . . . shall not be such as to appreciably interfere with the uses assigned to this class. The waters of this classification shall be considered as being acceptable for fishing, swimming and other recreational purposes and, after adequate treatment, for use as water supplies."[27]

More generally, the New Hampshire water quality regulations mandate that: "[a]ll surface waters shall provide, wherever attainable, for the protection and propagation of fish, shellfish and wildlife, and for recreation in and on the surface waters."[28]

The regulations also dictate that: "[a]ll surface waters shall be restored to meet the water quality criteria for their designated classification including existing and designated uses, and to maintain the chemical, physical, and biological integrity of surface waters."[29]

"Biological integrity" is defined to mean:

> the ability of an aquatic ecosystem to support and maintain a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region.[30]

New Hampshire water quality standard regulations specify a water quality criterion for "Biological and Aquatic Community Integrity":

> (a) The surface waters shall support and maintain a balanced, integrated, and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of a region.

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[25] NPDES Permit at Part I.A.1.b (pg. 2)
[26] N.H. Rev. Stat. Ann. § 485-A:8(II).
[27] *Id.*
[28] N.H. Code R. Env-Wq § 1703.01(c).
[29] *Id.* § 1703.01(e).
[30] *Id.* § 1702.08.

> (b) Differences from naturally occurring conditions shall be limited to non-detrimental differences in community structure and function.[31]

In sum, pollutant discharges to a Class B water body, such as the Hooksett Pool, may not harm aquatic life (*i.e.*, "be inimical to" or contribute to "detrimental differences" from naturally occurring conditions) or undermine a water body's ability to support and maintain what would otherwise be the natural, balanced community of aquatic life in that water body. Additionally, Merrimack Station's thermal discharges must not result in in-stream temperatures that "appreciably interfere" with fishing or other Class B uses in the Hooksett Pool.

The Merrimack Station's thermal discharges are causing an ongoing and continuous violation of water quality standards, in violation of the NPDES permit. In 2014, EPA concluded that the "Merrimack Station's current thermal discharges are not satisfying these criteria" and have "indeed been inimical to aquatic life in the Hooksett Pool."[32] This conclusion flowed directly from EPA's finding that the Merrimack Station has appreciably harmed the balanced indigenous population of aquatic species in the Hooksett Pool.

Further, EPA observed in 2011 that abrupt shutdowns in the colder seasons could cause "cold shocks", i.e., a relatively rapid reduction in discharge temperature, which can lead to the physiological impairment of fish and even to death.[33] EPA noted that studies "show that acclimation to cooler temperatures, at least for fish, is considerably slower (e.g. days versus hours) than acclimation to warmer temperatures."[34] In this regard, Merrimack's practice of operating sporadically in the winter months poses a threat to native species and the attainment of a balanced indigenous population in the Hooksett Pool. In response to EPA's call for additional public comments on renewal of the NPDES permit in 2017, the Notifiers submitted to EPA a report prepared by Ken Hickey and Peter Shanahan of HydroAnalysis, Inc., finding that even looking only at the averaged temperature data submitted by Eversource to the EPA, Merrimacks' sporadic operations cause sharp changes in water temperatures even in summer months. In winter months, the risk that Merrimack's intermittent operation will lead to cold shock is far greater. Merrimack violates water quality standards when it causes cold shock, because these conditions are inimical to aquatic life and further impede any chance to attain a balanced indigenous population of fish.

The Station's thermal discharges also cause or contribute to violations of New Hampshire's water quality standards for dissolved oxygen. The applicable standard is a daily average dissolved oxygen concentration that is 75% of the saturation concentration, and an instantaneous standard of 5.0 mg/L or greater at all times.[35] Violations of these standards occur during summer conditions in the Hooksett Pool, including but not limited to that portion of the Hooksett Pool at the bottom of the reach, near the Hooksett Dam, where EPA has noted that

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[31] *Id.* § 1703.19(a), (b).
[32] Attachment D at xi, 178.
[33] Attachment D at 349.
[34] *Id.*
[35] N.H. Code of Admin R. Ch Env-Wq 1700, 1703.07(b).

thermal discharge from Merrimack Station causes stratification of the water and consequent low dissolved oxygen in the underlying strata.

The Notifiers believe that the Station causes or contributes to violations of water quality standards in the Hooksett Pool through its pattern of discharges of waste heat. Therefore, the Merrimack Station is engaged in ongoing and continuous violations of applicable water quality standards, the NPDES permit, and the Clean Water Act.

C. The Merrimack Station Has Violated and is Violating Monitoring and Reporting Requirements.

The Merrimack Station has violated and is violating the monitoring and reporting requirements of the NPDES permit in an ongoing and continuous manner, by failing to submit continuous monitoring data to EPA and other agencies.

With respect to thermal monitoring, the NPDES permit requires that:

> Continuous river surface temperature monitoring in the vicinity of the Merrimack Generating Station shall be conducted on the following basis. Open-river surface water temperatures will be continuously monitored at control Station N-10, effluent discharge station Zero, and mixing zone Station S-4 . . . . The discharge Station Zero temperature monitoring probe will remain in place and in operation year round.[36]

The NPDES permit also requires continuous dissolved oxygen monitoring: "[t]he permittee shall continuously monitor the dissolved oxygen content of both an ambient river control station and the circulating water discharge. . . . [37]

The NPDES permit requires that all monitoring data be submitted annually to the EPA regional administrator: "All biological and hydrological monitoring program data shall be submitted to the NHDES, NHF&GD, USF&WS, and the Regional Administrator by December 31 of the following year."[38]

Since the NDPES permit went into effect, the Merrimack Station has not once submitted continuous thermal monitoring data to EPA, or to the best of the Notifiers knowledge, to any of the other agencies mentioned in the NDPES permit. To the extent that the Station has submitted summary data in place of the continuous data, this is insufficient as the permit requires that "*All* biological and hydrological monitoring program data shall be submitted." As such, the Merrimack Station has and is engaged in ongoing and continuous non-compliance with the NPDES permit's monitoring and reporting provisions and in violation of the Clean Water Act.

III.

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[36] NPDES Permit at Part I.A11.a (pg. 16).
[37] *Id.* at Part I.A.12.b (pg. 17).
[38] *Id.* at Part I.A.13.(pg. 17).

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The entities referred to collectively in this letter as the Operators are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice.

On information and belief, Public Service Company of New Hampshire d/b/a Eversource Energy until January 10, 2018, and thereafter Granite Shore Power LLC and GSP Merrimack LLC, have successively owned and operated the Merrimack Station. The Operators are responsible for ensuring that thermal discharges are in compliance with the CWA and that monitoring data are submitted to EPA and other agencies in accordance with the terms of the Merrimack Station's permit.

The Notifiers hereby put the Operators on notice that if the Notifiers subsequently identify additional persons as also being responsible for the violations set forth above, the Notifiers intend to include those persons in this action.

IV.

LOCATION OF ALLEGED VIOLATIONS

The violations alleged in this Notice have occurred and continue to occur at the Merrimack Station in Bow, New Hampshire and in the Merrimack River, Hooksett Pool reach.

V.

DATES OF VIOLATIONS

The Operators are liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue.

With respect to the dates that the permit's monitoring provisions have been violated, Part I.13 of Merrimack's permit requires that all data be submitted to EPA and other agencies by December 31 of the year following collection. Therefore, with respect to each year of missing or incomplete data, a separate date of violation has occurred on each date after December 31 of the year following collection.

Violations of the permit requirement that the plume have only minimal contact with the shores of the Merrimack river have occurred and continue to occur on all days when the thermal plume from Merrimack extends from shoreline to shoreline or for thousands of feet down the near shore of the Merrimack River. Such dates of violation occur principally during summer months.

Violations of the permit requirement that the plume not block the zone of fish passage have occurred and continue to occur, at least, on all occasions that the Station's thermal plume causes temperatures in the River, during spring and summer months, that exceed fish tolerance thresholds for any life stage of any native species. Such incidents have recurred in many recent years including, for example, the summer of 2016 – the last summer for which data are available to the Notifiers. To better enable the recipients of this notice letter to determine for themselves the dates of such violations, examples of relevant temperature thresholds for representative species in different months of the year can be found in EPA's supporting analysis for the 2011 draft permit.[39]

Violations of the permit requirements that the thermal plume shall not change the balanced indigenous population and shall ensure compliance with water quality standards have occurred continuously on all days within the statutory period. These violations are ongoing because Merrimack Station's pattern of episodic and significant thermal discharges continues to change and degrade the BIP and violate water quality standards by creating and perpetuating conditions that are inimical to aquatic life and undermine the Merrimack River's ability to support and maintain what would otherwise be the natural, balanced community of aquatic life.

VI.

RELIEF REQUESTED

The Notifiers will ask the court to order the Operators to comply with the Clean Water Act, to pay penalties, and to pay Notifiers' costs and legal fees.

First, the Notifiers will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law.

Second, pursuant to Section 309(d) of the CWA,[40] each separate violation of the CWA subjects the Operator to a penalty of up to $37,500 per day per day per violation for all Clean Water Act violations occurring between January 12, 2009 and November 2, 2015; up to $51,570 per day per violation for all CWA violations occurring after November 2, 2015 and assessed on or after August 1, 2016 but before January 15, 2017; up to $52,414 per day per violation for all Clean Water Act violations occurring after November 2, 2015 and assessed on or after January 15, 2017, and up to $53,484 per day per violation for all Clean Water Act violations assessed on or after January 15, 2018 for violations that occurred after November 2, 2015.[41] The Notifiers will seek penalties.

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[39] See Attachment D, Tables 8-2, 8-3, 8-4 and 8-5 (pp.196, 208, 209-10).
[40] 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).
[41] 40 C.F.R. § 19.2-4.

Third, pursuant to the CWA, the Notifiers will seek recovery of their litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.[42]

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Sierra Club
Attn: Zachary Fabish
50 F Street, N.W., 8th Floor
Washington, D.C. 20001
(202) 675-7917

Conservation Law Foundation
Attn: Tom Irwin
27 North Main Street
Concord, NH 03301
(603) 225-3060

VII.

IDENTIFICATION OF COUNSEL

The Notifiers are represented by legal counsel in this matter. The name, address, and telephone number of the Notifiers' attorneys are:

Edan Rotenberg, Esq.
Nicholas W. Tapert, Esq.
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
(212) 242-2355

IX.

CONCLUSION

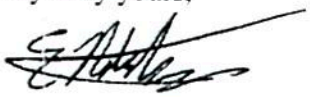
The foregoing provides more than sufficient information to permit the Operators to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the

[42] 33 U.S.C. § 1365(d); 42 U.S.C. § 6972(e).

location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.[43]

During the sixty-day notice period, the Notifiers are willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If the Operators wish to pursue such discussions, please contact the undersigned attorneys immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



Edan Rotenberg Esq.
Nicholas W. Tapert, Esq.
Super Law Group, LLC

cc:

Andrew Wheeler, Acting Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Alexandra Dunn, EPA Region 1 Administrator
Environmental Protection Agency
5 Post Office Square – Suite 100
Boston, MA 02109-3912

Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Corporation Service Company
c/o O Kay Comendul
107 Selden Street
Berlin, CT 06037

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[43] 40 C.F.R. § 135.3(a).