

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAVE THE SOUND, INC. :
 :
 Plaintiff, :
 V. : CIVIL NO. 3:21-cv-00177-CSH
 :
 GREATER NEW HAVEN WATER :
 POLLUTION CONTROL AUTHORITY. :
 :
 Defendant. : APRIL 29, 2021
 :

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT GREATER NEW HAVEN WATER POLLUTION CONTROL AUTHORITY

Defendant Greater New Haven Water Pollution Control Authority (the “Authority”), by and through its undersigned counsel, hereby responds to the Complaint of Plaintiff Save the Sound, Inc. (“Save the Sound”), dated February 10, 2021 (Doc. No. 1) as follows. To the extent not expressly admitted herein, the Authority denies all allegations of the Complaint.

NATURE OF THE ACTION

1. The allegations contained in Paragraph 1 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 1 may be deemed to contain any allegations of fact, the Authority denies those allegations.

JURISDICTION AND VENUE

2. The allegations of Paragraph 2 of the Complaint state a legal conclusion to which no response is required.

3. The Authority admits the allegations contained in Paragraph 3 of the Complaint.

4. The Authority admits the allegations contained in Paragraph 4 of the Complaint.

5. The Authority denies the allegations contained in Paragraph 5 of the Complaint.

6. The allegations of Paragraph 6 of the Complaint state a legal conclusion to which no response is required.

PARTIES

7. The Authority admits that Save the Sound 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. The Authority lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 7 of the Complaint and, therefore, denies those allegations.

8. The Authority admits the allegations contained in Paragraph 8 of the Complaint.

9. The allegations contained in Paragraph 9 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 9 may be deemed to contain any allegations of fact, the Authority denies those allegations.

10. The Authority lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Complaint and, therefore, denies those allegations.

11. The allegations contained in Paragraph 11 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 11 may be deemed to contain any allegations of fact, the Authority denies those allegations.

12. The Authority admits the allegations contained in Paragraph 12 of the Complaint; however, the Authority operates and maintains a combined and sanitary system.

FACTUAL ALLEGATIONS

13. The Authority lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13 of the Complaint and, therefore, denies those allegations.

14. The Authority lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14 of the Complaint and, therefore, denies those allegations.

15. The Authority lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 15 of the Complaint and, therefore, denies those allegations.

16. The Authority admits the allegations contained in Paragraph 16 that sewage collection systems consist of sewer pipes, along with associated facilities including, pumping stations, power and other equipment, and wastewater treatment facilities, and further admits that sewage collection systems are generally owned and operated by municipalities or regional authorities comprised of several municipalities. The Authority denies the remaining allegations of Paragraph 16.

17. The allegations contained in Paragraph 17 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 17 may be deemed to contain any allegations of fact, the Authority denies those allegations.

18. Insofar as the allegations contained in Paragraph 18 of the Complaint refer to the mandate of the Clean Water Act, those allegations state a legal conclusion to which no response is required. To the extent that Paragraph 18 may be deemed to contain any allegations of fact, the Authority lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 18 of the Complaint and, therefore, denies those allegations.

CLEAN WATER ACT STATUTORY SCHEME

19. The allegations contained in Paragraph 19 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 19 may be deemed to contain any allegations of fact, the Authority denies those allegations.

20. The allegations contained in Paragraph 20 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 20 may be deemed to contain any allegations of fact, the Authority denies those allegations.

21. The allegations contained in Paragraph 21 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 21 may be deemed to contain any allegations of fact, the Authority denies those allegations.

22. The Authority denies that it is causing unpermitted discharges and is in violation of NPDES permit conditions. The remaining allegations contained in Paragraph 22 of the Complaint state a legal conclusion to which no response is required. To the extent that the remaining allegations in Paragraph 22 may be deemed to contain any allegations of fact, the Authority denies those allegations.

23. The allegations contained in Paragraph 23 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 23 may be deemed to contain any allegations of fact, the Authority denies those allegations.

24. The allegations contained in Paragraph 24 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 24 may be deemed to contain any allegations of fact, the Authority denies those allegations.

25. The allegations contained in Paragraph 25 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 25 may be deemed to contain any allegations of fact, the Authority denies those allegations.

FIRST CLAIM FOR RELIEF
UNAUTHORIZED DISCHARGES

26. The Authority realleges and reincorporates its responses to the allegations in Paragraphs 1 through 25 above as if fully set forth herein.

27. The allegations contained in Paragraph 27 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 27 may be deemed to contain any allegations of fact, the Authority denies those allegations.

28. The allegations contained in Paragraph 28 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 28 may be deemed to contain any allegations of fact, the Authority denies those allegations.

29. The allegations contained in Paragraph 29 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 29 may be deemed to contain any allegations of fact, the Authority denies those allegations.

30. The allegations contained in Paragraph 30 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 30 may be deemed to contain any allegations of fact, the Authority denies those allegations.

31. The allegations contained in Paragraph 31 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 31 may be deemed to contain any allegations of fact, the Authority denies those allegations.

32. The allegations contained in Paragraph 32 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 32 may be deemed to contain any allegations of fact, the Authority denies those allegations.

33. In response to the allegations of Paragraph 33, the Authority admits that at certain times in the past there have been discharges from its system of untreated wastewater, including events consistent with its NPDES permit, but it denies that the Plaintiff has stated a valid cause of action in this Complaint arising from any such discharge.

34. In response to the allegations of Paragraph 34 of the Complaint, the Authority admits that from July 6, 2020 through July 7, 2020, approximately 2.1 million gallons of partially treated wastewater leaked from the Whitney Avenue Pressure Sewer, a portion of which migrated into the Mill River. The Authority further admits the allegations of Paragraph 34 to the extent that Plaintiff is alleging that the Authority's NPDES permit lacks provisions expressly authorizing the unanticipated leak and flow of untreated or partially treated sewage from the Whitney Avenue Pressure Sewer into the Mill River. The Authority denies the remaining allegations in Paragraph 34.

35. The Authority admits the allegations of Paragraph 35 to the extent that Plaintiff is alleging that the Authority's NPDES permit lacks provisions expressly authorizing the unanticipated leak and flow of untreated or partially treated sewage from the Whitney Avenue Pressure Sewer into the Mill River. The Authority also admits that the NPDES permit incorporates RCOSA § 22a-430-3(k), but denies that the regulation imposes such an absolute prohibition as the Plaintiff alleges, since the regulation incorporated into the permit also provides exceptions for "unanticipated, unavoidable, and necessary" circumstances, as well as other approved, essential maintenance activities. The Authority denies the remaining allegations in Paragraph 35.

36. The Authority lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 36 of the Complaint and, therefore, denies those allegations.

37. The Authority denies the allegations contained in Paragraph 37 of the Complaint.

38. Insofar as the allegation of Paragraph 38 of the Complaint contains allegations about the specific cause or causes of the July 6-7, 2020 discharge, the Authority lacks knowledge or information sufficient to form a belief as to such allegations and, therefore, denies them. The Authority denies the remaining allegations contained in Paragraph 38.

39. The Authority denies the allegations contained in Paragraph 39 of the Complaint.

40. In response to the allegations of Paragraph 40 of the Complaint, the Authority admits that the Whitney Avenue Pressure Sewer is not included in the Hydrogen Sulfide Monitoring and Control Program ("H2S Program"). The Authority further admits that evidence of hydrogen sulfide is one of the criteria considered when prioritizing areas for inspection. The Authority denies Paragraph 40 insofar as the allegations may be read to claim that the Authority does not prioritize or address the potential for hydrogen sulfide corrosion at areas not listed on the referenced inventory. The Authority denies the remaining allegations contained in Paragraph 40.

41. The Authority denies the allegations contained in Paragraph 41 of the Complaint.

SECOND CLAIM FOR RELIEF
FAILURE TO COMPLY WITH NPDES PERMIT CONDITIONS

42. The Authority realleges and reincorporates its responses to the allegations in Paragraphs 1 through 41 above as if fully set forth herein.

43. The allegations contained in Paragraph 43 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 43 may be deemed to contain any allegations of fact, the Authority denies those allegations.

44. The Authority admits that on limited occasions in the past there have been failures to comply with conditions of its NPDES permit, but the Authority denies that the Plaintiff has stated a valid cause of action in this Complaint arising from any such failure.

45. In response to the allegations of Paragraph 45 of the Complaint, the Authority admits that the NPDES permit incorporates RCSA § 22a-430-3(k), but the Authority denies that the regulation imposes such an absolute prohibition as the Plaintiff alleges, since the regulation incorporated into the permit also provides exceptions for “unanticipated, unavoidable, and necessary”

circumstances, as well as other approved, essential maintenance activities. The Authority admits the remaining allegations contained in Paragraph 45.

46. The allegations contained in Paragraph 46 of the Complaint state a legal conclusion to which no response is required. To the extent that Paragraph 46 may be deemed to contain any allegations of fact, the Authority admits that its NPDES permit incorporates RCSCA 22a-430-3(f) and (h); however, the Authority denies that the federal regulation cited in Paragraph 46 requires inclusion of the cited state regulatory subsections in all NPDES permits, since CTDEEP is authorized to administer the NPDES permit program in accordance with federal regulations set forth in 40 C.F.R. Part 123. The Authority denies the remaining allegations that are contained in Paragraph 46.

47. The Authority denies the allegations contained in Paragraph 47 of the Complaint.

48. The Authority denies the allegations contained in Paragraph 48 of the Complaint.

49. The Authority denies the allegations contained in Paragraph 49 of the Complaint.

50. In response to the allegations of Paragraph 50 of the Complaint, the Authority admits that the Whitney Avenue Pressure Sewer is not included in the H2S Program; however, the Authority denies Paragraph 50 insofar as the allegations may be read to claim that the Authority does not prioritize or address the potential for hydrogen sulfide corrosion at areas not listed on the referenced inventory. The Authority denies the remaining allegations contained in Paragraph 50.

51. The Authority denies the allegations contained in Paragraph 51 of the Complaint.

52. The Authority denies the allegations contained in Paragraph 52 of the Complaint.

THIRD CLAIM FOR RELIEF
PUBLIC NUISANCE

53. The Authority realleges and reincorporates its responses to the allegations in Paragraphs 1 through 52 above as if fully set for herein.

54. The Authority denies the allegations contained in Paragraph 54 of the Complaint.
55. The Authority denies the allegations contained in Paragraph 55 of the Complaint.
56. The Authority denies the allegations contained in Paragraph 56 of the Complaint.
57. The Authority denies the allegations contained in Paragraph 57 of the Complaint.
58. The Authority denies the prayer for relief contained in the Complaint.

RELIEF SOUGHT

To the extent that a response is required to the Plaintiff's prayer for relief, the Authority denies that the Plaintiff is entitled to any relief and denies the remaining allegations contained in the prayer for relief.

AFFIRMATIVE DEFENSES

The Authority alleges the following affirmative defenses with respect to each and every one of the purported claims for relief alleged in the Complaint:

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred because the alleged violation or violations of the Clean Water Act is or are wholly past.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the doctrine of diligent prosecution.

WHEREFORE, the Authority respectfully requests that the Court grant the following relief:

- a) dismiss each of the Plaintiff's claims with prejudice;
- b) enter judgment in favor of the Authority; and
- c) grant such other and further relief as this Court deems proper.

DEFENDANT
GREATER NEW HAVEN WATER
POLLUTION CONTROL AUTHORITY,

By: /s/ Edward J. Heath

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2021, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of Court's electronic filing system or by mail on anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Edward J. Heath _____
Edward J. Heath