

NOTICE OF INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

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THE ADIRONDACK COUNCIL)	AMENDED CITIZENS SUIT
)	NOTICE UNDER THE CLEAN
<i>Proposed Plaintiffs</i>)	WATER ACT
vs.)	
)	
)	
)	
)	
VILLAGE OF SARANAC LAKE,)	
)	
)	
<i>Proposed Defendants</i>)	
_____)	

NOTICE IS HEREBY PROVIDED TO PROPOSED DEFENDANTS:

Hon. Thomas Michael
Mayor
Village of Saranac Lake
3 Main Street
Saranac Lake, NY 12983

Martin Murphy,
Village Manager
Village of Saranac Lake
3 Main Street
Saranac Lake, NY 12983

NOTICE IS HEREBY PROVIDED TO GOVERNMENT OFFICIALS:

Hon. Lisa P. Jackson
U.S. EPA Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

George Pavlou
Acting U.S. EPA Regional Administrator
Region 2
Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Hon. Eric Holder
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Hon. Peter Grannis
Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-0001

Elizabeth M. Lowe
Regional Permit Administrator
NYSDEC Region 5 Headquarters
1115 NYS Route 86
PO BOX 296
RAY BROOK, NY 12977-0296

Hon. Andrew Cuomo
New York State Attorney General
Office of the Attorney General
The Capitol
Albany, New York 12224-0341

NOTICE IS HEREBY PROVIDED AS A COURTESY TO:

Hon. Curt Stiles
Chairman
Adirondack Park Agency
P.O. Box 99
NYS Route 86
Ray Brook, New York 12977

Pursuant to authorization provided by section 505(a)(1), (33 U.S.C. §1365(a)(1)), of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (“CWA”), the Adirondack Council, (hereinafter “the proposed plaintiff” or “Council”), hereby provides notice pursuant to section 505(b)(1)(A), (33 U.S.C. §1365(b)(1)(A)), of the CWA that it intends to file a civil action in federal district court against the Village of Saranac Lake for discharging pollutants from a point source without a National Pollution Discharge Elimination System Permit (NPDES) or equivalent state permit in violation of CWA §301(a), (33 C.F.R. §1311(a)) and CWA §402, (33 U.S.C. §1342) and for past and on-going violations of New York State water quality and purity standards adopted pursuant CWA §303, (33 C.F.R. §1313) and ECL, Article 17.

Founded in 1975, the Adirondack Council (“Council”) is a not-for-profit corporation organized pursuant to the laws of the State of New York. The Council is dedicated to the protection and preservation of the Adirondack Park. The Council advocates for proper land use planning within the Park and protection of its lakes, rivers and other natural resources; conducts education and outreach efforts related to the Park and its proper management; and monitors regional, statewide and national issues of environmental concern that may affect the Park.

Many of its 18000 members live within the Park and/or frequently visit the Adirondack Park and Forest Preserve. Its membership includes property owners who live and recreate in towns and villages throughout the Adirondacks including the Village of Saranac Lake and the Town of Harrietstown and who live adjacent to and use Colby Lake. Accordingly, the Council is a “citizen” within the meaning of section 505(g) of the CWA, (33 U.S.C. 1365(g)), and has standing to bring the citizen suit noticed herein.

Upon the expiration of the sixty (60) day statutory waiting period the proposed plaintiff will file a citizen suit in the federal district court.

BACKGROUND

The State of New York administers the Federal Clean Water Act's National Pollution Discharge Elimination System ("NPDES") program in New York State. CWA §402(b), (33 U.S.C. §1342(b)). New York administers the NPDES program through Article 17 of the Environmental Conservation Law ("ECL"), which prescribes the state's State Pollution Discharge Elimination System ("SPDES") and establishes a permit system authorizing discharges into the waters of the state. CWA §402, (33 U.S.C. §1342); ECL §17-0303. It is unlawful to discharge pollutants to the waters of the United States located in the State of New York from any outlet or point source without a NPDES or SPDES permit, (CWA §301, (33 U.S.C. §1311), CWA §402, (33 C.F.R. §1342); ECL §§17-0803, 17-0505 and 17-0701(1)(a). When authorized, such discharges must be in compliance with New York State's water quality standards adopted pursuant to CWA §303, (33 C.F.R. §1313).

The Village of Saranac Lake is located in the Adirondack Park, in Franklin County. Lake Colby is a 285 acre lake located in the Town of Harrietstown, Franklin County. A tributary of Lake Colby, known locally as Colby Brook, flows by the Village's salt and sand piles. Colby Brook and Lake Colby are waters of the State of New York and the United States (ECL, §17-0105(2); CWA §502(7), (33 U.S.C. §1362(7))). Lake Colby is classified as a Class A-Trout ("Class A(T)") surface water by the State of New York. CWA §303, 33 U.S.C. §1313; ECL 17-0301 and 6 NYCRR 701.1 et seq.

Class A waters are considered “a source of water supply for drinking, culinary or food processing purposes; primary and secondary contact recreation; and fishing. The waters shall be suitable for fish, shellfish, and wildlife propagation and survival.” 6 NYCRR 701.6. Actions that cause a substantial visible contrast to natural conditions to Class A – D waters are prohibited as violative of the turbidity standard. 6 NYCRR 703.2. Chloride levels cannot legally exceed the water quality standard of 250,000 ug/l [micrograms per liter or 250 ppm]. 6 NYCRR 703.5. New York State’s water quality standards were approved by the Administrator of the Environmental Protection Agency pursuant to CWA §303(a), (33 U.S.C. §1313(a)). As set forth below, the proposed defendants’ actions have resulted in discharges that violate the New York State Water Quality Standards for turbidity and Chloride in Colby Brook, a tributary of Lake Colby.

The Village of Saranac Lake (“Village”) owns and manages a salt pile for use by municipal road crews to deice and service roads during inclement weather. The Village’s salt pile, located in the Village on Van Buren Street, remains uncovered year round. During storm events, sand and salt from the pile, discharges from the pile both directly and through a culvert that traverses the Village property into Colby Brook which eventually flows to Lake Colby.

The Village has not obtained a NPDES/SPDES permit to discharge the sand and salt mixture into the waters of the State. The CWA defines “pollutant” to include “sand”. CWA §502(6), 33 C.F.R. §1362(6). The Village has not take measures to control the storm water runoff from its sand and salt piles through a SPDES Storm Water Pollution Prevention permit and program (“SWPPP”). CWA §402(p), (33 C.F.R. §1342(p)); ECL 17-0808. The failure by the proposed defendant to obtain a permit pursuant to the

NPDES/SPDES program violates CWA §402 (33 U.S.C. §1342) and Article 17, title 8 of the ECL, specifically sections 17-0803, 17-0807. The proposed defendant's failure to control storm water runoff from their sand and salt piles has resulted in violations of the turbidity and chloride standards in Colby Brook into waters of the state in violation of water quality standards adopted pursuant to CWA §303, (33 U.S.C. §1313). (See, ECL Article 17, §§17-0803, 17-0807 and 17-0911. (6 NYCRR 703.2 and 703.5). Violations of state water quality standards also violate CWA §§301 and 402, (33 U.S.C. §§1311 and 1342).

ON-GOING VIOLATIONS BY THE PROPOSED DEFENDANTS

The water quality of Lake Colby has been monitored since 1999 as part of the State's Citizens Statewide Lake Association Program ("CSLAP"), (ECL §17-0305) and by the Adirondack Lake Assessment Program ("ALAP") under the auspices of Paul Smith's College since 2003. Results from these monitoring programs indicate that concentrations of salt in Lake Colby are in excess of average salt levels for water bodies in the Adirondacks. According to the most recent ALAP report published in January 2009, "...background concentrations of chloride in Adirondack Lakes are usually less than 1 ppm. Chloride levels of 10 ppm and higher is usually indicative of pollution and, if sustained, can alter the distribution and abundance of aquatic plant and animal species." (see, <http://www.lakecolby.org/2008%20ALAP%20Results.pdf>). The average Chloride level for Lake Colby in 2008 was 39 ppm.

Samples taken from Colby Brook documented violations of New York State's Water Quality Standards for Chloride at 469 ppm in August of 2003 and 719 ppm in September of 2003. Additional sampling in Colby Brook documented violations of the

New York State's Water Quality Standard for Chloride at 590, 340 and 260 ppm on March 29, 2009 and 450 ppm, 480 ppm and 370 ppm on April 6, 2009. The New York State water quality standard for Chloride in surface waters is 250 parts per million (250,000 ppm or ug/L). 6 NYCRR 703.5.

<http://www.lakecolby.org/2003%20Adirondack%20Lake%20Assessment%20Program.pdf>

Since approximately 2001, the Lake Colby Association ("LCA"), a not-for-profit 501(c)4 New York membership corporation representing residential, commercial, and governmental interests on Lake Colby, have notified the proposed defendant and the New York State Department of Environmental Conservation ("DEC") of the storm water related discharges from the Village's sand and salt piles into waters of the state, including Colby Brook and Lake Colby and its tributaries, in violation of the SPDES.

Violations of water quality standards for turbidity are directly attributable to the proposed defendant's salt piles have been documented through photographic images. (http://www.lakecolby.org/Water_Quality/Water_Quality.htm).

As of the filing date of this Notice to File Suit, the salt piles remain uncovered and unpermitted resulting in on-going violations of the CWA and ECL as outlined herein.

INJUNCTIVE RELIEF AND PENALTIES

Upon expiration of the sixty (60) day notice period, the Council will seek injunctive relief in the form of an Order of the Court prohibiting the storage of sand and salt by the Village in a manner which allows discharges from the piles to enter the waters of the United States and compelling the Village to comply with all applicable provisions of the CWA and the ECL to control discharges from their sand and salt piles, including

but not limited to obtaining a municipal storm water management permit pursuant to Article 17, title 8 of the ECL. Pursuant to CWA §§505(a)(2) and 309(d), (33 U.S.C. 1365(a)(2) and 1319(d)), the Council intends to seek penalties in conformance with statutory maximums of \$37,500.00 per day for each day the proposed defendants maintained or operated a salt pile without a SPDES permit and for each violation of narrative standards for turbidity and suspended solids stated above in addition to those which have or may occur subsequent to this notice. (*see*, Civil Monetary Penalty Inflation Adjustment Rule, Federal Register, December 11, 2008 (Volume 73, Number 239, Page 75340-75346; <http://www.epa.gov/EPA-GENERAL/2008/December/Day-11/g29380.htm>) Pursuant to CWA 1365(d), (33 U.S.C. 1365(d)), the Council will also seek reasonable costs, attorney and expert fees, and any other relief deemed just and appropriate by the Court.

PARTY GIVING NOTICE

The full name, address and telephone number of the party providing this notice is:

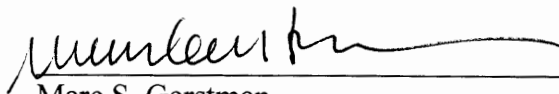
The Adirondack Council
P.O. Box D-2
103 Hand Ave. Suite 3
Elizabethtown, NY 12932
877-873-2240

CONCLUSION

This notice and attached declaration place the Village of Saranac Lake and the on notice of a claim under the Federal Water Pollution Control Act and state the grounds of the complaint. During the sixty (60) day notice period, the Council will be available to discuss effective remedies and actions that could be taken to bring the proposed defendants into compliance with the CWA and to avoid the civil action outlined herein.

The Law Office of Marc S. Gerstman

Dated: June 9, 2009
Albany, New York



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