

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION No. \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS,

*Plaintiff,*

v.

MARCHAND LLC d/b/a MARCHAND SEPTIC,  
MARCHAND SEPTIC SERVICE, MARCHAND  
ENVIRONEMNTAL and SMART RENTALS;  
MICHAEL L. MARCHAND; MICHAEL  
MARCHAND; and 25 ELM STREET LLC,

*Defendants.*

COMPLAINT

INTRODUCTION

1. Since at least April 2023, Marchand LLC d/b/a Marchand Septic, Marchand Septic Service, Marchand Environmental, and Smart Rentals ("Marchand LLC"); Michael L. Marchand; Michael Marchand; and 25 Elm Street LLC (hereinafter collectively referred to as "Defendants") have been dumping or causing, suffering, or allowing the dumping of raw septage and solid waste at property located at 25 Elm Street, Blackstone, Massachusetts (the "Site"), including in protected wetland resource areas, and on property owned by the Town of Blackstone, which abuts the Site and is located in a Zone II Wellhead Protection Area for five of the Town of Blackstone's drinking water wells.

2. As a result of the Defendants' actions, the Commonwealth of Massachusetts ("Commonwealth") brings this action on behalf and at the request of its Department of Environmental Protection ("MassDEP") for violations of the Massachusetts Wetlands Protection

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Act, G.L. c. 131, § 40, and its implementing regulations at 310 C.M.R. §§ 10.00 *et seq.* (“Wetlands Regulations”), the Massachusetts Clean Water Act, G.L. c. 21, §§ 26-53, and its implementing regulations at 310 C.M.R. § 22.00 *et seq.* and 314 C.M.R. §§ 3.00 *et seq.* (“CWA Regulations”), the State Environmental Code, G.L. c. 21A, § 13 and its implementing regulations at 310 C.M.R. §§ 15.000 *et seq.* (“Title 5 Regulations”), and the Solid Waste Disposal Act, G.L. c. 111, § 150A, and its implementing regulations at 310 C.M.R. §§ 16.00 *et seq.* and 19.000 *et seq.* (“Solid Waste Regulations”). For the Defendants’ violations of law and damage to the environment, the Commonwealth seeks civil penalties and injunctive relief.

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over the subject matter of this action and the authority to order the requested relief pursuant to G.L. c. 131, § 40; G.L. c. 21, §§ 42 and 46; G.L. c. 21A, § 13; G.L. c. 111, § 150A; G.L. c. 214, §§ 1 and 3(12); and G.L. c. 12, § 11D.

4. Venue lies in Suffolk Superior Court pursuant to G. L. c. 223, § 5.

### **PARTIES**

5. The Plaintiff is the Commonwealth, appearing by and through the Attorney General and the MassDEP.

6. The Attorney General, with an office at One Ashburton Place, Boston, Massachusetts, is the chief legal officer of the Commonwealth and is authorized to bring this action under G.L. c. 12, § 3 and 11D.

7. MassDEP is an agency of the Commonwealth charged with administering and enforcing the Wetlands Protection Act, the Clean Water Act, the State Environmental Code and the Solid Waste Disposal Act. MassDEP maintains its principal offices 100 Cambridge Street Suite 900, Boston, MA 02114.

8. Michael Marchand is an individual residing at 168 Federal St., Blackstone, Massachusetts, 01504.

9. Michael L. Marchand is an individual residing at 25 Elm St., Blackstone, Massachusetts, 01504, and is the father of Michael Marchand.

10. Marchand LLC is a domestic limited liability company, which was organized under the laws of the Commonwealth on April 30, 2019, revived on January 13, 2023, and has a principal place of business at 168 Federal St., Blackstone, Massachusetts, 01504. Michael L. Marchand and Michael Marchand are the managers of Marchand LLC which operates its business at the Site under various names or d/b/a's, including Marchand Environmental, Marchand Septic, Marchand Septic Service, and Smart Rentals.

11. 25 Elm Street LLC is a domestic limited liability company, which was organized under the laws of the Commonwealth on May 20, 2022, and has a principal place of business at 25 Elm St., Blackstone, MA 01504. 25 Elm Street LLC is the property owner of the Site, and Michael L. Marchand is the sole manager of 25 Elm Street LLC.

## **STATUTORY AND REGULATORY BACKGROUND**

### **The Wetlands Protection Act and Wetlands Regulations**

12. The WPA and the Wetlands Regulations establish a comprehensive regulatory scheme to prevent damage to the Commonwealth's wetland resource areas, to compel restoration of wetland resources that are illegally altered or filled, and to promote the public's interests in wetland resource areas, which include protection of the public and private water supply, flood control, storm damage prevention, pollution prevention, shellfish and fisheries protection, and wildlife habitat protection.



13. The WPA and the Wetlands Regulations protect and limit activities in various defined inland and coastal wetlands, including, but not limited to Banks and Bordering Vegetated Wetlands. The regulation at 310 C.M.R. § 10.54(2)(a) defines “Bank” as “the portion of the land surface which normally abuts and confines a water body... [and which] occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, ... occurs between a water body and an upland.” The regulation at 310 C.M.R. § 10.55(2)(a) defines “Bordering Vegetated Wetlands” as “freshwater wetlands which border on creeks, rivers, streams, ponds and lakes,” including “wet meadows, marshes, swamps, and bogs . . . where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants.” “Bordering Vegetated Wetlands” include areas that have been disturbed “that supported . . . under undisturbed conditions a predominance of wetland indicator plants prior to the disturbance.” *Id.* § 10.55(2)(c)3.

14. The WPA and 310 C.M.R. § 10.02(2) prohibit any person from removing, filling, dredging, or altering any wetlands protected by the WPA, or the 100-foot “Buffer Zone” surrounding them, without filing a Notice of Intent (“NOI”) and obtaining an Order of Conditions (“OOC”) from the local conservation commission or a Superseding Order of Conditions from MassDEP. If there is doubt as to whether a particular activity requires a NOI, a project proponent may file a Request for Determination of Applicability, pursuant to 310 C.M.R. § 10.02(2) and § 10.05(3)(a)(2).

15. The WPA prohibits any person from causing, suffering, or allowing the unauthorized filling, dredging, or alteration of wetlands protected by the WPA, from failing to restore illegally filled or altered wetlands, and from failing to comply with an enforcement order issued pursuant to the WPA. G.L. c. 131, § 40.

The Massachusetts Clean Water Act and the CWA Regulations

16. The CWA authorizes MassDEP to establish a program for prevention, control, and abatement of water pollution and obligates MassDEP to adopt water quality standards for waters of the Commonwealth to protect public health and enhance the quality and value of the Commonwealth's water resources. *See* G.L. c. 21, § 27.

17. Pursuant to that authorization, MassDEP has adopted water quality standards, *see* 314 C.M.R. §§ 4.00 *et seq.*, and established procedures for MassDEP to certify that any discharge of dredged or fill material in waters of the United States within the Commonwealth will comply with those standards, in accordance with Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1251. *See* 314 C.M.R. § 9.01(1).

18. Under MassDEP's Water Quality Regulations, found at 314 C.M.R. §§ 9.00 *et seq.*, anyone conducting an activity that will result in the discharge of dredged or fill material resulting in the loss of more than five thousand (5,000) square feet of certain wetland resource areas, *see id.* § 9.04(1), must obtain a water quality certification from MassDEP certifying that the planned work will meet applicable water quality standards and minimize environmental impacts ("Water Quality Certification"), *see id.* §§ 9.06(1), 9.09.

19. The Clean Water Act also prohibits the discharge of pollutants into waters of the United States within the Commonwealth without a permit and obligates MassDEP to prescribe effluent limitations and permit programs for such discharges. G.L. c. 21, §§ 27(6), 43(2).

20. Pursuant to that authorization, MassDEP has adopted regulations, including 314 C.M.R. §§ 3.00 *et seq.* ("Surface Water Discharge Regulations") that provide, with exceptions not relevant here, that no person shall discharge pollutants into waters of the United States within the Commonwealth without a state-issued pollutant discharge permit. *See* 314 C.M.R. § 3.03(1).

21. In addition, the Ground Water Discharge Regulations provide that no person shall discharge pollutants to the groundwaters of the Commonwealth without a permit. *See* 314 C.M.R. 5.03(1) (“Ground Water Discharge Regulations”).

22. The Drinking Water Protection Standards provide that no person shall violate any municipal control that is issued as part of a MassDEP-issued approval of a groundwater or surface water protection program. 310 C.M.R. §§ 22.03(7) (“Drinking Water Protection Standards”).

23. The Town of Blackstone’s by-laws at Article IV § 123-23.1 prohibit using groundwater protection districts as a landfill, open dump, sludge, and septage landfill and storage of sludge and septage.

#### State Environmental Code and Title 5 Regulations

24. The State Environmental Code at G.L. c. 21A, § 13, authorizes MassDEP to adopt regulations for matters affecting the environment and the well-being of the public including, but not limited to, standards for the disposal of sewage. *See* G.L. c. 21A, § 13.

25. Pursuant to that authority, MassDEP has adopted the regulations at 310 C.M.R. §§ 15.00 *et seq.* which govern the transport and disposal of septage.

26. Those regulations provide that no person shall remove or transport septage through the streets of any city or town or via any state or federal highway without a permit from the local board of health of the city or town where the septage was first collected designating the treatment works where the hauler is authorized to dispose of septage. 310 C.M.R. § 15.502(1).

27. Similarly, a septage hauler may not transport septage over the streets or highways of a city or town in which septage did not originate unless the hauler first registers with the local board of health of that city or town. 310 C.M.R. § 15.502(4).



28. Boards of health may regulate locations for the transfer of septage from one truck, tanker, or other storage container equipped with wheels sufficient for over-the-road or rail travel to another such truck, tanker, or storage container. 310 C.M.R. § 15.503.

29. Disposal of septage must be by discharge to a sanitary sewer or to a treatment works approved by MassDEP. 310 C.M.R. § 15.504(2). A sanitary sewer is any system of pipes or other structures used for collecting and conveying wastewater to a public or private treatment works. *Id.* § 15.002.

30. Equipment used by a septage hauler must have tight discharge valves and pumps must be maintained to prevent the leakage of septage. 310 C.M.R. § 15.505.

#### The Solid Waste Disposal Act and Solid Waste Regulations

31. The SWDA and Solid Waste Regulations at 310 C.M.R. §§ 19.00 *et seq.* protect public health, safety, and the environment by regulating the siting and operation of solid waste management sites in the Commonwealth, thereby preventing pollution at disposal sites and promoting an integrated solid waste management system that maximizes material reuse and energy conservation.

32. The SWDA generally prohibits the establishment, expansion, and operation of any “solid waste” management “facility” without a site assignment from the local Board of Health and a valid permit from MassDEP. G.L. c. 111, § 150A; 310 C.M.R. §§ 16.00 *et seq.*, 19.028(1).

33. The Solid Waste Regulations also prohibit any person from establishing, constructing, operating or maintaining a “dumping ground” or operating or maintaining a “landfill” in Massachusetts in such manner as to constitute an “open dump.” 310 C.M.R. § 19.014; *see id.* § 19.006.

## STATEMENT OF FACTS

### *Site Description*

34. The Site comprises fourteen and nine hundredths (14.09) acres of land, bordered by private land on the east and twenty-five and fifty-four hundredths (24.54) acres of land owned by the Town of Blackstone to the west and south.

35. There are wetlands on the western, eastern, and southern areas of the Site ("Site Wetlands").

36. The Town of Blackstone property contains wetlands and streams and has wet land where groundwater is at or near the surface and where plants indicative of "swamps" and "marshes" grow in significant amounts ("Town Wetlands").

37. Two streams flow onto the Site. A larger stream enters the Site from the southeast ("Stream 1") and a smaller stream flows onto the Site from the north ("Stream 2"). Portions of Stream 1 and Stream 2 have been culverted. Stream 1, which runs east to west across the southern half of the Site, intersects with the Site Wetlands and the portion of the Site where business operations occur.

38. Both streams have well-defined Banks and join near the western property line of the Site to form a single stream ("Main Stream") that flows west approximately nine hundred (900) feet into the Mill River, which in turn flows south into Harris Pond. Harris Pond is located downstream from the Site on land owned by the Town of Blackstone.

39. Five wells, owned by the Town of Blackstone, are adjacent to Harris Pond and the Mill River and serve as a groundwater drinking water supply for the Town of Blackstone. Harris Pond is protected as a Zone II Wellhead Protection Area for the Town of Blackstone and serves as a supplementary surface drinking water supply for the City of Woonsocket, Rhode Island.



40. The following May 2023 image obtained from MassDEP, Wetland and Wetland Change Areas Map, has been annotated by the Attorney General's Office to depict 25 Elm Street and the bordering Town of Blackstone property. The depiction of wetland resource areas in the May 2023 image below is an approximation, Not to Scale, and for Descriptive Purposes Only.



#### ***Ownership and Operation of the Site***

41. 25 Elm Street LLC owns the property where the Site is located, and Marchand LLC operates its business on the Site.

42. Michael L. Marchand, the sole manager of 25 Elm Street LLC and the co-manager of Marchand LLC with his son Michael Marchand, is responsible for the day-to-day operations of Marchand LLC.

43. The Defendants operate a business at the Site that conducts septic waste pumping, hauling, and disposal; trash and construction debris hauling and disposal; septic system

inspection, installation, and repair; land clearing and tree removal; commercial and residential demolition; dumpster rental services; and excavation and site work.

44. Since August 1, 2022, when the Defendants became owners of the Site, the Defendants have operated and stored heavy equipment, including but not limited to excavators, bulldozers, septage tank trucks, tank trailers, and Municipal Solid Waste (“MSW”) packer garbage trucks, as well porta-potty portable toilets, on the southern half of the Site.

45. Since at least August 1, 2022, the Defendants have operated a maintenance garage at the Site.

46. The Defendants conduct these activities without requisite permits and approvals and in an area where most of the activities are strictly forbidden because of the Site’s proximity to the Town of Blackstone’s drinking water wells.

***The Defendants’ Illegal Filling and Alteration of Streams, Banks, and  
Bordering Vegetated Wetlands***

***Alteration to Site Wetlands***

47. Sometime after 2019, the Defendants expanded the area at the Site available for use in their business operations by dumping fill material and solid waste, including rocks, soil, wood waste, and construction and demolition debris, such as asphalt, brick, and concrete, and MSW, in and around Stream 1, the Main Stream, Bordering Vegetated Wetlands, and all associated Buffer Zones at the Site.

48. During that time period, the Defendants also dumped gray fill material (“gray fill”) throughout the southern half of the Site, including in and around Stream 1 and the Main Stream and in and around the associated wetlands. The gray fill increased the elevation of the Site by at least ten (10) feet.



49. During that time period, the Defendants also dumped piles of brush and soil at least partially within Bordering Vegetated Wetlands and their Buffer Zones on the Site and dumped large amounts of stumps and wood waste on top of the gray fill along the western side of the Site and in Town Wetlands.

50. The Defendants did not install erosion /or sedimentation controls at or downgradient from the gray fill or along or upgradient of Stream 1, Stream 2, and adjacent Bordering Vegetated Wetlands.

51. The Defendants did not place any erosion or sedimentation controls at or upgradient of the Main Stream, along Bordering Vegetated Wetlands boundaries, or downgradient from the gray fill along the western side of the Site.

52. To date, the Defendants have continued to dump fill material and solid waste in Stream 1, the Main Stream, Bordering Vegetated Wetlands, and associated Buffer Zones on the Site.

53. The Defendants buried or allowed the upstream inlet to the culverted portion of Stream 1 to be buried beneath rocks and assorted manmade debris.

54. The Defendants installed or allowed the installation of a new, unauthorized culvert at the confluence of Stream 1 and Stream 2, which conveys the Main Stream for approximately one hundred fifty (150) feet to an outfall located near the western property line of the Site. The Defendants also installed or allowed the installation of a second new, unpermitted, one hundred fifty (150) foot culvert to the east of the first culvert.

55. As part of that culvert installation, the Defendants filled the Main Stream, portions of Stream 1, and adjacent Bordering Vegetated Wetlands and cleared vegetation, including mature trees along Stream 2, which resulted in sedimentation of Stream 2.



56. As a result of these activities, the Defendants adversely affected Bank and Bordering Vegetated Wetlands throughout the Site, including Stream 1, Bordering Vegetated Wetlands to the south of Stream 1, Stream 2, Bordering Vegetated Wetlands along Stream 2, the entirety of the Main Stream within the Site, and Bordering Vegetated Wetlands within the western property line of the Site.

57. The Defendants did not file an NOI or obtain authorization from the Town of Blackstone or MassDEP for any of the aforementioned activities.

*Filling and Alteration of the Town Wetlands*

58. Stormwater runoff from the Site flows directly into the Town Wetlands.

59. Runoff from the gray fill is located in the Town Wetlands and the Main Stream at depths which can result in alterations to downgradient wetlands.

60. The Defendants dumped discarded pipes and other debris within Bordering Vegetated Wetlands along the western property line of the Site into Town Wetlands.

61. Since at least 2023, Defendants have collected and continue to dump a large amount of wood waste, including landscaping, land clearing debris, and stumps ("wood waste") on the Town Wetlands. The wood waste pile is approximately twenty-five to thirty (25-30) feet high with an estimated volume of fourteen thousand (14,000) cubic yards.

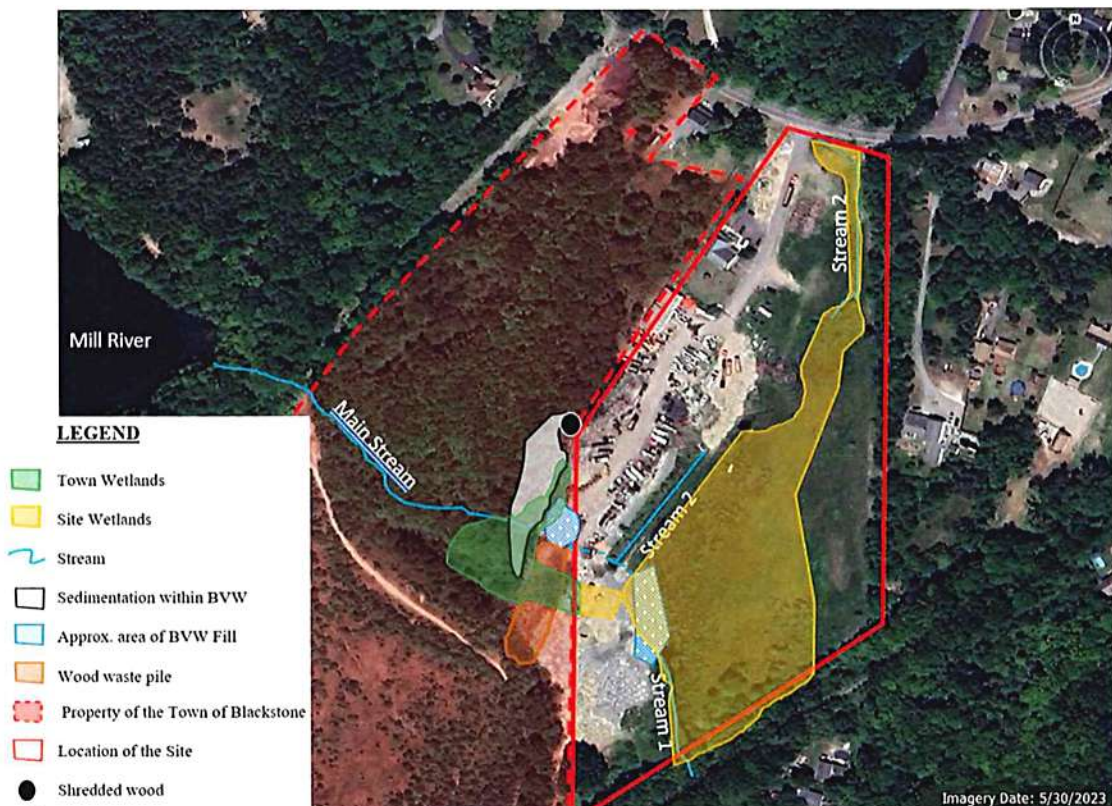
62. Defendants have accumulated the wood waste without any stated or observable means to process, recycle, or otherwise manage it for proper disposal.

63. Since at least 2023, the Defendants also have dumped matted, shredded wood waste material ("shredded wood"), in an approximately eight hundred (800) square foot area, on the base of the gray fill along the edge of the Town Wetlands.

Cumulative Impact of Defendants Illegal Alteration and Filling of Wetlands

64. Due to the Defendants' operation and expansion of the Site, disposal of wood waste and shredded wood, and placement of gray fill on the Site, Marchand has altered approximately thirty-seven thousand seven hundred (37,700) square feet of Bordering Vegetated Wetlands and six hundred twenty-four (624) linear feet of Bank.

65. The following May 2023 image obtained from MassDEP, Wetland and Wetland Change Areas Map, has been annotated by the Attorney General's Office to depict the alteration of the Town Wetlands and Site Wetlands. The depiction of wetland resource areas in the May 2023 image below is an approximation, Not to Scale, and for Descriptive Purposes Only.



Defendants' Failure to Comply with Regulatory Requirements

66. The Defendants failed to file an NOI and obtain a Final OOC for the filling and alteration of Site Wetlands and Town Wetlands.

67. The Defendants did not obtain a state-issued groundwater discharge permit or a surface water discharge permit to discharge pollutants in to the waters of the United States within the Commonwealth.

68. The Defendants did not obtain a Water Quality Certification certifying that the activities at the Site would meet applicable water quality standards and minimize environmental impacts and demonstrating that there were no practicable alternatives that would have had less adverse impact on the aquatic ecosystem before filling the Bordering Vegetated Wetlands on the Site prior to altering approximately thirty-seven thousand seven hundred (37,700) square feet of Bordering Vegetated Wetlands.

69. The Defendants did not implement stormwater best management practices prior to filling and altering wetlands resources at the Site which allowed sedimentation to flow into streams and wetlands on the Site and into the Town Wetlands.

***Defendants' Illegal Hauling, Transfer, Storage, and Disposal of Septage***

70. In April 2023, the Defendants stored approximately forty to fifty porta-potty portable toilets at the Site, which can contain varying amounts of human waste and chemical toilet fluids.

71. During this time, the Defendants had staged two porta-potty toilets at the Site for cleaning.

72. Also during this time, the Defendants backed a septic pumping truck into the area of the shredded wood pile. The rear tank valve was leaking and had formed a puddle of septic waste and gray water on the ground.



73. During that time, the Defendants also dumped septage from the pumping truck to the shredded wood pile, including solid materials such as plastic tampon applicators and feces which were present throughout the pile.

74. As a result, of the Defendants' dumping of septage at the shredded wood pile, the pile emitted an odor of septic waste.

75. Since at least April 2023, the Defendants have been dumping septage, including plastic tampon applicators, on the ground in and around the shredded wood pile.

76. The Defendants' dumping, leaking, and discharge of septage on the Site has resulted in highly elevated levels of fecal coliform bacteria contamination in Town Wetlands, as well as elevated levels of the HF183 Marker in the areas where eroded sediments from the Site have accumulated in the Town Wetlands.

77. Fecal coliform is a subset of the general coliform bacteria group. The presence of coliform-group bacteria is an indication of possible pathogenic bacterial contamination. Fecal coliform bacteria are found in the feces of various warm-blooded animals.

78. The HF183 Marker is a section of DNA sequences located on the *Bacteroides* human-associated gene. *Bacteroides* human-associated gene sequences are commonly found in the feces of humans (primary source) and secondary sources of human fecal pollution (sewage and septage). The presence of human-associated *Bacteroides* marker is generally considered an indicator of human fecal pollution as opposed to other mammalian sources of such pollution.

79. The contamination of the Town Wetlands by human fecal matter poses a threat to Harris Pond and to the drinking water wells serving the Town of Blackstone, as well as the backup surface water supply for the City of Woonsocket, Rhode Island.

80. Since at least 2022, the Defendants have not obtained a permit from or registered with the Town of Blackstone to haul, transfer, or dispose of septage in or through the Town.

81. Since at least 2022, the Defendants have not obtained a permit from or registered with the Towns of Bellingham or Mendon, which are contiguous with the Town of Blackstone, to haul, transfer, or dispose of septage in or through those Towns despite hauling septage through these towns.

82. Since at least 2022, the Defendants also have not obtained the required permits in the State of Rhode Island, also contiguous with the Town of Blackstone, to haul, transfer, or dispose of septic waste in that state.

83. To date, the Defendants have failed to provide pumping records to MassDEP or to any of the municipalities in which it is pumping septage, including but not limited to the towns of Blackstone, Uxbridge, Mendon, and Milford.

84. The Defendants have failed to provide records of septage collection and disposal to MassDEP.

85. The Defendants have applied for a hauling permit in the Town of Milford and certified that they are permitted to dispose of septage in Rhode Island. The Defendants have applied for a hauling permit in Millville and certified that they are permitted to dispose of septage in Taunton. The Defendants do not have a permit to haul, transfer, or dispose of septage in either Rhode Island or Taunton.

***The Defendants' Illegal Handling, Storage, and Disposal of MSW and Other Solid Waste at the Site***

86. Since at least April 2023, the Defendants have collected MSW from surrounding towns and stored that waste at the Site prior to transporting it to Rhode Island for disposal.

87. The Defendants store the MSW in packer garbage trucks, often containing full loads of MSW, dumpster roll-off trucks, several dumpsters, including two large dumpsters owned by a Rhode Island waste disposal company, and numerous municipal waste collection bin trucks on the Site.

88. In April 2023, the Defendants allowed MSW and food waste to litter the ground in the area of the Rhode Island company's dumpsters. During that time, the Defendants hauled MSW from this Rhode Island company on a bi-weekly basis.

89. In August 2023, the Defendants dumped MSW directly from one of its packer trucks onto the ground at the Site.

90. To date, the Defendants continue to collect, accept, and dispose of MSW and other waste at the Site.

91. The Defendants do not have a permit to operate a solid waste transfer station.

92. Since at least April 2023, the Defendants have accumulated asphalt, brick, and concrete rubble debris in piles around the Site and mixed it with fill material. Additionally, the Defendants dumped waste concrete directly onto the ground at the Site in what appeared to be a concrete waste disposal area opposite the garage building.

93. The Defendants do not have a site assignment from the Blackstone Board of Health for any of the solid waste handling, transportation, transferring, or disposal activities.

***Marchand's Noncompliance with MassDEP's May 2023 Unilateral Administrative Order***

94. On May 4, 2023, MassDEP issued a Unilateral Administrative Order ("UAO") and Notice of Non-Compliance to Marchand LLC for violations of the Commonwealth's wetlands, water pollution, septage collection and storage, and solid waste laws and regulations at the Site.



95. The UAO ordered Marchand LLC to immediately cease and desist from 1) all activities that could alter areas subject to protection under the Wetlands Protection Act; 2) dumping, draining, placing, discharging, storing septage at the Site and cleaning of any portable toilets at the Site; 3) disposing of or depositing soil or fill material, and solid waste at the Site; and 4) collecting, accepting, and accumulating municipal solid waste at the Site.

96. The UAO also ordered Marchand LLC to “immediately implement measures to stabilize all exposed soils at the Site to prevent soil erosion and shall install effective erosion and sedimentation controls to prevent sediment from reaching wetland resource areas”.

97. To date, neither Marchand LLC nor any of the other Defendants have brought the Site into compliance with the UAO or the Wetlands Regulations.

### **FIRST CAUSE OF ACTION**

#### **Violations of the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40, and the Wetlands Regulations, 310 C.M.R. §§ 10.00 *et seq.***

98. The Commonwealth realleges and incorporates by reference the allegations of Paragraph 1 through 97, as if they were restated in full.

99. The WPA and its implementing regulations provide, with exceptions not relevant here, that no person shall remove, fill, dredge, or alter areas subject to that Act’s protection, or cause, suffer, or allow such activity, without first obtaining and complying with, as relevant here, an Order of Conditions from the Conservation Commission or a Superseding Order of Conditions from MassDEP. *See* G.L. c. 131, § 40; 310 C.M.R. §§ 10.02(2)(a), 10.05(4)(a).

100. The regulation at 310 C.M.R. § 10.02(2)(d) also provides that any person undertaking an activity outside of an area subject to the WPA’s protection which alters such a protected area may be required by MassDEP or the Conservation Commission, through an Order of Conditions or Enforcement Order, to take steps to protect such areas.

101. The WPA also provides that “[n]o person shall leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition.” G.L. c. 131, § 40.

102. The WPA defines “person” to include “any individual, group of individuals, association, partnership, corporation, company, business organization, . . . or any other legal entity or its legal representative, agents or assigns.” G.L. c. 131, § 40.

103. The regulation at 310 C.M.R. § 10.54(2)(a) defines “Bank” as “the portion of the land surface which normally abuts and confines a water body... [and which] occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, ... occurs between a water body and an upland.”

104. “Bordering Vegetated Wetlands” are defined by 310 C.M.R. § 10.55(2) as “freshwater wetlands which border on creeks, rivers, streams, ponds, and lakes,” including “wet meadows, marshes, swamps, and bogs ... where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants.”

105. The regulation at 310 C.M.R. § 10.04 defines to “fill” as “to deposit any material so as to raise an elevation, either temporarily or permanently.”

106. The regulation at 310 C.M.R. § 10.04 defines to “alter” as “to change the condition of any Area Subject to Protection Under [the WPA].” This activity includes “the changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns, flood retention areas;” “the lowering of the water level or water table;” “the destruction of vegetation;” and “the changing of water temperature, and other physical, biological, or chemical characteristics of the receiving water.” *Id.*

107. The Defendants are “persons” within the meaning of G.L. c. 131, § 40, and 310 C.M.R. §§ 10.00 *et seq.*

108. The areas where the Defendants are dumping wood waste and shredded wood, disposing of septage, and placing gray fill along the Main Stream is “Bank” and “Bordering Vegetated Wetland” as defined by 310 C.M.R. §§ 10.54(2)(a) and 10.55(2).

109. The area where the Defendants are dumping wood waste and shredded wood, disposing of septage, and placing gray fill on the western and southern areas of the Site and in Town Wetlands is located within the 100-foot “Buffer Zone” to the Bordering Vegetated Wetlands, as defined by 310 C.M.R. § 10.02(2)(b).

110. The Bordering Vegetated Wetlands on the southern half of the Site, the streams, and the Banks are “wetlands” within the meaning of G.L. c. 131, § 40, and its implementing regulations, 310 C.M.R. §§ 10.00 *et seq.*

111. The filling and alteration of the Site Wetlands and Town Wetlands by dumping wood waste and shredded wood, disposing of septage and placing gray fill into fresh water forested Bordering Vegetated Wetlands constitutes “removing and altering protected wetland areas” within the meaning of the WPA and its implementing regulations. *See* G.L. c. 131, § 40; 310 C.M.R. §§ 10.00 *et seq.*

112. By discharging sediment to the Town Wetlands and Site Wetlands or by causing, suffering, or allowing that activity, the Defendants “fill[ed]” or “alter[ed]” the Bordering Vegetated Wetlands, Bank, and streams at the Site in violation of G.L. c. 131, § 40 and 310 C.M.R. §§ 10.02(2)(a), 10.04(4)(a).

113. By dumping or by causing, suffering, and allowing the dumping of wood waste and shredded wood, disposal of septage at the Site, and placement of gray fill in and around the Site Wetlands and Town Wetlands without a final OOC or Superseding OOC the Defendants



“fill[ed]” and “alter[ed]” wetland resource areas in violation of the WPA and 310 C.M.R. § 10.02(2)(a).

114. By failing to remove the unauthorized fill and restore the wetland resource areas to their original condition the Defendants violated and are continuing to violate the WPA. G.L. c. 131, § 40.

115. The WPA provides that this Court may restrain violations of the WPA and may enter such orders as it deems necessary to remedy those violations, including an order to restore the damaged property to its original condition. G.L. c. 131, § 40.

116. The WPA states that a person who violates the WPA or its implementing regulations is liable for civil penalties of up to \$25,000 per day per violation. G.L. c. 131, § 40.

## **SECOND CAUSE OF ACTION**

### **Violations of the Massachusetts Clean Water Act, G.L. c. 21, § § 26-53, and the Water Quality Regulations, 314 C.M.R. § 9.00 *et seq.***

117. The Commonwealth realleges and incorporates by reference the allegations of Paragraph 1 through 116, as if they were restated in full.

118. Section 27 of G.L. c. 21 obligates MassDEP to adopt water quality standards and to adopt regulations to administer the laws relative to water pollution control and the protection of the quality and value of water resources.

119. Pursuant to that authorization, MassDEP promulgated 314 C.M.R. § 9.04(1)(a), which, with exceptions not relevant here, mandates that any activity that will result in discharge of dredged or fill material into an area protected under the Wetlands Regulations and that will cause the loss of more than five thousand (5,000) square feet of Bordering Vegetated Wetlands, may not proceed until a project proponent has applied for, and the Department has issued, a Water Quality Certification for that activity.

120. The regulation at 314 C.M.R. § 9.06(1) further provides, with exceptions not relevant here, that no discharge of dredged or fill material shall be permitted if there is a practicable alternative that would have a less adverse impact on the aquatic ecosystem and minimize potential adverse impacts to Bordering Vegetated Wetlands, as demonstrated in an alternatives analysis in a Water Quality Certification application.

121. Section 26 of G.L. c. 21 and the regulation at 314 C.M.R. § 9.02 define “person” to mean, *inter alia*, any “public or private corporation or authority, individual, partnership or association, or other entity.”

122. The regulation at 314 C.M.R. § 9.02 defines “Bordering Vegetated Wetlands” as “any land or surface area so defined by the [Wetland Protection Act] and the [Wetlands Regulations.]”]

123. The regulation at 314 C.M.R. § 9.02 defines “Discharge of Dredged or Fill Material” as “[a]ny addition of dredged or fill material into [waters of the United States within the Commonwealth].”

124. The Defendants are “persons” as defined by G.L. c. 21, § 26A and 314 C.M.R. § 9.02 and used by G.L. c. 21, § 42.

125. The Town Wetlands and Site Wetlands located on the eastern and southern sections of the Site are Bordering Vegetated Wetlands as defined by 314 C.M.R. § 9.02.

126. By filling and altering, and thereby causing the loss of, approximately thirty-seven thousand seven hundred (37,700) square feet of Bordering Vegetated Wetlands at the Site, or by causing, suffering, or allowing such activity, without first applying for or obtaining a Water Quality Certification, the Defendants violated G.L. c. 21, § 27 and 314 C.M.R. § 9.04(1).

127. By expanding the usable working area of the Site to include the southern half of the Site, by placing gray fill material in and around the Main Stream, Stream 1, Town Wetlands, and Site Wetlands, thereby increasing the elevation of the Site by at least ten (10) feet, the Defendants “discharge[d] fill ... material” into the waters of the United States within the Commonwealth.

128. By installing a concrete pipe on the Site and subsequently covering it with gray fill, the Defendants “discharge[d] fill ... material” into the waters of the United States within the Commonwealth.

129. By discharging sediment from the placement of gray fill in and around the Main Stream, Stream 1, Site Wetlands, and Town Wetlands without taking appropriate and practical steps to minimize the adverse impacts to those resources, the Defendants violated G.L. c. 21, § 27 and 314 C.M.R. § 9.06(2).

130. By allowing sediment from the placement of gray fill material to remain in place in and around Stream 1, Stream 2, and the Main Stream, Site Wetlands, and Town Wetlands, the Defendants violated and continue to violate G.L. c. 21, § 27 and 314 C.M.R. § 9.06(2).

131. Under G.L. c. 21, § 46, this Court is authorized to enjoin further violations of G.L. c. 21.

132. Pursuant to G.L. c. 21, § 42, any person who violates any provision of G.L. c. 21 or any regulation issued thereunder shall be subject to a civil penalty of up to \$50,000 per day for such violation.



### THIRD CAUSE OF ACTION

**Violations of the Massachusetts Clean Water Act, G.L. c. 21, § § 26-53, the Surface Water Discharge Regulations, 314 C.M.R. § 3.00 *et seq.*, and the Ground Water Discharge Regulations, 314 C.M.R. § 5.00 *et seq.***

133. The Commonwealth realleges and incorporates by reference the allegations of Paragraphs 1 through 132, as if they were restated in full.

134. Section 43 of G.L. c. 21 and the regulations at 314 C.M.R. § § 3.03(1), 5.03(1) provide, with exceptions not relevant here, that no person shall discharge pollutants into Waters of the Commonwealth without a state-issued pollutant discharge permit. *See* G.L. c. 21, § 43(2).

135. The regulation at 314 C.M.R. § 3.04(1) provides, with exceptions not relevant here, that “no person shall engage any activity that may reasonably result, directly or indirectly, in the discharge of pollutants into waters of the Commonwealth without” a state-issued pollution discharge permit.

136. Section 26 of G.L. c. 21 and the regulation at 314 C.M.R. § 3.02 define “person” to mean, *inter alia*, any “public or private corporation or authority, individual, partnership or association, or other entity.”

137. The regulation at 314 C.M.R. § 3.02 defines “discharge” as “any addition of any pollutant or combination of pollutants to the [W]aters of the Commonwealth from any source...”

138. The regulation at 314 C.M.R. § 3.02 defines a “pollutant” as “any element or property of sewage, agriculture, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained or otherwise introduced into any... [W]aters of the Commonwealth.”

139. The regulation at 314 C.M.R. § 3.02 defines “[W]aters of the Commonwealth” as “all waters within the jurisdiction of the Commonwealth including, without limitation, rivers, streams, lakes, ponds... wetlands, coastal waters, and ground waters.”

140. Sediment in runoff from the placement of gray fill is a “pollutant” within the meaning of 314 C.M.R. § 3.02.

141. The septage disposed in and around the Site and Town of Blackstone property is a “pollutant” within the meaning of 314 C.M.R. § 3.02.

142. The Town Wetlands and Site Wetlands are “Waters of the Commonwealth” within the meaning of 314 C.M.R. § 3.02.

143. By discharging sediment in runoff from the placement of gray fill in and around the Main Stream, Stream 1, Site Wetlands, and Town Wetlands without a state-issued pollutant discharge permit, the Defendants violated G.L. c. 21, § 43(2) and 314 C.M.R. § § 3.03(1).

144. By discharging septage from the trucks to the ground on the Site and onto the piles of shredded wood located on and adjacent to the Town Wetlands, the Defendants violated G.L. c. 21, § 43 and 314 C.M.R. § § 3.03(1), 5.03(1).

145. By failing to implement in a timely manner adequate stormwater pollutant and erosion controls at the Site, the Defendants engaged in activities that resulted in the discharge of sediment to Waters of the Commonwealth without a state-issued permit, in violation of G.L. c. 21, § 43(2) and 314 C.M.R. § 3.04(1).

146. By failing to implement in a timely manner adequate stormwater pollutant and erosion controls at the Site, the Defendants directly or indirectly discharged or allowed the discharge of sediment to Waters of the Commonwealth without a state-issued pollutant discharge permit. 314 C.M.R. § 3.04(1).

147. Pursuant to G.L. c. 21, § 42, any person who violates any provision of G.L. c. 21 or any regulation issued thereunder shall be subject to a civil penalty of up to \$50,000 per day for such violation.

#### **FOURTH CAUSE OF ACTION**

##### **Violations of the State Environmental Code, G.L. c. 21A, § 13, and Title 5 Regulations, 310 C.M.R. §§ 15.00 *et seq.***

148. The Commonwealth realleges and incorporates by reference the allegations of Paragraph 1 through 147, as if they were restated in full.

149. The regulation at 310 C.M.R. § 15.002 defines “[p]erson” as “[a]ny individual, partnership, corporation, firm, association, authority, trust or group, including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.”

150. The regulation at 310 C.M.R. § 15.002 defines “[o]perator” as “[a] person who alone or together with other persons has charge or control of any system.”

151. The regulation at 310 C.M.R. § 15.002 defines “[s]eptage” as the “[m]aterial physically removed from any part of an on-site system, including, but not limited to, the solids, semi-solids, scum, sludge and liquid contents of a septic tank, privy, chemical toilet, cesspool, holding tank, or other sewage waste receptacle. It does not include any material which is hazardous waste.”

152. The regulation at 310 C.M.R. § 15.002 defines “[s]eptic [h]auler” as “[a] person licensed by an Approving Authority to remove septage from on-site sewage disposal systems and transport it to an approved disposal location in accordance with 310 C.M.R. § 15.500.”

153. The Defendants are each a “person” within the meaning of 310 C.M.R. § 15.002.



154. At all relevant times, the Defendants were in control of the septage operations at the Site and were therefore each an “operator” of the Site within the meaning of 310 C.M.R. § 15.002.

155. By dumping septage directly to the ground of the Site, including but not limited to the area in and around the shredded wood pile, the Defendants violated and continue to violate 310 C.M.R. §§ 15.000 and 15.504.

156. By collecting, storing, transferring, and disposing of septage in the Towns of Blackstone, Uxbridge, and Mendon, without first obtaining a permit from the local Board of Health in accordance with G.L. c. 111, § 31A and 310 C.M.R. §§ 15.000 *et seq.*, the Defendants violated and continue to violate G.L. c. 111, § 31A and 310 C.M.R. § 15.502.

157. Under G.L. c. 21A, § 13, this Court is authorized to enjoin further violations of G.L. c. 21A.

158. Under G.L. c. 21A, § 13, any person who violates the State Environmental code or any regulation promulgated thereunder is subject to a civil penalty of up to \$25,000 for each such violation for each day such violation occurs or continues.

#### **FIFTH CAUSE OF ACTION**

##### **Violations of the Massachusetts Solid Waste Disposal Act, G.L. c. 111, §§ 150A & 150A ½, and the Solid Waste Regulations**

159. The Commonwealth realleges and incorporates by reference the allegations of Paragraphs 1 through 158, as if they were restated in full.

160. Section 150A of G.L. c. 111 defines “[f]acility” to include “a dumping ground for refuse or any other works for treating, storing, or disposing of refuse.”

161. The regulations at 310 C.M.R. §§ 16.02 and 19.006 define “[f]acility” more particularly as “a site or works, and other appurtenances thereto, which is, has been or will be

used for the handling storage, transfer, processing, treatment or disposal of solid waste including all land, structures and improvements which are directly related to solid waste activities.”

162. Section 150A of G.L. c. 111 defines “[r]efuse” to include “any solid... materials, including garbage and rubbish...” *See also* 310 C.M.R. § 19.006 (defining “[r]efuse” as “solid waste”).

163. The regulations at 310 C.M.R. §§ 16.02 and 19.006 define “[s]olid [w]aste” to include “useless, unwanted or discarded solid... material resulting from industrial, commercial, mining, agricultural, municipal or household activities that is disposed or is stored, treated, processed or transferred pending such disposal.”

164. The regulation at 310 C.M.R. §§ 16.02 and 19.006 define “construction and demolition waste” as “the waste building materials and rubble resulting from the construction, remodeling, repair or demolition of buildings, pavements, roads, or other structures,” including “concrete, bricks, asphalt pavement, masonry, plaster, gypsum wallboard, metal, lumber and wood.”

165. The regulations at 310 C.M.R. §§ 16.02 and 19.006 define “[d]isposal” to include “the final dumping, landfilling, or placement of solid waste into or on any land or water...”

166. The regulations at 310 C.M.R. § 19.006 define “dumping ground” as “a facility or place used for the disposal of solid waste from one or more sources which is not established or maintained pursuant to a valid site assignment or permit in accordance with [the Solid Waste Disposal Act and Solid Waste Regulations.]”

167. The regulations at 310 C.M.R. §§ 16.02 and 19.006 define “operator” as “any person who has care, charge or control of a facility subject to 310 C.M.R. § 19.000, including without limitation, an agent or lessee of the owner or an independent contractor.”

168. The regulations at 310 C.M.R. § 16.02 define a “[s]ite [a]ssignment as “a determination by a board of health or by the Department as specified in M.G.L. c. 111, § 150A which: (a) designates an area of land for one or more solid waste uses subject to conditions with respect to the extent, character and nature of the facility that may be imposed by the assigning agency after a public hearing in accordance with M.G.L. c. 111, § 150A.”

169. The regulations at 310 C.M.R. §§ 16.02 and 19.006 define “[p]erson(s)” to include “any individual, partnership, association, firm, company, corporation... or any other entity responsible in any way for any activity, facility, or operation subject to” 310 C.M.R. §§ 16.00 *et seq.* and 310 C.M.R. §§ 19.000 *et seq.*

170. The Defendants are each “[p]erson(s)” within the meaning of 310 C.M.R. §§ 16.02 and 19.006.

171. At all relevant times, each of the Defendants was in control of solid waste disposal operations at the Site and each was therefore an “operator” of the Site within the meaning of 310 C.M.R. § § 16.02 and 19.006.

172. The Site is a “[f]acility” within the meaning of G.L. c. 111, § 150A, and 310 C.M.R. §§ 16.02 and 19.006.

173. The food waste and MSW the Defendants have stored in the dumpsters and packer trucks, and on the ground at the Site, and stockpiles of wood waste, asphalt, brick, and concrete rubble the Defendants have stored and disposed of on the Site are “[s]olid [w]aste,” “[r]efuse,” and/or “construction and demolition waste” within the meaning of 310 C.M.R. § § 16.02 and 19.006.

174. By dumping or allowing the dumping of “[s]olid [w]aste,” “[r]efuse,” and/or “construction and demolition waste” onto the ground at the Site and by stockpiling those



materials in dumpsters and large piles throughout the Site, the Defendants “[d]ispose[d]” of those materials within the meaning of 310 C.M.R. §§ 16.02 and 19.006.

175. By storing and disposing of solid waste at the Site without a valid site assignment or permit in accordance with the SWDA and Solid Waste Regulation, the Defendants established, constructed, operated, and maintained, and continue to establish, construct, operate, and maintain, a “[d]umping ground” at the Site within the meaning of 310 C.M.R. § 19.006.

176. By disposing of, contracting for the disposal of, or maintaining solid waste at the Site without obtaining a site assignment from the Town of Blackstone Board of Health, the Defendants violated and continue to violate G.L. c. 111, § 150A and 310 C.M.R. §§ 16.01(8)(a)(5), 16.40(4)(d), 19.015, and 19.028(1).

177. By disposing of, contracting for the disposal of, or maintaining solid waste at the Site without first obtaining a permit or approval from MassDEP, the Defendants violated and continue to violate G.L. c. 111, § 150A and 310 C.M.R. §§ 16.01(8)(a)(6), 19.014(2)-(3), 19.015, and 19.028(2).

178. By establishing, constructing, operating, and maintaining a dumping ground at the Site, the Defendants violated and continue to violate G.L. c. 111, § 150A and 310 C.M.R. § 19.014(1).

179. Under G.L. c. 111, § 150A, this Court is authorized to enjoin further violations of G.L. c. 111, § 150A.

180. Under G.L. c. 111, § 150A, any person who violates the SWDA or any regulation promulgated thereunder is subject to a civil penalty of up to \$25,000 for each such violation for each day such violation occurs or continues.

## **RELIEF REQUESTED**

WHEREFORE, the Commonwealth requests that the Court grant the following relief:

- A. ENJOIN the Defendants from violating G.L. c. 131, § 40; G.L. c. 21, §§ 26-53; G.L. c. 21A, § 13; and G.L. c. 111, § 150A at the Site and at and around the Site Wetlands and Town Wetlands;
- B. ORDER the Defendants to take appropriate actions to restore the quality of the Site Wetlands and the Town Wetlands and the waters of the United States within the Commonwealth adversely impacted by their activities;
- C. ORDER the Defendants to pay to the Commonwealth a civil penalty of \$25,000 for each day of each violation of the WPA, G.L. c. 131, § 40 and the Wetlands Regulations;
- D. ORDER the Defendants to pay to the Commonwealth a civil penalty of \$50,000 for each day of each violation of the CWA, G.L. c. 21, §§ 26-53 and the CWA Regulations;
- E. ORDER the Defendants to pay to the Commonwealth a civil penalty of \$25,000 for each day of each violation of the State Environmental Code, G.L. c. 21A, § 13, and the Title 5 Regulations
- F. ORDER the Defendants to pay to the Commonwealth a civil penalty of 25,000 for each day of each violation of the SWDA, G.L. c. 111, §§ 150A & 150A ½ and the Solid Waste Regulations; and
- G. Grant such other relief as this Court finds just and appropriate.

Respectfully submitted,

COMMONWEALTH OF  
MASSACHUSETTS

By its attorneys,

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