



Conservation Law Foundation

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 3, 2001

Mr. Peter S. Goodwin
Plant Manager
General Alum & Chemical Corporation of New England
Kidders Point Road
Searsport, ME 04974

Re: Notice of Intent to Sue

Dear Mr. Goodwin:

This letter provides you notice of the intent of the Conservation Law Foundation, on behalf of its members, to bring suit under Section 505(a)(1) of the Federal Clean Water Act (CWA or Act), 33 U.S.C. § 1365(a), against General Alum & Chemical Corporation of New England (GAC) for violating the Act.

The Conservation Law Foundation (CLF) is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of the quality of the environment in the State of Maine, including its coastal waters. This includes the conservation and protection of the uses of the waters in and around Stockton Harbor and Penobscot Bay for, among other things, fishing, recreation, navigation, scenic/aesthetic, and commercial purposes. CLF's members live on or near Stockton Harbor and Penobscot Bay and/or use such waters for fishing, recreational, navigational, scenic/aesthetic and commercial purposes. Among the specific concerns of CLF and its members is the fact that the waters in and around Stockton Harbor were once an extremely productive shellfish harvesting area that has lost much of its previous vitality. CLF believes that GAC's egregious and long-standing inattention to environmental compliance has contributed to the decline of Stockton Harbor's water quality, and the habitat and marine species that depend upon that water quality.

27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059 • www.clf.org

MAINE: 120 Tillson Avenue, Suite 202, Rockland, Maine 04841-3416 • 207-594-8107 • Fax: 207-596-7706

MASSACHUSETTS: 62 Summer Street, Boston, Massachusetts 02110-1016 • Phone: 617-350-0990 • Fax: 617-350-4030

RHODE ISLAND: 69 Washington Street, Providence, Rhode Island 02903-1726 • 401-323-7608 • Fax: 401-351-0118

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

Conservation Law Foundation

NPDES Wastewater Permit Violations

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides that the discharge of pollutants into navigable waters of the United States is illegal, unless the discharger complies with certain specified sections of the Act. Under Section 402 of the Act, 33 U.S.C. § 1342, a discharger may only discharge pollutants pursuant to a National Pollution Discharge Elimination System (NPDES) permit issued by the Environmental Protection Agency (EPA), or by a State or Tribe that has received approval to issue such permit pursuant to section 402(b) of the Act, 33 U.S.C. § 1342(b).

Specifically, CLF's review of public records reveals that GAC possesses a federal NPDES permit, No. ME0001830, to discharge "uncontaminated cooling water" from a single outfall (Outfall 001) to Stockton Harbor. This permit was issued by EPA in 1979 to Delta Chemicals, Inc., was transferred to GAC on July 18, 1994, and remains active. This permit has never been modified to reflect any discharges from additional outfalls or to reflect additional and/or different wastewater streams generated at the facility and discharged through Outfall 001. The NPDES permit itself has effluent limitations and monitoring and reporting requirements for Outfall 001 including limitations on pH, temperature, and flow, and it otherwise requires discharges to not cause a violation of the water quality standards of the receiving water.

GAC has not met its pH limit in Outfall 001 since at least the second quarter of 1997, causing a continuous and ongoing discharge of highly acidic wastewater to Stockton Harbor. GAC has also violated its temperature limit on at least one occasion. GAC's Discharge Monitoring Reports (DMRs) have also failed to report the range of its pH monitoring results, as required by its permit. GAC's NPDES permit violations related to Outfall 001 that CLF is presently aware of are summarized in Table 1 (attached), and is incorporated herein by reference.

Unpermitted Discharges from Outfall 001

GAC's effluent from Outfall 001 also contains unpermitted discharges of process wastewaters other than uncontaminated cooling water, including unpermitted discharges of softener regeneration effluent (Brine), stormwater (see below), and steam condensate. Discharges of this additional effluent from Outfall 001 cause and contribute to unpermitted discharges of a number pollutants presently being monitored and reported by GAC, including, but not limited to, ammonia, total suspended solids, and oil and grease. The unpermitted discharges of these process wastewaters from Outfall 001 are also summarized in Table 1.

As discussed above, Section 301(a) of the CWA provides that the discharge of pollutants into navigable waters of the United States is illegal except pursuant to a NPDES permit issued under Section 402 of the Act. GAC's unpermitted discharges of these wastewaters and the pollutants contained therein are continuing violations of the CWA for every day GAC has operated and discharged process wastewater from Outfall 001 since at least the second quarter of 1996.

Other Unpermitted Discharges

GAC has also discharged process wastewater that is not permitted under GAC's NPDES permit

Conservation Law Foundation

from an outfall identified as Outfall 002 in a license issued by the Maine Department of Environmental Protection, Waste Discharge License (WDL) #2530. Because of state license requirements, GAC has filed sworn quarterly reports of discharges of process wastewater and pollutants including, but not limited to, total suspended solids, oil and grease, ammonia, and pH from this outfall. As discussed above, Section 301(a) of the CWA provides that the discharge of pollutants into navigable waters of the United States is illegal except pursuant to a NPDES permit issued under Section 402 of the Act. These unpermitted discharges of wastewaters and the pollutants contained therein are continuing violations of the CWA for every day GAC has operated and discharged process wastewater from Outfall 002 since at least the second quarter of 1996.

As noted, CLF is aware that GAC has a current waste discharge license issued by the State of Maine licensing the discharge of pollutants from Outfall 001 and Outfall 002. Such a license does not relieve GAC of its responsibility to obtain and comply with a NPDES permit for all of its wastewater discharges, storm water discharges (see discussion below), and all other requirements under the CWA. Moreover, the fact that GAC may have applied for a NPDES permit or permit modification is not an excuse for operating without a NPDES permit or in violation of its existing NPDES permit.

In addition, the unpermitted discharges from Outfall 002 often violate GAC's state license limit for pH, the pH limit contained in state water quality standards, and would be in violation of the federal NPDES permit limit for pH at Outfall 001 if those limitations were applied to Outfall 002.

Oil and Hazardous Substance Spill Violations

Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes the President, by regulation, to determine those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

For purposes of Section 311, oil is defined broadly as "oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." 33 U.S.C. 1321(a)(1). For purposes of Section 311(b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines.

On or about April 1st to April 3rd of 1998, a large quantity of oil sludge was discovered and removed from a catch basin at Outfall 002. This oil caused a sheen upon or discoloration of the adjoining shoreline and surface water of Stockton Harbor in violation of Section 311(b)(3) of the CWA.

Hazardous substances include substances "which, when discharged in any quantity into or upon

Conservation Law Foundation

the navigable waters of the United States . . . or which may affect natural resources . . . present an imminent and substantial danger to the public health or welfare.” 33 U.S.C. 1321(b)(2)(A). Hazardous substances subject to section 311 are designated at 40 C.F.R. § 116.4. The list of designated hazardous substances includes sulfuric acid.

On April 19th and 20th of 2001, GAC spilled approximately 800 gallons of sulfuric acid at its facility. This sulfuric acid flowed through a storm water catch basin and was directly discharged into Stockton Harbor through Outfall 001 in violation of Section 311(b)(3) of the CWA.

Spill Prevention Control and Countermeasure Plan Violations

Pursuant to Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), EPA promulgated the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112. GAC is the “owner” and “operator” within the meaning of Section 311(a)(6), 33 U.S.C. § 1321(a)(6), of “onshore facilities” within the meaning of Section 311(a)(10), 33 U.S.C. § 1321(a)(10). Although CLF has not been able to find, as a matter of public record, specific information regarding the type and amount of “oil” within the meaning of 40 C.F.R. § 112.2 stored at its facility, based on information available to CLF it believes that GAC has oil storage capacity subjecting it to the requirements of the Oil Pollution Prevention regulations at 40 C.F.R. Part 112, and that its facility could reasonably be expected to discharge oil in harmful quantities into or upon Stockton Harbor, a navigable water within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Pursuant to 40 C.F.R. § 112.3, the owner or operator of an onshore facility that has discharged or, due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters shall prepare a Spill Prevention Control and Countermeasure (SPCC) Plan meeting all CWA requirements by no later than July 10, 1974, or within six months of beginning operations. The requirements for preparation and implementation of SPCC plans are found at 40 C.F.R. § 112.3. Pursuant to 40 C.F.R. § 112.5(b) the owner and operator of the facility shall complete a review and evaluation of the SPCC plan at least once every three years.

Although specific information regarding any plan or partial plan GAC may have in place that addresses oil spill prevention and control is not available to CLF as a matter of public record, CLF is aware that GAC has failed to complete a valid SPCC plan meeting CWA requirements. Therefore GAC has operated and continues to operate its facility in violation of Section 311(j)(1) of the CWA and 40 C.F.R. Part 112 every day it has operated its facility since at least six months of beginning operations. A valid and fully implemented SPCC plan is particularly critical given the nature of GAC’s business and its proximity to Stockton Harbor, and CLF believes a significant amount of environmental harm to the harbor could have been avoided had a valid SPCC plan been in place.

NPDES Storm Water Permit Violations

In 1995 and 2000, GAC filed Notices of Intent (NOI) to be covered by federal NPDES storm water multi-sector general permits for industrial activities. However, GAC has failed to implement the requirements of those permits. These failures include failure to develop and implement storm water pollution prevention plans (SWPPP) designed to prevent pollution from storm water

Conservation Law Foundation

discharges, and failure to conduct required monitoring and reporting of such discharges. Storm water is a significant concern at GAC due to years of toxic material storage and deposition at its facility. With proper storm water permit implementation, years of environmental harm could have been mitigated or eliminated altogether.

Under sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, the Administrator of EPA on November 16, 1990, promulgated regulations relating to the control of storm water discharges, at 40 C.F.R. § 122.26. Section 122.26(c)(1), 40 C.F.R., provides that dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit. Pursuant to 40 C.F.R. § 122.26(e), the deadline for individual and group permit applications was October 1, 1992. Pursuant to the NPDES Baseline General Permit available for dischargers of storm water associated with industrial activity located in Maine (hereinafter the Baseline General Permit), dischargers seeking coverage under the Baseline General Permit were required to file a NOI to be covered by October 1, 1992. 57 Fed. Reg. 41306 (September 9, 1992).

Effective September 29, 1995, EPA issued a final NPDES Storm Water Multi-Sector General Permit for Industrial Activities (60 Fed. Reg. 50804, September 29, 1995) (the 1995 Multi-Sector Permit), available for certain facilities, including chemical and allied products manufacturing facilities (Section C). To be covered under the 1995 Multi-Sector Permit, facilities discharging storm water associated with industrial activity were required to submit a NOI by March 29, 1996. (61 Fed. Reg. 5254, February 9, 1996).

Effective October 30, 2000, EPA reissued the final NPDES Storm Water Multi-Sector General Permit for Industrial Activities (65 Fed. Reg. 64747, October 30, 2000) (the 2000 Multi-Sector Permit). To be covered under the 2000 Multi-Sector Permit, facilities discharging storm water associated with industrial activity were required to submit a NOI by January 29, 2001. (65 Fed. Reg. 64758).

Under 40 C.F.R. § 122.26(b)(14)(ii), storm water associated with industrial activity includes storm water discharges associated with industrial activity from facilities identified under Standard Industrial Classification (SIC) 28 (except 283). GAC's facility conducts activities associated with manufacturing chemical and allied products manufacturing facilities and is identified under SIC 2819 within the meaning of 40 C.F.R. § 122.26(b)(14)(ii). Since at least July 18, 1994, GAC has discharged "storm water associated with industrial activity" within the meaning of 40 C.F.R. § 122.26 from its facility to Stockton Harbor. Storm water from GAC discharges to Stockton Harbor through storm drains and eroded channels in the banks of Stockton Harbor. The storm drains and eroded channels are all "point sources" within the meaning of section 502(14) of the Clean Water Act, 33 U.S.C. §1362(14).

GAC submitted a NOI for coverage under the 1995 Multi-Sector Permit, for discharges of storm water from its facility on December 21, 1995 and received permit coverage under the 1995 Multi-Sector Permit for discharges to Penobscot Bay (Stockton Harbor) on December 23, 1995. GAC submitted a NOI for coverage under the 2000 Multi-Sector Permit, for discharges of storm water from its facility on January 29, 2001 and received permit coverage under the 2000 Multi-Sector Permit on January 31, 2001.

Conservation Law Foundation

The 1995 and 2000 Multi-Sector Permits contain many terms and conditions designed to ensure implementation of practices designed to reduce the pollutants in storm water discharges associated with industrial activity at the facility.¹ The 1995 Multi-Sector Permit required GAC to develop and implement a SWPPP for the facility in accordance with requirements specified in the permit on or before September 25, 1996. (60 Fed. Reg. 51115). The 2000 Multi-Sector Permit required all permittees previously covered by the 1995 Multi-Sector Permit to update their SWPPP for the facility to comply with any new requirements specified in the permit on or before the date they submit their new NOIs. (65 Fed. Reg. 64766).

During the period beginning December 23, 1995 through the present, GAC failed to develop and implement a SWPPP in violation of the conditions of its 1995 and 2000 Multi-Sector Permits. Discharges in violation of permit conditions constitute violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These are violations of a condition in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, and enforceable under Section 309(d) of the Act, 33 U.S.C. § 1319(d).

The 1995 Multi-Sector Permit also required GAC to conduct analytical monitoring and reporting for each outfall at least quarterly during years two and four of the Permit, specifically the period October 1, 1996, through September 30, 1997, and the period October 1, 1998, through September 30, 1999. (60 Fed. Reg. 51137-38). The permit required GAC to record the monitoring results on quarterly monitoring report forms, and to submit the forms to EPA, postmarked no later than March 31, 1998, and March 31, 2000, respectively. (60 Fed. Reg. 51139). The 2000 Multi-Sector Permit requires GAC to conduct benchmark monitoring and reporting for each outfall at least quarterly during years two and four of the Permit, specifically beginning with the period October 1, 2001, through September 30, 2002. (65 Fed. Reg. 64816-17). The permit requires GAC to record the monitoring results on quarterly monitoring report forms, and to submit the forms to EPA. (65 Fed. Reg. 64852).

During the period October 1, 1996, through September 30, 1997, the period October 1, 1998, through September 30, 1999, and the period October 1, 2001 through the present, GAC discharged and is continuing to discharge storm water associated with industrial activity without conducting analytical (benchmark) monitoring of its storm water discharges or reporting the results to EPA, in violation of its 1995 and 2000 Multi-Sector Permits and section 301(a) of the CWA, 33 U.S.C. § 1311(a).

The 1995 Multi-Sector Permit also required GAC to conduct visual monitoring and reporting for each outfall at least quarterly throughout the permit period, and to maintain the results of such monitoring on site in the SWPPP. (60 Fed. Reg. 51139). The 2000 Multi-Sector Permit requires GAC to conduct visual monitoring and reporting for each outfall at least quarterly throughout the permit period, and to maintain the results of such monitoring on site in the SWPPP. (65 Fed. Reg. 64816).

¹ Among the conditions contained in the 1995 and 2000 Multi-Sector Permits for SWPPPs are conditions requiring that GAC identify potential sources of pollution that could affect the quality of its storm water discharges, describe and ensure implementation of practices to decrease pollutants in storm water, identify areas where potential spills and leaks can occur and develop hazardous material spill prevention and response procedures, and conduct routine inspections and annual comprehensive site evaluations of the facility. (65 Fed. Reg. 64812-14).

Conservation Law Foundation

During the period December 23, 1995, through the present, GAC discharged and is continuing to discharge storm water associated with industrial activity without conducting quarterly visual monitoring of its storm water discharges and without maintaining the results of such monitoring on site in a SWPPP, in violation of its 1995 and 2000 Multi-Sector Permits and section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Other Environmental Concerns

CLF is also concerned about environmental harm being caused by the severe deterioration of portions of GAC's facility. Several old buildings are ejecting roofing tiles directly into Stockton Harbor's inter-tidal zone. These roofing tiles can negatively impact the benthic community and further inhibit the growth of shellfish and other marine life. Further, there are numerous unaccounted for pipes and miscellaneous debris littering the shoreline near the facility, and numerous "bluffs" of excavated material from the facility covering the banks of Stockton Harbor. CLF is concerned, in particular, that during rain events these bluffs may be leaching unknown and potentially toxic materials through eroded gullies into Stockton Harbor and its adjoining shoreline.

CLF intends to sue GAC for all of the described violations occurring prior to the date of this letter, and for every day that GAC continues to discharge without a permit and/or in violation of its NPDES permits and other CWA requirements subsequent to the date of this letter. CLF also intends to seek injunctive relief to prevent GAC from discharging process wastewater and storm water except in compliance with its NPDES wastewater permit, its storm water permit, and all other CWA requirements.

Conservation Law Foundation

The Conservation Law Foundation is represented by Roger Fleming, 120 Tillson Avenue, Rockland, ME 04841-3416. Should you wish to discuss this matter, please contact me at 207.594.8107.

Sincerely,

Roger Fleming
Staff Attorney
Conservation Law Foundation
120 Tillson Avenue
Rockland, ME 04841

Conservation Law Foundation

Cc: Christine Todd Whitmann, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, DC 20460

Robert Varney
U.S. Environmental Protection Agency-New England
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

Martha Kirkpatrick, Commissioner
Maine Department of Environmental Protection
State House Station #17
Augusta, ME 04333-0017

James T. Kilbreth, Esquire
Verrill & Dana
One Portland Square
P.O. Box 586
Portland, Maine 04112-0586

Conservation Law Foundation

TABLE 1- Known Effluent Limit Violations, Other Permit Violations
And Unpermitted Discharges from GAC Outfall 001

Discharge Monitoring Report (DMR)	Reported pH Range (Limit: >6.0 and < 8.5)	Temperature (Limit: Daily max. 85°F)	Other Violations
2001 2 nd Quarter	4.0 – 7.2		Unpermitted Wastewater ²
2001 1 st Quarter	4.0 - 4.9		Unpermitted Wastewater
2000 4 th Quarter	4.0 - 5.8		Unpermitted Wastewater
2000 3 rd Quarter	4.4 - 9.3		Unpermitted Wastewater
2000 2 nd Quarter	9.3 ³		Failure to report pH range Unpermitted Wastewater
2000 1 st Quarter	3.9 ⁴		Failure to report pH range Unpermitted Wastewater
1999 4 th Quarter	3.6 ⁵		Failure to report pH range Unpermitted Wastewater
1999 3 rd Quarter	3.3 ⁶	87°	Failure to report pH range Unpermitted Wastewater ⁷
1999 2 nd Quarter	NA ⁸		NA
1999 1 st Quarter	3.6		Failure to report pH range Unpermitted Wastewater
1998 4 th Quarter	3.5		Failure to report pH

² As discussed above, GAC’s NPDES permit limits wastewater discharges to non-contact cooling water, however, other unpermitted process wastewaters are discharged.

³ The DMR reports only a pH value of 9.3, not a range as required in the permit. The report also includes what appears to be an average daily pH value of 4.17. The attached cover letter for the DMR also notes that the range of the pH discharge in early May to be 5.0-5.5. All of these values are outside the effluent pH limitation range.

⁴ The DMR reports only a pH value of 3.9. The reported average daily pH was 3.65.

⁵ The DMR reports only a pH value of 3.6. The reported average daily pH was 3.52.

⁶ The DMR reports only a pH value of 3.3. All of the DMR reports for quarters preceding this quarter also only report a single pH value (and do not include an average daily pH value).

⁷ The unpermitted wastewater for this quarter was reported in the DMR cover letter.

⁸ The DMR for this quarter has not been made available to CLF, however, based on information available to CLF, CLF believes that GAC violated its pH limit, failed to report pH range, and had unpermitted wastewater discharges.

Conservation Law Foundation

			range Unpermitted Wastewater
1998 3 rd Quarter	4.2		Failure to report pH range Unpermitted Wastewater
1998 2 nd Quarter	4.2		Failure to report pH range Unpermitted Wastewater
1998 1 st Quarter	4.6		Failure to report pH range Unpermitted Wastewater
1997 4 th Quarter	3.3		Failure to report pH range Unpermitted Wastewater
1997 3 rd Quarter	3.3		Failure to report pH range
1997 2 nd Quarter	3.8		Failure to report pH range
Prior Quarters ⁹			Unpermitted Wastewater

⁹ CLF has been unable to obtain DMRs for prior quarters, however, based on information available to CLF, CLF believes that at a minimum GAC had unpermitted wastewater discharges from Outfall 001 dating back to at least the second quarter of 1996.