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January 25, 2023

Via Federal Express,
Tracking No. 771120469950

Frederick J. Mercer, Jr., President
James J. Mercer, Treasurer
Housatonic Water Works Company
80 Maple Ave.
Great Barrington, MA 01230

RE: G.L. c 93A, § 9 Demand Letter/Water Quality/Our File No. 3067

Dear Messrs Mercer:

This firm represents the following residents of Housatonic, Massachusetts:

- Debra Herman, 373 N. Plain Road;
- Rosemary Smith, 7 Wyantenuck Street;
- Andrea Crofut, 210 Cottage Street;
- William Fields, 209 Highland Street;
- Damon Vorie, 216 Highland Street
- Maja Stodte, 203 Highland Street;
- Lucinda Hastings, 12 Wright Lane;
- Denise Forbes, 325 North Plain Road;
- Susan Magazine, 332 North Plain Road; and
- Tracee Augcomfar, 218 Oak Street.

This is a Demand Letter pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, § 9 for unfair and deceptive acts or practices in trade or commerce by Housatonic Water Works Company ("HWWC") on account of unsafe, unfit, impure, and also unreliable water furnished by HWWC to our clients and the residents of the Housatonic section of Great Barrington, Massachusetts, as well as a small number of residents in the neighboring towns of West Stockbridge and Stockbridge.

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HWWC is a privately-owned, for-profit Massachusetts corporation organized in 1897. It is a public water supply for more than 800 customer households and a service population of approximately 1300. The present owners, the Mercer family, purchased HWWC in 1984.

HWWC has been supplying unsafe water to the residents of Housatonic and its customers in West Stockbridge and Stockbridge for years. Residents receive brown water and are expected to drink it, serve it to their children, pets, and farm animals, cook with it, and bathe in it. Various news articles demonstrating the discolored water are attached as Exhibit A.

As recently as September 2, 2022, the Great Barrington Board of Health has expressed its “deep concerns regarding the [HWWC] and the water the Company is supplying to its customers . . . The Board of Health considers the state of water in Housatonic a public health issue of immediate concern.” A copy the Board of Health letter addressed to the Selectboard is attached as Exhibit B.

HWWC Has Violated and is Violating State Drinking Water Regulations

The Massachusetts Department of Environmental Protection (“DEP”) has promulgated a comprehensive set of regulations to “promote the public health and general welfare” and ensure “that public water systems in Massachusetts provide to the users thereof water that is safe, fit, and pure to drink.” 310 CMR 2201(1), 310 CMR 2200 ff.

HWWC has received numerous Notices of Noncompliance and Unilateral Administrative Orders from DEP and entered into Administrative Consent Orders, all on account of HWWC’s violation of the drinking water regulations. By way of example and not limitation, on March 3, 2022, DEP issued HWWC a Notice of Noncompliance with drinking water regulations because its public water system violated the maximum contaminant level specified in the regulations, it failed to notify the public of the violation, it failed to report the violation to DEP, and it failed to report the analytical results of the contaminant to DEP. A copy of this Notice of Noncompliance is attached at Exhibit C.

DEP has issued HWWC numerous other Notices of Noncompliance and Orders in the last few years. A copy of the various DEP notices and orders are attached as Exhibit D.

Elevated levels of manganese have been identified in the water furnished by HWWC. Attached at Exhibit E is a DEP Fact Sheet on manganese in drinking water. It may be harmful for infants and children younger than 12 months. Lifetime exposure may also be harmful, which is pertinent in this case because of the chronic nature of the problem. It is also listed by DEP and the United States Environmental Protection Agency as a secondary contaminant because of aesthetic concerns including unacceptable taste, staining of fixtures, and dark, cloudy water at levels greater than 0.05 milligrams per liter.

HWWC's Violation of the Drinking Water Regulations is a Violation of G.L. c. 93A

Pursuant to 940 CMR 3.16, an act or practice is a violation of M.G.L. c. 93A, § 2 if it “fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public’s health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection.” 940 CMR 3.16. Violations of the DEP Drinking Water Regulations (310 CMR 22.00 et seq.) are per se violations of G.L.c. 93A, § 2.

Additional Unfair or Deceptive Acts by HWWC

HWWC’s website states, “[f]or over 20 years, drinking water supplied by Housatonic Water Works has met or surpasses the EPA and state water quality standards.” As discussed above, HWWC has incurred numerous violations from DEP declaring that the water does not meet state water quality standards. While in violation of DEP water quality standards, HWWC told its customers that the water was safe to drink while at the same time—and confusingly—not guaranteeing its safety. For example:

- On June 13, 2022, HWWC published a press release that stated, “[p]er the MassDEP, people who drink water containing HAA5 in excess of the MCL over many years may have an increased risk of getting cancer.” A copy of the press release is attached as Exhibit F.
- On June 15, 2022, an article in the Berkshire Eagle quoted James Mercer as saying, “[s]o while HWWCO’s water may have color at times due to the manganese, at no time has the water been considered unsafe for customer consumption by either HWWCO or the [DEP].” A copy of the news article is attached as Exhibit G.
- On June 23, 2022, HWWC published a violation notice for HAA5 that stated, “if you have a severely compromised immune system, have an infant, are pregnant, or are elderly, you may be at an increased risk and should seek advice from your health care providers about drinking this water . . . People who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.” A copy of the violation notice is attached as Exhibit H.
- On August 1, 2022, HWWC sent a letter to its customers stating, “[w]hile the water is safe to drink, the color is concerning.” A copy of the letter is attached as Exhibit I.
- On August 18, 2022, James Mercer replied to an email from Ms. Stodte inquiring about the safeness of the water for her toddler to drink and stated, “[w]hile the water is safe, we understand your concern and recommend that you do what you feel is best for your family.” A copy of this email is attached as Exhibit J.

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- On October 3, 2022, in another email to the same resident, Mercer stated, “MassDEP has deemed our water ‘safe.’ We are not making guarantees” A copy of this email is attached as Exhibit K.

In less than four months, Mr. Mercer confused and deceived the public. The residents of Housatonic do not trust HWWC because Mr. Mercer has made numerous conflicting statements. If the owner and operator of a company cannot tell a consumer that their product is safe, then who can?

On November 16, 2022, HWWC sent a letter to its customers stating that the transponder that electronically sends customers’ meter readings to HWWC’s billing software became inoperable and the company can no longer read customers’ meters until new transponders are installed. A copy of this letter is attached as Exhibit L. HWWC does not know when the new transponders will be available for installation. Since November and until an unspecified future date, customers will be billed the monthly minimum for water usage. Instead of accepting the loss of income due to HWWC’s equipment failure, once the new transponders are installed, HWWC will back charge all its customers for the water they have used since November. Customers will be presented with a hefty bill all because HWWC’s equipment failed.

Breach of Warranties

HWWC has breached its implied warranties of merchantability and fitness for a particular purpose by providing residents with a product that is defective and unreasonably dangerous for the ordinary purposes for which it is fit. M.G.L. c. 106, § 2-314; *Laramie v. Philip Morris USA Inc.*, 488 Mass. 399 (2021).

Consumers of tap water expect to be able to drink, cook with, and bathe in their water without ingesting harmful chemicals or the fear of imminent harm. The water coming out of the tap in Housatonic is discolored and in violation of DEP’s drinking water regulations. HWWC has admitted it does not know whether the water is safe for “immunocompromised persons such as person with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders,” infants, those who are pregnant, and the elderly. But it has assured that for everyone else, it is safe. Who else is there if the immunocompromised, infants, pregnant individuals, and the elderly are eliminated?

The residents of Housatonic pay for safe and clear drinking water and HWWC has not provided this.

Injuries, Harms and Damages

Our clients and all residents receiving water from HWWC have suffered injuries, harms and damages. Our clients have suffered emotional distress, paid for undrinkable water, purchased bottled water, paid for laundromat service in neighboring towns, and purchased water filtration systems. These water filtration systems have filters that need to be replaced regularly. Our clients are having to replace their filters much more frequently because of the dirty water than the manufacturer recommends. This is costing our clients additional money and time. These issues affect both private residences and commercial businesses in Housatonic.

Residents are forced to drink, cook with, and bathe in filtered or bottled water. The quality of water HWWC is providing to its customers is not even fit for animal consumption. Residents are buying bottled water for their pets and farm animals. The water is making one resident's sheep sick with diarrhea and the owner is forced to run the water for long periods of time until the water is clear. Residents are paying for brown water that is unusable.

Residents have ruined clothing and bedding by using their washing machines that are hooked up to HWWC water. Light colored garments are ruined and residents are forced to commute to laundromats and pay for loads of laundry so as not to ruin their clothing. There is no laundromat in Housatonic or Great Barrington. This is another additional cost and inconvenience to residents. Attached as Exhibit M are photos of laundry discolored by the water.

Some residents have installed wells on their property at great expense out of fear of giving their young children contaminated drinking water.

Finally, home values in Housatonic are being negatively affected by the lack of potable water. No one wants to buy a house where they cannot drink the water coming out of the tap. Residents looking to sell their home and move to a town with potable water are having a hard time finding a willing buyer.

Failure to respond to this G.L. c. 93A demand letter within 30 days offering a reasonable settlement would compel the commencement of a lawsuit under G.L. c. 93A, § 9. If suit is filed against you under G.L. c. 93A and your conduct is found to be unfair and deceptive, the plaintiffs will be awarded their actual damages and automatically awarded reasonable attorneys' fees.

Furthermore, if a court determines that your conduct was willfully or knowingly unfair and deceptive, the court must award plaintiffs up to three times, but not less than two times actual damages if you refuse to grant relief pursuant to this demand letter and a court determines that your refusal, after your review of this letter, was made in bad faith with reason to know your conduct was unfair and deceptive in violation of G.L. c. 93A.

Our clients demand safe, fit, pure and reliable water immediately. Until HWWC furnishes such water, our clients demand that HWWC provide them with filtrations systems at no cost to

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them for purchase, installation, operation, maintenance or repair. Our clients also demand monetary damages in the amount of \$3,000.00 per family.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Michael J. O'Neill", is written over the typed name.

Michael J. O'Neill