

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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TOWN OF WOLFBORO)	
)	
	Plaintiff,)	
v.)	
)	Civil Action No.: 1:12-cv-00130-JD
)	
WRIGHT-PIERCE,)	
)	
	Defendant.)	
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**ANSWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND
TO AMENDED VERIFIED COMPLAINT**

The Defendant, Wright-Pierce (“WP”), responds as follows to the allegations set forth in the Amended Verified Complaint by the Town of Wolfeboro (“Wolfeboro”).

THE PARTIES

1. WP admits the allegations in paragraph 1 of the Amended Verified Complaint.
2. WP admits the allegations in paragraph 2 of the Amended Verified Complaint.

JURISDICTION AND VENUE

3. The allegations set forth in paragraph 3 of the Amended Verified Complaint state conclusions of law to which no response is required. To the extent that a response is deemed necessary, WP denies the truth of the allegations set forth in paragraph 3 of the Amended Verified Complaint.

4. The allegations set forth in paragraph 4 of the Amended Verified Complaint state conclusions of law to which no response is required. To the extent that a response is deemed necessary, WP admits the truth of the allegations set forth in paragraph 4 of the Amended Verified Complaint but only in the event that jurisdiction is proper.

FACTUAL ALLEGATIONS

History of Wolfeboro's Treatment of Wastewater

5. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 5 of the Amended Verified Complaint. Upon information and belief, Wolfeboro has a permit to operate its Wastewater Treatment Facility ("WWTF") at 600,000 gallons of wastewater per day.

6. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 6 of the Amended Verified Complaint, but understands upon information and belief that Wolfeboro has stored treated wastewater in an Effluent Storage Pond ("ESP").

7. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 7 of the Amended Verified Complaint, but understands upon information and belief that Wolfeboro has pumped effluent from the ESP into approximately 100 acres of spray fields.

8. The allegations set forth in paragraph 8 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 8 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

9. The allegations set forth in paragraph 9 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 9 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied. Upon information and belief, WP understands that Wolfeboro was

permitted to utilize the spray fields for approximately 7 months per year, with an average application rate of 2 inches of wastewater per week.

Wolfeboro's Application for Permit Renewal

10. The allegations set forth in paragraph 10 of the Amended Verified Complaint reference written documents that speak for themselves. To the extent that the allegations set forth in paragraph 10 of the Amended Verified Complaint are inconsistent with the terms of the written documents, they are denied. Upon information and belief, WP understands that the New Hampshire Department of Environmental Services ("NHDES") directed Wolfeboro to obtain additional disposal areas and to develop a long range site management plan to address overland flow.

11. The allegations set forth in paragraph 11 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 11 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

12. The allegations set forth in paragraph 12 of the Amended Verified Complaint reference a written document that speaks for itself, including the direction from NHDES to Wolfeboro. To the extent that the allegations set forth in paragraph 12 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

Engagement of Wright-Pierce as the Engineer of Record

13. The allegations set forth in paragraph 13 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 13 of the Amended Verified Complaint are inconsistent with the terms of the written

document, they are denied. WP admits that Wolfeboro sought to engage an outside engineering consultant to assist in responding to the Administrative Order issued by NHDES, No. WD 05-014 (hereinafter “AO”).

14. WP admits the allegations of paragraph 14 of the Amended Verified Complaint except that it was only Engineer of Record as to the drawings that it stamped.

15. The allegations set forth in paragraph 15 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 15 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

16. WP admits the allegations of paragraph 16 of the Amended Verified Complaint.

17. The allegations set forth in paragraph 17 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 17 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

18. The allegations set forth in paragraph 18 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 18 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

19. The allegations set forth in paragraph 19 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 19 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

20. The allegations set forth in paragraph 20 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 20 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied. WP admits that it identified a Rapid Infiltration System (“RIB”) as a potential option for Wolfeboro to address the AO. WP denies the remaining allegations set forth in paragraph 20 of the Amended Verified Complaint.

21. The allegations set forth in paragraph 21 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 21 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

22. The allegations set forth in paragraph 22 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 22 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied, especially where only a portion of the document is referenced.

23. WP admits that the Board of Selectmen met on January 4, 2005. However, the allegations set forth in paragraph 23 of the Amended Verified Complaint reference written documents that speak for themselves. To the extent that the allegations set forth in paragraph 23 of the Amended Verified Complaint are inconsistent with the terms of the written documents, they are denied.

24. The allegations set forth in paragraph 24 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 24 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied, especially where only portions of the document are referenced.

25. WP admits that Wolfeboro authorized a bond in March 2006. However, the allegations set forth in paragraph 25 of the Amended Verified Complaint references a written document that speaks for itself. To the extent that the allegations set forth in paragraph 25 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

26. The allegations set forth in paragraph 26 of the Amended Verified Complaint reference written documents that speak for themselves. To the extent that the allegations set forth in paragraph 26 of the Amended Verified Complaint are inconsistent with the terms of the written documents, they are denied.

Contract #1

27. WP admits that it entered into a contract with Wolfeboro dated May 25, 2006. However, the allegations set forth in paragraph 27 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 27 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

Contract #2

28. WP admits that it entered into a contract with Wolfeboro on May 16, 2006. However, the allegations set forth in paragraph 28 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 28 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

29. The allegations set forth in paragraph 29 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 29 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

30. The allegations set forth in paragraph 30 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 30 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

31. The allegations set forth in paragraph 31 of the Amended Verified Complaint reference a written document which that for itself. To the extent that the allegations set forth in paragraph 31 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

32. The allegations set forth in paragraph 32 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 32 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

Contract #3

33. WP admits that it entered into a contract with Wolfeboro on May 16, 2006. However, the allegations set forth in paragraph 33 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 33 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

34. The allegations set forth in paragraph 34 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 34 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

35. The allegations set forth in paragraph 35 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 35 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

36. The allegations set forth in paragraph 36 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 36 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

37. The allegations set forth in paragraph 37 of the Amended Verified Complaint reference written documents that speak for themselves. To the extent that the allegations set forth in paragraph 37 of the Amended Verified Complaint are inconsistent with the terms of the written documents, they are denied.

38. The allegations set forth in paragraph 38 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 38 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

39. The allegations set forth in paragraph 39 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in

paragraph 39 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

40. The allegations set forth in paragraph 40 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 40 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

41. The allegations set forth in paragraph 41 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 41 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

42. WP admits that its third contact with Wolfeboro had an Amendment on February 22, 2007. However, the allegations set forth in paragraph 42 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 42 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

43. WP denies the truth of the allegations set forth in paragraph 43 of the Amended Verified Complaint.

44. WP denies the truth of the allegations set forth in paragraph 44 of the Amended Verified Complaint.

45. WP denies the truth of the allegations set forth in paragraph 45 of the Amended Verified Complaint.

46. WP denies the truth of the allegations set forth in paragraph 46 of the Amended Verified Complaint.

47. WP denies the truth of the allegations set forth in paragraph 47 of the Amended Verified Complaint.

48. WP denies the truth of the allegations set forth in paragraph 48 of the Amended Verified Complaint.

49. WP denies the truth of the allegations set forth in paragraph 49 of the Amended Verified Complaint.

Contract #4

50. WP admits that it entered into a contract with Wolfeboro on May 25, 2006. However, the allegations set forth in paragraph 50 of the Amended Verified Complaint reference a written document which speaks for itself. To the extent that the allegations set forth in paragraph 50 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

51. The allegations set forth in paragraph 51 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 51 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

52. The allegations set forth in paragraph 52 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 52 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

The Selection of the Rapid Infiltration Disposal System

53. WP admits that it identified Wolf-1A as a potential location for an RIB; however, WP denies the accuracy of the allegations set forth in paragraph 53 of the Amended Verified Complaint, and the allegations set forth in paragraph 53 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 53 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

54. The allegations set forth in paragraph 54 of the Amended Verified Complaint reference written documents that speak for themselves. To the extent that the allegations set forth in paragraph 54 of the Amended Verified Complaint are inconsistent with the terms of the written documents, they are denied.

55. WP admits the allegations in paragraph 55 of the Amended Verified Complaint.

56. WP admits that it finalized a Wastewater Effluent Disposal Alternatives Report in March 2007. However, the allegations set forth in paragraph 56 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 56 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

57. WP admits that it submitted a Preliminary Design Report in March 2007; however, it denies the characterization of the remaining allegations in paragraph 57, and the allegations set forth in paragraph 57 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 57 of the

Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

58. The allegations set forth in paragraph 58 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 58 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

59. WP denies the allegations of paragraph 59 of the Amended Verified Complaint.

60. WP denies the allegations of paragraph 60 of the Amended Verified Complaint.

61. WP admits the allegations of paragraph 61 of the Amended Verified Complaint.

62. WP admits that Wolfboro received NHDES approval for a Groundwater Discharge Permit; however, WP denies that the remaining allegations in this paragraph are accurate.

63. WP admits that Wolfboro received NHDES approval in 2007 for construction of RIBs 1, 2, and 3; however, WP denies that the remaining allegations in this paragraph are accurate.

WP's Design of the Rapid Infiltration Disposal System

64. WP admits that it entered into a contract with Wolfboro on March 21, 2007. However, the allegations set forth in paragraph 64 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 64 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

65. The allegations set forth in paragraph 65 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 65 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

66. WP admits that the contract executed on March 21, 2007 had an Amendment. However, the allegations set forth in paragraph 66 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 66 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

67. The allegations set forth in paragraph 67 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 67 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

68. WP admits that the contract dated March 21, 2007 had a second Amendment. However, the allegations set forth in paragraph 68 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 68 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

69. WP denies the truth of the allegations set forth in paragraph 69 of the Amended Verified Complaint. In further answering, WP states that the documents referenced in this paragraph speak for themselves.

70. WP denies the truth of the allegations set forth in paragraph 70 of the Amended Verified Complaint.

71. WP denies the accuracy of the allegations set forth in paragraph 71 of the Amended Verified Complaint, and further states that the allegations reference written documents which speaks for themselves. To the extent that the allegations set forth in paragraph 71 of the Amended Verified Complaint are inconsistent with the terms of the written documents, they are denied.

Construction of RIBs 1, 2, and 3

72. WP admits that Wolfeboro chose to retain WP for the final design of three RIBs. However, the allegations set forth in paragraph 72 of the Amended Verified Complaint reference written documents that speak for themselves. To the extent that the allegations set forth in paragraph 72 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

73. WP admits the allegations set forth in paragraph 73 of the Amended Verified Complaint.

74. WP denies the allegations set forth in paragraph 74 of the Amended Verified Complaint, and further answering, states that Wolfeboro knows that operation of the RIBs did not commence on March 3, 2009. On numerous occasions throughout the month of February 2009, David Ford, Wolfeboro's Director of Public Works, discussed in writing with WP, that the initial application of wastewater to the RIBS should be loaded at a maximum of 600,000 gpd. Mitch Locker of the NHDES also confirmed in writing on February 17, 2009 that "the intent and verified limit [of the permit] is 600,000 gallons per day to the basins." Again on

March 3, 2009 at 5:37 PM, Melissa Hamkins of WP sent an email to David Ford, Wolfeboro's Director of Public Works, in which she explicitly recommended that the RIBs be loaded at a constant steady rate of 600,000 gpd in order to develop a steady state groundwater mound geometry to compare to the model results. Specifically, she advised him:

“[F]or the initial application of water to the RIBs we would like you to applying to all three basins simultaneously (open all three valves) at a constant rate of 0.6 mgd [600,000 gpd] (approximately 416 gpm) over 24-hrs per day. This will develop a steady rate groundwater mound geometry to compare to the model predicted mound.”

But the next day, on March 4, 2009, in complete disregard of WP's repeated recommendations that loading should begin at a rate of 600,00 gpd, and *without notifying WP of its intentions to commence operations*, Wolfeboro started operating the RIBs by loading wastewater at 800,000 gpd.

Discovery of Defects

75. WP denies the truth of the allegations set forth in paragraph 75 of the Amended Verified Complaint. Further answering, WP states that since Wolfeboro ignored its recommendation to begin applying wastewater simultaneously . . . at a constant rate of 0.6 mgd (approximately 416 gpm)” and to “develop a steady rate groundwater mound geometry to compare to the model predicted mound,” WP does not know when Wolfeboro first became aware of problems at the RIBs.

76. WP denies the truth of the allegations set forth in paragraph 76 of the Amended Verified Complaint.

77. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 77 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same.

78. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 78 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same.

79. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 79 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same.

80. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 80 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same.

81. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 81 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same.

82. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 82 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same. In further answering, the allegations set forth in paragraph 82 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 82 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

83. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 83 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same.

84. WP denies the allegations set forth in paragraph 84 of the Amended Verified Complaint.

85. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 85 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same. In further answering, WP admits that Wolfeboro proceeded to complete the final design and construct RIBs 4 and 5.

86. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 86 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same. However, upon information and belief, WP understands that Wolfeboro commenced operations of RIBS 4 and 5 on June 1, 2010.

87. WP denies the truth of the allegations set forth in paragraph 87 of the Amended Verified Complaint.

Remedial Measures

88. WP denies the truth of the allegations set forth in paragraph 88 of the Amended Verified Complaint.

89. WP denies the truth of the allegations set forth in paragraph 89 of the Amended Verified Complaint.

90. WP denies the truth of the allegations set forth in paragraph 90 of the Amended Verified Complaint.

**Factual Allegations Regarding WP's Fraud, Violations of RSA 358-A,
and Gross Negligence**

91. WP admits that it contracted with Jesse Schwalbaum of Watershed Hydrogeologic Inc. to develop a computer model of the Wolf-1A Site, but denies the remaining allegations set forth in paragraph 91 of the Amended Verified Complaint.

92. WP admits the allegations set forth in paragraph 92 of the Amended Verified Complaint.

93. The allegations set forth in paragraph 93 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent that the allegations set forth in paragraph 93 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

94. WP denies the allegations set forth in paragraph 94 of the Amended Verified Complaint.

95. WP denies the allegations set forth in paragraph 95 of the Amended Verified Complaint.

96. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 96 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same.

97. WP is without sufficient information to form a belief as to the truth of the allegations set forth in paragraph 97 of the Amended Verified Complaint, and calls upon the Plaintiff to prove the same. In further answering, the allegations set forth in paragraph 97 of the Amended Verified Complaint reference a written document that speaks for itself. To the extent

that the allegations set forth in paragraph 97 of the Amended Verified Complaint are inconsistent with the terms of the written document, they are denied.

98. WP denies the allegations in paragraph 98 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 98 of the Amended Verified Complaint reference written documents that speak for themselves.

99. WP denies the allegations in paragraph 99 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 99 of the Amended Verified Complaint reference written documents that speak for themselves.

100. WP denies the allegations in paragraph 100 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 100 of the Amended Verified Complaint reference written documents that speak for themselves.

101. WP denies the allegations in paragraph 101 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 101 of the Amended Verified Complaint reference written documents that speak for themselves.

102. WP denies the allegations in paragraph 102 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 102 of the Amended Verified Complaint reference written documents that speak for themselves.

103. WP denies the allegations in paragraph 103 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 103 of the Amended Verified Complaint reference written documents that speak for themselves.

104. WP denies the allegations in paragraph 104 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 104 of the Amended Verified Complaint reference written documents that speak for themselves.

105. WP denies the allegations in paragraph 105 of the Amended Verified Complaint. In further answering, the allegations set forth in paragraph 105 of the Amended Verified Complaint reference written documents that speak for themselves.

106. WP denies the allegations in the first sentence of paragraph 106 of the Amended Verified Complaint and states that the RIBs did not “commence operation” by themselves on March 3, 2009. On numerous occasions throughout the month of February 2009, David Ford, Wolfeboro’s Director of Public Works, discussed in writing with WP, that the initial application of wastewater to the RIBS should be loaded at a maximum of 600,000 gpd. Mitch Locker of the NHDES also confirmed in writing on February 17, 2009 that “the intent and verified limit [of the permit] is 600,000 gallons per day to the basins.” Again on March 3, 2009 at 5:37 PM, Melissa Hamkins of WP sent an email to David Ford, Wolfeboro’s Director of Public Works, in which she explicitly recommended that the RIBs be loaded at a constant steady rate of 600,000 gpd in order to develop a steady state groundwater mound geometry to compare to the model results. Specifically, she advised him:

“[F]or the initial application of water to the RIBs we would like you to applying to all three basins simultaneously (open all three valves) at a constant rate of 0.6 mgd [600,000 gpd] (approximately 416 gpm) over 24-hrs per day. This will develop a steady rate groundwater mound geometry to compare to the model predicted mound.”

But the next day, on March 4, 2009, in complete disregard of WP’s repeated recommendations that loading should begin at a rate of 600,00 gpd, and *without notifying WP and/or Mitch Locker*

at NHDES of his intentions, David For started operating the RIBs by loading wastewater at 800,000 gpd.

Further answering, WP states that Wolfeboro reported observing groundwater breakout on April 20, 2009, and that David Ford of Wolfeboro admitted that “*the Town under my direction overloaded the RIB’s during the time period from 3-4 to 3-25, during the Spring, with high ground water and snow melt, a most likely bad combination.*” The fact that breakouts occurred after David Ford overloaded the RIBs at 800,000 gpd during the month of March and April 2009, serves to verify the accuracy of the model, since the model indicated that breakout would occur at loading rates of 800,000 gpd or above. WP denies the second and third sentences in paragraph 106, and further answering, states that they refer to a written document that speaks for itself.

107. WP denies the allegations in paragraph 107 of the Amended Verified Complaint.

COUNT I
Professional Negligence

108. This is a paragraph of incorporation, and therefore no responsive pleading is required. In further answering, WP incorporates by reference its answers to paragraphs 1 through 107 of the Amended Verified Complaint.

109. The allegations set forth in paragraph 109 of the Amended Verified Complaint state conclusions of law to which no response is required. Further answering, WP states that its duties and obligations were set forth in its various agreements with Wolfeboro.

110. WP denies the truth of the allegations set forth in paragraph 110 of the Amended Verified Complaint.

111. WP denies the truth of the allegations set forth in paragraph 111 of the Amended Verified Complaint.

112. WP denies the truth of the allegations set forth in paragraph 112 of the Amended Verified Complaint.

COUNT II
Gross Negligence

113. This is a paragraph of incorporation, and therefore no responsive pleading is required. In further answering, WP incorporates by reference its answers to paragraphs 1 through 112 of the Amended Verified Complaint.

114. WP denies the truth of the allegations set forth in paragraph 114 of the Amended Verified Complaint.

115. WP denies the truth of the allegations set forth in paragraph 110 of the Amended Verified Complaint.

116. WP denies the truth of the allegations set forth in paragraph 111 of the Amended Verified Complaint.

117. WP denies the truth of the allegations set forth in paragraph 112 of the Amended Verified Complaint.

COUNT III
Breach of Contract

118. This is a paragraph of incorporation, and therefore no responsive pleading is required. In further answering, WP incorporates by reference its answers to paragraphs 1 through 117 of the Amended Verified Complaint.

119. WP admits that it entered into various agreements with Wolfeboro for professional engineering services, and states that these documents speak for themselves.

120. WP denies the truth of the allegations set forth in paragraph 120 of the Amended Verified Complaint.

121. WP denies the truth of the allegations set forth in paragraph 121 of the Amended Verified Complaint.

COUNT IV
Negligent Misrepresentation

122. This is a paragraph of incorporation, and therefore no responsive pleading is required. In further answering, WP incorporates by reference its answers to paragraphs 1 through 121 of the Amended Verified Complaint.

123. WP admits that it is a professional engineering firm, but denies the truth of the remaining allegations in paragraph 123 to the extent that they mischaracterize the nature of WP's business.

124. WP denies the truth of the allegations set forth in paragraph 124 of the Amended Verified Complaint.

125. WP denies the truth of the allegations set forth in paragraph 125 of the Amended Verified Complaint.

126. WP denies the truth of the allegations set forth in paragraph 126 of the Amended Verified Complaint.

127. WP denies the truth of the allegations set forth in paragraph 127 of the Amended Verified Complaint.

COUNT V
Breach of Warranty

128. This is a paragraph of incorporation, and therefore no responsive pleading is required. In further answering, WP incorporates by reference its answers to paragraphs 1 through 127 of the Amended Verified Complaint.

129. WP denies the truth of the allegations set forth in paragraph 129 of the Amended Verified Complaint.

130. WP denies the truth of the allegations set forth in paragraph 130 of the Amended Verified Complaint.

131. WP denies the truth of the allegations set forth in paragraph 131 of the Amended Verified Complaint.

COUNT VI
(Violation of RSA 358-A)

132. This is a paragraph of incorporation, and therefore no responsive pleading is required. In further answering, WP incorporates by reference its answers to paragraphs 1 through 131 of the Amended Verified Complaint.

133. WP denies the truth of the allegations set forth in paragraph 133 of the Amended Verified Complaint.

134. WP denies the truth of the allegations set forth in paragraph 134 of the Amended Verified Complaint.

135. WP denies the truth of the allegations set forth in paragraph 135 of the Amended Verified Complaint.

136. WP denies the truth of the allegations set forth in paragraph 136 of the Amended Verified Complaint.

137. WP denies the truth of the allegations set forth in paragraph 137 of the Amended Verified Complaint.

COUNT VII
(Fraudulent Misrepresentation)

138. This is a paragraph of incorporation, and therefore no responsive pleading is required. In further answering, WP incorporates by reference its answers to paragraphs 1 through 137 of the Amended Verified Complaint.

139. WP denies the truth of the allegations set forth in paragraph 139 of the Amended Verified Complaint.

140. WP denies the truth of the allegations set forth in paragraph 140 of the Amended Verified Complaint.

141. WP denies the truth of the allegations set forth in paragraph 141 of the Amended Verified Complaint.

142. WP denies the truth of the allegations set forth in paragraph 142 of the Amended Verified Complaint.

143. WP denies the truth of the allegations set forth in paragraph 143 of the Amended Verified Complaint.

WHEREFORE, Wright-Pierce respectfully requests that the Amended Verified Complaint be dismissed with prejudice and judgment entered in Wright-Pierce's favor on the

merits, and that it be awarded costs and attorneys' fees, and that Wright-Pierce be granted such further relief as this Court may deem just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Amended Verified Complaint fails to state a claim against WP upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by operation of the applicable statute of limitations and/or the statute of repose.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because it failed to mitigate its damages and/or has not sustained any actionable damages.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because WP did not breach a legal duty owed to the Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

If the Plaintiff was damaged as alleged, which WP denies, then said damage resulted from the Plaintiff's own negligent conduct. Accordingly, the Plaintiff is barred from recovery or its recovery must be reduced proportionately to its contributory negligence.

SIXTH AFFIRMATIVE DEFENSE

If the Plaintiff was damaged as alleged, which WP denies, then said damage resulted from the acts and/or omissions of persons or entities over which WP had no control and for whose conduct WP is neither legally liable nor responsible.

SEVENTH AFFIRMATIVE DEFENSE

WP states that at all times material it acted with reasonable care, and that the Plaintiffs damages, if any, were caused by the conduct of a party for whose conduct WP was not responsible.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff's claims against WP are barred because WP has at all times complied with the applicable standard of care.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because WP at all times did not provide a warranty under any of its operative Contracts for the project.

TENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because all of the Plaintiff's damages, if any, arise from subsequent events that did not arise from any actionable claims against WP.

ELEVENTH AFFIRMATIVE DEFENSE

If the Plaintiff was damaged as alleged, said damages were caused by the intervening and/or superseding acts of other parties for whom WP is not responsible.

TWELTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by failure to join a party necessary for just adjudication of this action

THIRTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because the acts or omissions of WP, if any, were not the legal or proximate cause of any damages to the Plaintiff

FOURTEENTH AFFIRMATIVE DEFENSE

The Amended Verified Complaint should be dismissed for lack of jurisdiction over WP.

FIFTEENTH AFFIRMATIVE DEFENSE

The Amended Verified Complaint should be dismissed for improper venue.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by collateral estoppel and/or judicial estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel or equitable estoppel.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred, in whole or in part, by the doctrine of laches and unclean hands.

NINETEENTH AFFIRMATIVE DEFENSE

WP asserts that it performed all of its services pursuant to the operative Contracts for the project, and it reserves all Contractual defenses provide for under the respective Contracts.

TWENTIETH AFFIRMATIVE DEFENSE

WP reserves the right to allege additional affirmative defenses that may become evident during discovery.

JURY CLAIM

Wright-Pierce hereby demands a trial by jury to the fullest extent permitted by law.

WRIGHT PIERCE

By its attorneys,

/s/Patricia B. Gary

Patricia B. Gary, BBO #8163

Kelly Martin Malone, BBO #18093

Matthew F. Lenzi, BBO #20383

David H. Corkum (Pro Hac Vice)

DONOVAN HATEM LLP

2 Seaport Lane, 8th Floor

Boston, MA 02210

Tel (617) 406-4500

pgary@donovanhatem.com

kmalone@donovanhatem.com

dcorkum@donovanhatem.co

Dated: September 19, 2013

CERTIFICATE OF SERVICE

In accordance with Local Rule 5.4(b), I hereby certify that this document filed through the ECF system on September 19, 2013 will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non registered participants.

/s/Patricia B. Gary

Patricia B. Gary, Esq.