

Legacy Environment Group
Michael Hootstein, Principal Hydrogeologist
Shutesbury, Massachusetts

Dedicated to helping people & organizations protect drinking water and human health for over 30 years

**September 14, 2022 Complaint Filed on behalf of the Lot 0-32 Remediation Oversight Group
For DEP 21E Waste Site Cleanup electronic RTN 1-21489 submission**

Shutesbury Conservation Commission
concom@shutesbury.org
Town Hall
PO Box 276, 1 Cooleyville Road
Shutesbury, MA 01072

Mary Grover, Division of Wetlands Analyst
Mary.Grover@state.ma.us
DEP Western Region Wetland Circuit Rider Program
MassDEP Western Regional Office (WERO)
436 Dwight Street, Springfield, MA 01103

John Ziegler, DEP Western Region Director of Waste Site Cleanup
John.Ziegler@mass.gov
Division of Waste Site Cleanup
MassDEP Western Regional Office (WERO)
436 Dwight Street, Springfield, MA 01103

Town of Shutesbury
TownClerk@shutesbury.org
1 Cooleyville Rd. (PO Box 276)
Shutesbury MA 01072-0276

RE: Complaint: With deliberate indifference in August 2021, Shutesbury illegally filled, dredged and altered Land Subject to Flooding and Bordering Vegetated Wetlands (“BVW”) at 66 Leverett Rd. (**21E Site: RTN 1-21489**), in violation of the **Shutesbury General Wetlands Protection Bylaw** and **M.G.L. c. 131, § 40** setting forth “a public review and decision-making process by which activities affecting Areas Subject to Protection... are to be regulated in order to contribute to the... protection of ... private water supply... flood control, storm damage prevention, [and] prevention of pollution.”

Dear Commissioners, Ms. Grover, Mr. Ziegler and the Town of Shutesbury,

This second complaint alleges, that with deliberate indifference in August 2021, Shutesbury illegally filled, dredged and altered Land Subject to Flooding and Bordering Vegetated Wetlands in violation of the **Shutesbury General Wetlands Protection Bylaw, M.G.L. c. 131, § 40** and the **Commission’s July 22, 2021 Orders of Conditions** allowing the Town to only demolish the 3-bay

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automotive garage in IVW 2, at the following locations identified by Fuss & O'Neill's September 6, 2022 Delineation Report:

Upgradient BVW 3 on the west boundary- the location where, in August 2021, the Town illegally dredged and removed household wastes, automotive debris, and other likely OHM in an active 21E waste site (RTN 1-21489) without any permits, and repeatedly dumped mini-excavator loads of wastes into a larger front end loader bucket to transport (through saturated mucky soils) the likely OHM wastes into 3 dumpsters located in **IVW 4** and **IVW 2** on the east boundary of the site near the demolished 3-bay automotive garage.

Downgradient BVW 1 on the west boundary - the proposed library site where the wetland was mowed in an area in July 2021 where an old house with a failed leaching pit was burnt down by the town and the foundation/pit was filled in 2007;

Upgradient IVW 4 and downgradient IVW 2 on the east boundary - the locations where, in August 2021, the Town illegally dredged and trucked (with a front end loader) household wastes, automotive debris, and other likely OHM from **BVW 3 on the west boundary**, without any permits, through saturated mucky soils and dumped the likely OHM into 3 dumpsters located in **IVW 2** near the demolished 3-bay automotive garage.

On August 12, 2022, the Shutesbury Conservation Commission issued an Enforcement Order against the Town of Shutesbury for illegally dredging, removing and filling **downgradient protected BVW 1 and downgradient IVW 2 wetlands** at 66 Leverett Rd, in violation of the *Shutesbury General Wetlands Protection Bylaw* and *Massachusetts Wetlands Protection Act M.G.L. c. 131, §40*, "The property was subject to a Determination of Applicability issued by the Shutesbury Conservation Commission (SCC) on July 22, 2021. In its Request for Determination of Applicability, filed on July 7, 2021, the Town of Shutesbury sought to demolish and remove a concrete block garage that was partially in the Buffer Zone of a Protected Resource Area."

When Shutesbury filed its above July 7, 2021 Request for Determination, Shutesbury concealed (from the Conservation Commission) its illegal plan to also dredge and remove household wastes, automotive debris, and other likely OHM from **upgradient BVW 3 on the west boundary**.

Thus, the evidence shows **Shutesbury acted with deliberate indifference in August 2021** to violate the *Shutesbury General Wetlands Protection Bylaw, M.G.L. c. 131, § 40* and **the Commission's July 22, 2021 Orders of Conditions**.

In a related August 23, 2022 complaint filed with DEP on behalf of the Lot 0-32 (*DEP RTN 1-21489*) Remediation Oversight Group of which I am a member, we also provided "credible evidence of a point discharge of pollutants into a Protected Resource Area" ("**IVW 2**" **on the east boundary**) that evidences a flagrant violation by Shutesbury of 310 CMR 27.00 Underground Injection Control Regulations.

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A magnification of the Fuss & O'Neill delineated map (Exhibit 1) shows IVW 2 is in the general location where a point discharge of PCB in groundwater was found, in GP-3 - south of the demolished 3-bay automotive garage and in GP-2 - in the vicinity of the "drain pipe" east of the demolished garage.

We contend that Fuss & O'Neill incorrectly identified IVW 2 as an isolated vegetated wetland. To the contrary, available evidence shows both IVW 2 and the immediately upgradient IVW 4 are not isolated vegetated wetlands because, according to the MACC Handbook, "IVWs must have wetland vegetation, hydric soils and evidence of wetland hydrology, **but are not hydrologically connected.**"

According to a DEP Lot O-32 wetlands site map (**Exhibit 2**) noting "hydrologic connections" in blue and "bordering vegetated wetlands" in green, not only is Fuss & O'Neill's delineated upgradient IVW 4 hydrologically connected to downgradient IVW 2, both IVW 4 and IVW 2 are hydrologically connected to the downgradient private well (contaminated with reportable concentrations of PFAS) at 62 Leverett Road, a "hydrologic connection" (in blue) and BVW (in green) to the east of IVW 2.

Thus, because IVW 2 and IVW 4 are hydrologically connected to a downgradient private well BVW and a hydrologic connection, the law/regulations and hydrology of the site define IVW 2 and IVW 4 as bordering vegetated wetlands BVW 2 and BVW 4.

Additionally, a comparison of an old USGS map showing original topography contours (**Exhibit 3**) and 2019 topography contours shown overlying the Lot O-32 wetlands site map (**Exhibit 2**), proves up to 10 feet of "fine sand", overlying a confining layer of glacial till (the "water table"), was removed prior to the town's use of carved out wetland depressions to dispose of household rubbish, automotive debris and OHM. Upgradient BVW 3 to downgradient BVW 1 preferred OHM contaminant pathways can be observed migrating north-northwest under Leverett Rd. Upgradient BVW 4 to downgradient BVW 2 preferred OHM contaminant pathways can be observed migrating north-northeast under Leverett Rd.

The attached September 21, 2021 DEP Notice of Environmental Sampling (**Exhibit 4**) confirms reportable concentrations of PFAS were found in a 62 Leverett Rd. well less than 100 feet downgradient from Fuss & O'Neill's IVW 2, "the laboratory report for your kitchen sink tap water sample indicates a total PFAS6 concentration of 40.2 ug/L, which is above Mass DEP's drinking water standard of 20 ug/L." The attached January 14, 2022 DEP Notice of Environmental Sampling (**Exhibit 5**) effectively confirms the fact that the town of Shutesbury admits upgradient Lot O-32 in the vicinity of upgradient IVW 2 is the likely source of OHN PFAS contamination in the private well, "MassDEP collected a treated water sample from your kitchen sink tap following the installation of a Point of Entry Treatment (POET) System install by the Town of Shutesbury."

Legacy Environment Group
Michael Hootstein, Principal Hydrogeologist
Shutesbury, Massachusetts

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In addition, a Cold Springs Environmental map (**Exhibit 6**) identifies the locations where reportable levels of PCB, a DNAPL (dense non-aqueous phase liquid) was found in 2012, at GP-3 and just under at GP-2, in bordering vegetated wetland IVW 2.

I herein provide a photograph (**Exhibit 7**) of the 2-inch deep perched wetland water table I took on September 3, 2022, after one day of rain ended our summer drought. It shows the upgradient IVW 4 to IVW 2 hydrologically connected wetland extends downgradient to the northern border of IVW 2 located at the Lot O-32 “horse shoe” parking area.

I herein provide two photographs (**Exhibits 8-9**) I took on November 28, 2011, showing the oily perched wetland water table located in IVW 2 just north of the 3-bay auto garage demolished by Shutesbury in August 2021.

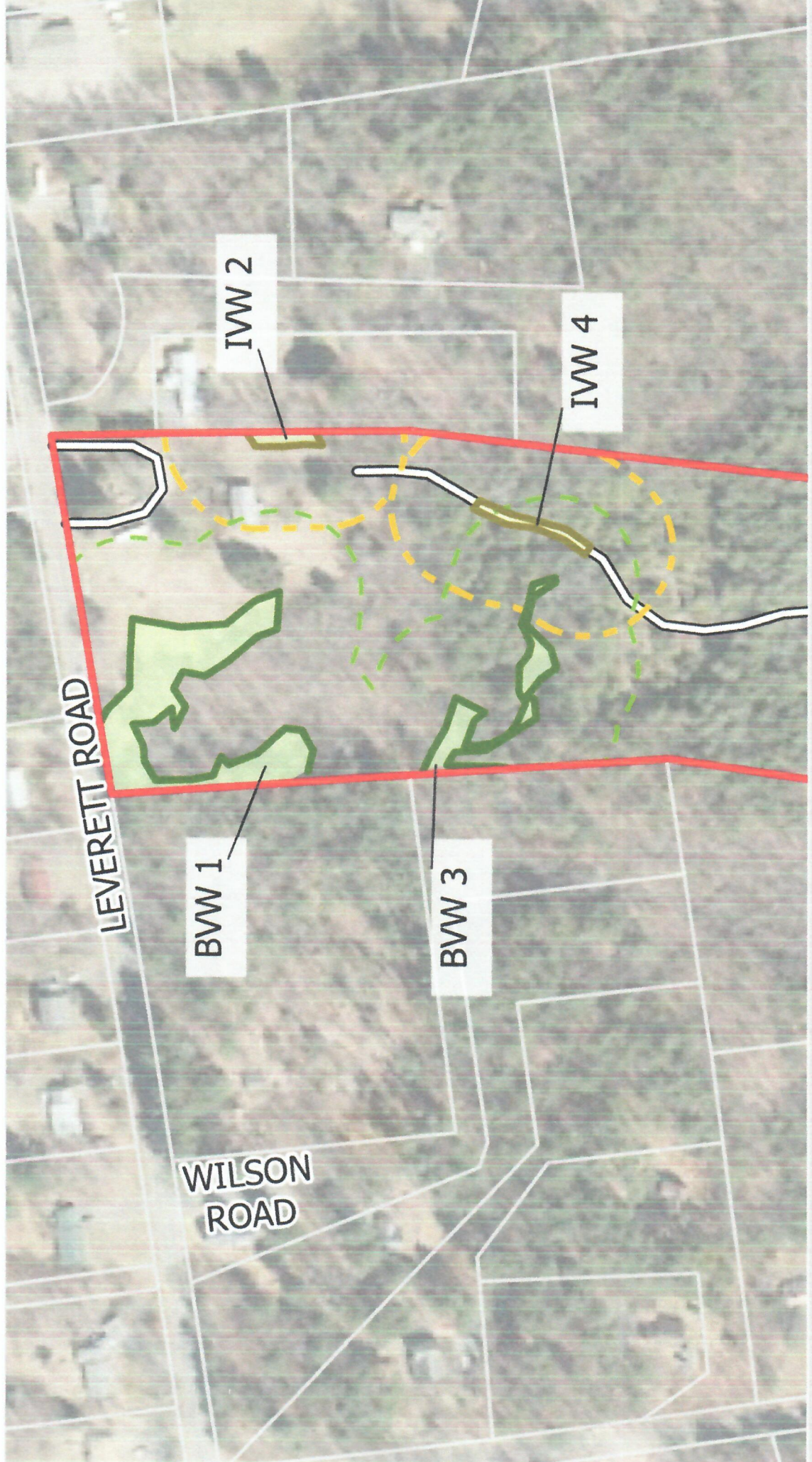
Whereas, Shutesbury acted with deliberate indifference in August 2021, to illegally fill, dredge and alter Land Subject to Flooding and Bordering Vegetated Wetlands in violation of the *Shutesbury General Wetlands Protection Bylaw, M.G.L. c. 131, § 40* and the Commission’s July 22, 2021 Orders of Conditions (only allowing the Town to demolish the 3-bay automotive garage in IVW 2), the Conservation Commission should order the Town:

- 1) to mitigate protected wetland resource damage to Lot O-32, the contamination of downgradient drinking water and harm to human health caused by Shutesbury’s reckless indifference to the rule of law; and
- 2) to comply with our *Shutesbury General Wetlands Protection Bylaw, Section 4*, that requires the Town to file a written application “to perform activities... affecting resource areas protected by this Bylaw... No activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw... The Commission, at its discretion in [this] appropriate case, may accept as the application and plans under this Bylaw the Notice of Intent and plans filed under the Wetlands Protection Act.”.

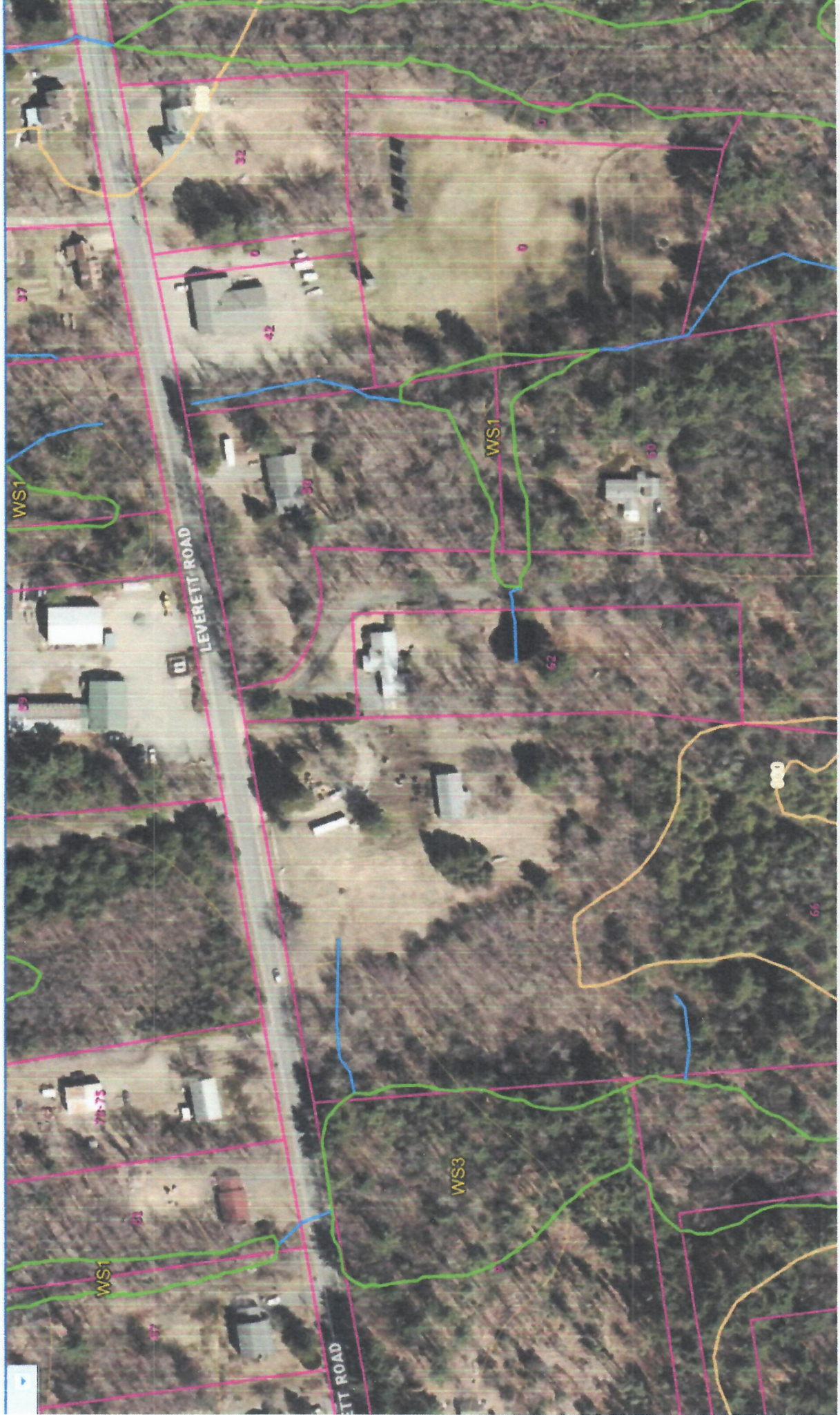
Respectfully submitted on September 14, 2022,

/s/ Michael Hootstein
Legacy Environmental Group

Set as default

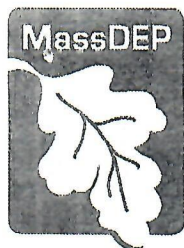


Wetlands Map



Wetlands Map





Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Kathleen A. Theoharides
Secretary

Karyn E. Polito
Lieutenant Governor

Martin Suuberg
Commissioner

September 21, 2021

[REDACTED]
62 Leverett Road
Shutesbury, MA 01072

Re: Notice of Environmental Sampling
62 Leverett Road
Shutesbury, MA
RTN 1-21340

[REDACTED]

Thank you for allowing the Massachusetts Department of Environmental Protection (MassDEP) access your property on August 4, 2021 to collect a water sample from your home for per- and polyfluoroalkyl substances (PFAS) analysis. A private well sampling program was initiated in your area following the detection of PFAS in groundwater samples collected in the vicinity of Leverett and Old Orchard Roads. MassDEP requested access to your property to sample your drinking water to protect public health and ensure safe drinking water.

The August 4, 2021 water sample was collected from your kitchen sink tap. Alpha Analytical analyzed the sample for 18 PFAS compounds using U.S. Environmental Protection Agency Method 537.1. Currently, MassDEP regulates six specific PFAS, abbreviated as "PFAS6." These chemicals are as follows:

1. Perfluorooctane sulfonic acid (PFOS)
2. Perfluorooctanoic acid (PFOA)
3. Perfluorohexane sulfonic acid (PFHxS)
4. Perfluorononanoic acid (PFNA)
5. Perfluoroheptanoic acid (PFHpA)
6. Perfluorodecanoic acid (PFDA)

As mentioned during your phone conversation with Caprice Shaw on August 20, 2021, the laboratory report for your kitchen sink tap water sample indicates a total PFAS6 concentration of 40.2 ng/L, which is above MassDEP's drinking water standard of 20 ng/L.

On October 2, 2020, MassDEP published its PFAS public drinking water standard, called a Massachusetts Maximum Contamination Level (MMCL), of 20 nanograms per liter (ng/L) [or parts per trillion (ppt)] – individually or for the sum of PFAS6. The drinking water standard is set to be protective against adverse health effects for all people consuming the water. Drinking water at a level above the MMCL does not necessarily mean that you have been harmed or will get sick. This is because the MMCL is based on a level that is safe to drink for an entire lifetime.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

MassDEP has determined that water with PFAS6 levels equal to or greater than 20 ng/L is unacceptable for long-term use as drinking water. You can reduce your exposure by using bottled water that has been tested by a certified laboratory using EPA-approved analytical methods for PFAS and determined to be non-detect. The Massachusetts Department of Public Health maintains a list of licensed bottlers that have tested their water or beverages for PFAS on their website at <https://www.mass.gov/info-details/water-quality-standards-for-bottled-water-in-massachusetts>.


Some home water treatment systems may also be able to reduce PFAS levels in the water. See MassDEP's PFAS in Private Well Drinking Water Supplies FAQ (<https://www.mass.gov/info-details/per-and-polyfluoroalkyl-substances-pfas-in-private-well-drinking-water-supplies-faq>) for information regarding treatment devices that are known to remove many types of PFAS contaminants from water. For additional information, you may wish to consult with your health care provider, local Board of Health or MassDEP.

If you wish to re-sample your drinking water for PFAS in the future, MassDEP recommends that you contact a certified laboratory for the analysis. Instructions on how to find a MassDEP-certified laboratory are provided at <https://www.mass.gov/how-to/find-a-certified-laboratory-for-water-testing>.

Additional information on PFAS is included in MassDEP's PFAS fact sheet, a hard copy of which was provided to you with the July 6, 2021 access agreement mailing. The fact sheet is also available online at <https://www.mass.gov/doc/massdep-fact-sheet-pfas-in-drinking-water-questions-and-answers-for-consumers/download>.

If you have any questions regarding this letter or your results, please contact Caprice Shaw (at Caprice.Shaw@mass.gov or 413-755-2222). Thank you for your cooperation in this matter.

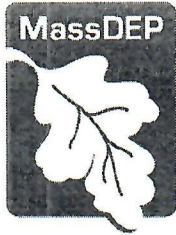
Sincerely,



Elizabeth M. Stinehart
Deputy Regional Director
Bureau of Waste Site Cleanup

Enclosures:
Notice of Environmental Sampling (Form BWSC-123)
Laboratory Report L2141927

ecc: Shutesbury Select Board
Shutesbury Board of Health
BWSC Files: RTN: 1-21340



Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker
Governor

Kathleen A. Theoharides
Secretary

Karyn E. Polito
Lieutenant Governor

Martin Suuberg
Commissioner

January 14, 2022

[REDACTED]
62 Leverett Road
Shutesbury, MA 01072

Re: Notice of Environmental Sampling
62 Leverett Road
Shutesbury, MA
RTN 1-21340

[REDACTED]

On November 16, 2021, Massachusetts Department of Environmental Protection (MassDEP) collected a treated water sample from your kitchen sink tap following the installation of a Point of Entry Treatment (POET) System installed by the Town of Shutesbury, for per- and polyfluoroalkyl substances (PFAS) analysis. The sample was analyzed for 18 PFAS compounds using U.S. Environmental Protection Agency Method 537.1. Currently, MassDEP regulates six specific PFAS, abbreviated as "PFAS6" in drinking water (see attached Supplemental information).

As mentioned to you via a phone conversation on December 13, 2021, the laboratory report for your kitchen sink tap water sample indicates that no PFAS6 compounds were detected above the reporting limit (RL) of 2.00 nanograms per liter (ng/L) [or parts per trillion (ppt)].

The PFAS results from your sample, both individual and total, are presented below in Table 1 with MassDEP's drinking water standard of 20 ng/L.

**Table 1
PFAS6 Results (ppt or ng/L)**

Sample Location: Date Collected:	Treated Kitchen Sink Tap 11/16/21
PFAS:	
PFOS	ND (<2.0)
PFOA	ND (<2.0)
PFHxS	ND (<2.0)
PFNA	ND (<2.0)
PFHpA	ND (<2.0)
PFDA	ND (<2.0)
Total PFAS6:	ND (<2.0)
MassDEP Drinking Water Standard:	20

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

Notes:

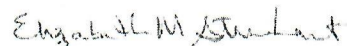
ND = Not detected; result was below the level that can be confidently reported by the laboratory (laboratory reporting limit provided in parentheses).

ng/L = Nanograms per liter

ppt = Parts per trillion

If you have any questions regarding this letter or your results, please contact Caprice Shaw (at Caprice.Shaw@mass.gov or 413-755-2222). Thank you for your cooperation in this matter.

Sincerely,



Elizabeth M. Stinehart
Deputy Regional Director
Bureau of Waste Site Cleanup

Enclosures:

Notice of Environmental Sampling Supplemental Info 9-15-21

Notice of Environmental Sampling (Form BWSC-123)

Laboratory Report L2163417

ecc: Shutesbury Select Board
Shutesbury Board of Health
BWSC Files: RTN: 1-21340



Cold Spring Environmental Consultants Inc.

FIGURE 2: SITE LAYOUT, 66 LEVERETT ROAD
PROPOSED LIBRARY SITE, SHUTESBURY, MA

DATE: 12.30.2011	DRAWN BY: AW	REVISED: 04.25.2012
SCALE: -		DRAWING NUMBER: # 110-3360-0427

GP-1 GEOPROBE 1" PVC MONITORING WELL

