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# Privatization of Wastewater Facilities in Lynn, Massachusetts

## *EXECUTIVE SUMMARY*

June 2001

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### **Background**

The Lynn Water and Sewer Commission (Commission) provides water and wastewater collection, treatment, and disposal services for residents and businesses in the city of Lynn, Massachusetts and several surrounding communities. Pursuant to a consent decree negotiated with the United States Environmental Protection Agency (EPA), the Commission constructed a 25.8 million gallon per day primary wastewater treatment plant in 1985 and secondary wastewater treatment facilities in 1990. The wastewater treatment plant has been operated by U.S. Filter under a series of contracts since the plant came on line in 1985.

Lynn's wastewater collection system was constructed between 1884 and 1928. Prior to 1990, the collection system had many combined sewers that carried both sanitary flows and stormwater. The combined sewer system lacked the capacity needed to handle the combined flows and would overflow during periods of heavy rain, discharging untreated wastewater into river or ocean waters. The inadequate capacity of the combined sewer system also produced flooding of streets and basements in Lynn.

In 1987, the Commission negotiated an amended consent decree with the EPA requiring the Commission to develop a plan to address the combined sewer overflows (CSOs). The engineering firm of Camp Dresser & McKee Inc. (CDM) developed a CSO control plan that included separating combined sewers in some areas of Lynn and constructing a tunnel/pumpback facility to store excess water during periods of heavy rain. CDM's 1998 cost estimate for the tunnel/pumpback facility was \$62 million.

Beginning in 1991, the Commission began a sewer separation program as required by the consent decree. Between 1991 and 2000, the Commission awarded eight construction contracts for sewer separation work in various Lynn neighborhoods. These contracts were awarded on the basis of bids solicited under the state's public construction bidding law.

### **Planning for Long-Term DBO Contracting**

In 1997, CDM conducted an efficiency study for the Commission to identify potential management or operating changes that would produce cost savings. In the 1997 efficiency study, CDM noted that the operation and maintenance contract required U.S. Filter to employ a minimum of 49 employees at the

wastewater treatment plant. CDM recommended the award of a contract to design and build improvements to and operate the wastewater treatment plant for a 20-year term. CDM determined that a 20-year design-build-operate (DBO) contract could produce cost savings if the contractor were allowed to reduce the number of employees. The CDM study recommended against the DBO contract approach for the design and construction of CSO abatement facilities, but the Commission did not follow this recommendation.

In 1997, the Commission entered into privatization services contracts with CDM and with the New York law firm of Hawkins, Delafield & Wood (HDW) to assist with the procurement of long-term DBO contracts for the wastewater treatment plant and for CSO abatement work, referred to as the East Lynn CSO Project. In 1998, the Commission shifted the privatization services work from CDM to Malcolm Pirnie, another engineering firm, through a no-bid amendment to a small engineering services contract. The Commission's expenditures for these two privatization consultants would mount to more than \$3 million over the following three years.

The Commission obtained special legislative authorization in 1998 to exempt the DBO contracts from the state's public construction bidding law. In February 1999, the Commission issued requests for proposals (RFPs) for both contracts; proposers could respond to one or both RFPs.

### **The East Lynn CSO Project**

The Commission chose an open-ended design approach for the East Lynn CSO Project. The RFP invited proposers to develop a design based on any technology that would accomplish the project objectives of reducing or eliminating CSOs and flooding problems. This approach was intended to promote competition among firms to develop the most cost-effective design. The Commission expected to place responsibility on the contractor for meeting the project objectives.

However, the Commission's expectations for the East Lynn CSO Project procurement approach proved to be unrealistic. The open-ended design competition required proposers to invest substantial resources to investigate the causes of the CSO problem and to develop design solutions; thus, the high cost of proposal preparation discouraged rather than promoted competition. The Commission received only two proposals: one from U.S. Filter and one from another design-build team. U.S. Filter had been acquired by Vivendi, a \$45 billion corporation, prior to the proposal due date; the design firm responsible for preparing the second proposal was also owned and controlled by Vivendi. Thus, it does not appear that the Commission generated genuine competition for the project.

Neither of the two proposals included the tunnel/pumpback facility that CDM had recommended in 1990. Instead, both proposals were for sewer separation projects. U.S. Filter proposed to install a new, small-diameter, sanitary-only sewer but refused to accept responsibility for the risk of sewer overflows, sewage backup, and flooding that could result from this approach. The second proposal contained a completely different scope of work, calling for the construction of a new, large-diameter stormwater sewer. Because the scopes of work involved in each approach were so different, the proposal prices were not comparable.

After 15 months of proposal evaluation and contract negotiation, the Commission awarded a \$48 million sewer separation contract to U.S. Filter. However, the contract did not produce the benefits that the Commission had hoped to achieve through the DBO process. The U.S. Filter approach poses risks of sewer overflows and flooding resulting from inadequate sewer capacity. Under the one-sided contract negotiated with U.S. Filter, the Commission bears the risk for ensuring that the sewer system design has adequate capacity to prevent these problems. The contract also makes the Commission responsible for

other construction work that will be required to meet the project objectives. The findings in this report show that this work is likely to bring the Commission's cost for the project to more than \$86 million. Even more troubling, the Office's cost estimate for the sewer separation work proposed by U.S. Filter shows that the \$47 million design-build price is \$22 million higher than the cost of comparable work procured by the Commission under the state's public construction bidding law for other sewer separation projects.

The Commission's Chairman and the Mayor of Lynn have publicly claimed that the U.S. Filter contract stands to produce \$400 million in cost savings when compared with a 1990 plan for a totally different technical approach involving a tunnel/pumpback facility. This cost-savings claim was not supported by the engineering cost estimates prepared by the Commission's own consultants. But more importantly, the comparison of the cost of the U.S. Filter contract with the cost of the tunnel/pumpback plan is a red herring. U.S. Filter's \$47 million design-build price is nearly double the cost for similar construction work procured through competitive bidding, making the East Lynn CSO Project a bad deal for ratepayers.

### **The 20-Year DBO Wastewater Treatment Plant Contract**

The Commission's 25.8 million gallon per day wastewater treatment plant has been operated by U.S. Filter since the plant came on line in 1985. The Commission awarded a five-year contract to U.S. Filter through a competitive process in 1991 and subsequently amended that contract to allow U.S. Filter to pass through increased operating costs. The Commission again solicited proposals for a new five-year contract in 1996 and received competitive proposals from U.S. Filter and another firm. The price proposed by U.S. Filter in 1996 would have resulted in approximately \$500,000 in cost savings per year in comparison with the 1991 contract. However, the Commission did not award a new contract in 1996 but instead continued to rely on U.S. Filter to operate the plant for another four years under month-to-month extensions of its 1991 contract pending the procurement of a 20-year DBO contract.

The RFP for a 20-year DBO contract issued by the Commission in February 1999 generated only two proposals. As was the case with the East Lynn CSO Project, the two proposals were submitted by U.S. Filter and by another firm; both firms were owned and controlled by Vivendi. Thus, the RFP process did not generate meaningful competition.

The Commission relied on Malcolm Pirnie to perform an analysis comparing the costs of the two proposals and to determine whether a 20-year DBO contract resulting from one of the proposals would result in lower costs than a traditional, five-year operating and maintenance contract. Malcolm Pirnie's flawed analysis overstated the Commission's actual operating cost in projecting that the 20-year DBO contract would cost \$28.6 million less over the 20-year term than the Commission's then-current five-year contract. When the Office corrected the costs to reflect the Commission's actual data, the projected savings were reduced from \$28.6 million to \$7.7 million. Moreover, cost adjustment factors in the 20-year DBO contract will increase the Commission's costs, further eroding any potential cost savings.

The Office used Malcolm Pirnie's mathematical model to compare the cost of U.S. Filter's 1996 competitive proposal with the 20-year DBO contract. This comparison shows that the competitive price for a five-year contract, extrapolated to 20 years, would produce lower costs than the 20-year DBO contract with U.S. Filter. U.S. Filter may realize operating cost savings resulting from its CSO work and its planned staff reductions, but the findings in this report show that the savings will translate to increased profits for U.S. Filter rather than lower rates for the ratepayers. Moreover, the Commission will have little leverage in future cost-adjustment negotiations with U.S. Filter under the complex, 20-year DBO contract, which effectively insulates U.S. Filter from the threat of future competition.

### **The Commission's Privatization Consultant Contracts**

The findings in this report also show that the Commission failed to exercise control over its expenditures for privatization consultants, which mounted to more than \$3 million over three years. The Commission initially awarded a competitively priced \$56,168 general engineering services contract to Malcolm Pirnie. The Commission later amended that contract to allow Malcolm Pirnie to increase its hourly rates by as much as 73 percent and to bill more than \$1.6 million in privatization consultant services.

The Commission also awarded a sole-source contract for privatization legal services to the New York firm of Hawkins, Delafield & Wood (HDW) that grew to more than \$1.5 million over the first three years. This open-ended contract did not require HDW to itemize or document the \$92,564 in travel and meal expenses billed to and reimbursed by the Commission. After the Office requested documentation, HDW acknowledged that \$3,295 of those expenses had been erroneously billed to the Commission and that HDW had no documentation to support another \$4,695 in travel and meal expenses.

The RFPs for both of the DBO contracts required the winning firm to reimburse the Commission for the cost of the privatization consultants. This imprudent method of financing its consultant costs created pressure for the Commission to award the contracts to recover the \$3 million it had spent, regardless of whether the contracts offered good deals for ratepayers.

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*Revised June 29, 2001*

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT  
CIVIL ACTION NO. 050453

DANIEL C. MACRITCHIE  
Plaintiff

**D**

v.

VEOLIA WATER NORTH AMERICA  
ENGINEERING & CONSTRUCTION, INC.  
N/K/A N.A. WATER SYSTEMS, LLC;  
VEOLIA WATER NORTH AMERICA  
OPERATING SERVICES, INC.;  
US FILTER CORPORATION;  
ANDREW D. SEIDEL;  
MATTHEW S. THOMPSON;  
JAMES BROWN;  
MICHAEL RODI;  
SCOTT RECINOS;  
JOHN LUCEY;  
MICHAEL STARK; and  
BRIAN J. CLARKE,  
Defendants

COMPLAINT WITH JURY DEMAND

1. Plaintiff is Daniel C. MacRitchie, an individual having a usual place of residence in Exeter, New Hampshire.
2. Defendant is Veolia Water North America Engineering & Construction, Inc., a corporation having a usual place of business at 250 Airside Drive, Moon Township, Pennsylvania, and is the successor to US Filter Engineering & Construction, Inc., a Pennsylvania corporation, having a usual place of business at 250 Airside Drive, Moon Township, Pennsylvania ("US Filter Engineering" collectively hereinafter).

3. Defendant N.A. Water Systems, LLC, a Pennsylvania Limited Liability Corporation, having a usual place of business at 250 Airside Drive, Moon Township, Pennsylvania, is the surviving company of a merger between Veolia Water North America Engineering & Construction, Inc., and N.A. Water Systems, LLC which occurred on July 16, 2004. N.A. Water Systems, LLC, is a subsidiary of Veolia Water North America Operating Services, Inc. (F/K/A US Filter Operating Services, Inc.), a Delaware Corporation, having a usual place of business at 250 Airside Drive, Moon Township, Pennsylvania (hereinafter referred to as "VWNAOS"). VWNAOS is a subsidiary of a French multinational business known as Veolia Environnement formerly known as Vivendi Environnement, and sometimes referred to by its trade name or parent Vivendi ("US Filter Engineering" collectively hereinafter).
4. Defendant is US Filter Corporation, a California corporation, having a usual place of business at 40-004 Cook Street, Palm Desert, California.
5. Defendant is Andrew D. Seidel, president of US Filter Corporation, having a usual place of business at 40-004 Cook Street, Palm Desert, California.
6. Defendant is Matthew S. Thompson, treasurer of US Filter Corporation, having a usual place of business at 40-004 Cook Street, Palm Desert, California.
7. Defendant is James Brown, president N.A. Water Systems, LLC, having a usual place of business at 250 Airside Drive, Moon Township, Pennsylvania.
8. Defendant is Michael Rodi, a human resources employee of N.A. Water Systems, LLC, and/or US Filter Corporation, having a usual business address of 250 Airside Drive, Moon Township, Pennsylvania.
9. Defendant is Scott Recinos, Vice President of N.A. Water Systems, LLC, having a usual

place of residence at 43901 Felicity Place, Ashburn, Virginia 20147.

10. Defendant is John Lucey, an Officer of VWNAOS, having a usual business address at 250 Airside Drive, Moon Township, Pennsylvania.
11. Defendant is Michael Stark, President of VWNAOS, having a usual business address at 250 Airside Drive, Moon Township, Pennsylvania.
12. Defendant is Brian J. Clarke, Manager of N.A. Water Systems, having a usual business address at LLC, 250 Airside Drive, Moon Township, Pennsylvania.

#### STATEMENT OF FACTS

13. On or about July 25, 2002, US Filter Engineering, a subsidiary of US Filter Corporation, made a written offer of employment to Mr. MacRitchie for the position of Construction Manager at the Lynn Water and Sewer Commission located in Lynn, Essex County, Massachusetts. In that offer, US Filter Engineering offered a base salary at the rate of ninety thousand dollars (\$90,000.00) per annum plus substantial fringe benefits, including but not limited to health insurance, dental insurance, life insurance, disability insurance, 401(k) plan participation, and other benefits. In addition, US Filter Engineering assigned a percentage of the Project Incentive Plan ("PIP") as additional cash compensation to Mr. MacRitchie.
14. The PIP value assigned to Mr. MacRitchie was established as a component of each of the two (2) principle contracts on which Mr. MacRitchie worked and was considered earned compensation in the form of wages in connection with each contract.
15. On or about August 1, 2002, Mr. MacRitchie accepted the offer of employment.
16. On or about August 28, 2002, less than a month after commencing work at US Filter Engineering, Mr. MacRitchie was paid four thousand five hundred dollars (\$4,500.00)

under the PIP compensation plan in connection with a contract with the City of Lynn.

17. On or about August 1, 2002, US Filter Engineering assigned Mr. MacRitchie to be the project manager for a troubled contract with the Lynn Water & Sewer Commission ("Commission") in Lynn, Massachusetts.
18. Mr. MacRitchie worked out of the US Filter Engineering office located at 330 Lynnway, Suite 107, Lynn, Massachusetts on a regular basis.
19. In January 2003, US Filter Engineering promoted Mr. MacRitchie from his current project management position to his new position as the Northeast Region Operations Manager. In or about the same time, US Filter Engineering assigned Mr. MacRitchie to yet another troubled contract in addition to the Lynn contract. This contract was with the Borough of Naugatuck, Connecticut.

#### THE COMMISSION'S CSO CONTRACT

20. The City of Lynn's wastewater collection system was constructed between 1884 and 1928. Prior to 1990, the collection system had many combined sewers that carried both sanitary flows and storm water into the same system. The combined sewer system lacked the capacity needed to handle the combined flows and would overflow during periods of heavy rain, discharging untreated wastewater into various bodies of water, including the Massachusetts Bay.
21. In 1985, the City of Lynn and the Commission entered into a consent decree with the United States Environmental Protection Agency ("EPA") as a result of years of litigation under the Clean Water Act. The consent decree was amended in 1987 to address combined sewer overflows ("CSO"):
22. For a period of time, Wheelabrator EOS, Inc. operated the wastewater facility for the

- Commission. In the late 1990s, WE Filter Corporation acquired Wheelabrator EOS, Inc.
23. During the mid 1990s, the City of Lynn retained a Boston engineering firm, Camp, Dresser & McGee ("CDM"), to design an improved wastewater treatment system to resolve the CSO problem.
24. In 1997, CDM conducted an efficiency study for the Commission to identify potential managerial or operational changes that would produce cost savings. In the 1997 efficiency study, CDM noted that the operation and maintenance contract required U.S. Filter Corporation to employ a minimum of 49 employees at the wastewater treatment plant. CDM recommended the award of a contract to design and build improvements to the wastewater treatment plant and to operate the plant for a 20-year term. CDM determined that a 20-year design-build-operate ("DBO") contract could produce cost savings if the contractor was allowed to reduce the number of employees. The CDM study recommended against the DBO contract approach for the design and construction of CSO abatement facilities; however, the Commission did not follow this recommendation.
25. In 1998, the Commission obtained special legislative authorization to exempt the DBO contracts from the Commonwealth's public construction bidding law. Partially due to this exemption, only US Filter Corporation and one other entity bid for work from the Commission.
26. On or about September 11, 2000, Pat McManus, the Mayor of the City of Lynn and the Commission Chairman, told fellow members of the Commission that the Commission would realize savings of \$400 million by adopting US Filter Corporation's proposal. In an effort to sway fellow Commission members, Mr. McManus stated, "I am the Mayor of

the city, and I want to make this simple for you. Anybody who votes against this ought to be run out of town on a rake." Despite the recommendations of CDM, the Commission entered into a \$48 million sewer separation contract with US Filter Corporation under terms that did not incorporate the design terms recommended by CDM.

27. Shortly thereafter US Filter Corporation retained a lobbyist John "Jack" E. Murphy, currently of Issues Management Group, Inc., who had a working relationship with Mr. McManus and had formerly served on the Massachusetts legislature.
28. On or before December 2002, US Filter Corporation began to secretly negotiate the terms of an employment/consulting relationship with Mr. McManus. Mr. McManus' employment/consulting relationship with US Filter Corporation commenced on or about January 2003.
29. As a result of complaints regarding the bidding process, the cost overruns, and the ultimate costs to tax payers, the Inspector General for the Commonwealth of Massachusetts conducted an investigation of the relationship between the City of Lynn, the Commission, and US Filter Corporation relating to the CSO contract.
30. In June 2001, the Inspector General for the Commonwealth of Massachusetts issued a report in excess of one hundred pages in which it concluded that the Commission had entered into a contract that had unreasonably shifted the burden of risk from US Filter Corporation to the Commission and to the tax payers of the City of Lynn. The report further concluded that the true cost of the contract was nearly two times the cost that it should have been and that the bidding process had not been competitive, which had resulted in an extremely expensive contract for the Commission and for the tax payers of

the City of Lynn.

31. The Massachusetts Inspector General also concluded that the purported \$400 million savings was unsubstantiated and called it a "red herring."
  32. In or about the early part of 2002, the Commission demanded that US Filter Corporation remove its original project manager, William Fahey, from the CSO project.
  33. Mr. MacRitchie's offer of employment from US Filter Engineering was contingent upon the Commission determining that Mr. MacRitchie was a suitable replacement for William Fahey.
  34. On or about August 12, 2002, the Commission accepted Mr. MacRitchie as US Filter Corporation's replacement project manager.
  35. In order to improve its relationship with municipalities, US Filter Corporation hired a former Massachusetts representative, Christopher G. Hodgkins, as Vice President and as Mr. MacRitchie's supervisor.
  36. In or about May 2003, US Filter Engineering paid the Greater Lynn Mental Health & Retardation Association, Inc. ("GLMHRA") \$10,000.00 for a table at a purported charitable event for GLMHRA. At that time, City Council President James M. Cowdell and former City Council President and senior manager at Lynn Water and Sewer Commission Robert Tucker were employed by or affiliated with GLMHRA.
  37. At that time, Robert Tucker was the President of GLMHRA. James Cowdell was an employee and still holds the position of Chief Administrative Officer of GLMHRA.
- Over the course of the next several weeks, Mr. MacRitchie learned that none of the local business people with whom he had contact were aware of GLMHRA's pending charitable event. Mr. MacRitchie questioned the appropriateness of the \$10,000.00 payment which

had been approved by Mike Stark, the president of VWNAOS, which is an affiliate of US Filter Corporation. Subsequently, GLMHRA returned the \$10,000.00 payment and the charitable event never took place.

**THE COMMISSION DEMANDS REMOVAL OF MR. MACRITCHIE**

38. In October 2003, the Commission demanded that US Filter Corporation remove Mr. MacRitchie as the project manager.
39. On or about October 31, 2003, US Filter Engineering and US Filter Corporation wrote to the Commission supporting Mr. MacRitchie and opposing the demands of the Commission.
40. Because of strained relations between the Commission and US Filter Corporation and US Filter Engineering, both entities sought a way to sever their relationship with the Commission in a manner that would be favorable to them.
41. Certain senior employees at US Filter Engineering made a conscious decision to engage in conduct and omissions that would lead to the termination of the CSO Contract. This was sometimes referred to internally as "Plan A."
42. On or about February 24, 2004, the Commission terminated its contract with US Filter Corporation for various reasons, including but not limited to, US Filter Corporation's election to allow a performance guarantee or bank letter of credit in the amount of \$15 million dollars to expire in December 2001 without renewing it.

**THE NAUGATUCK WASTE WATER CONTRACT**

43. In or about 2002, US Filter Corporation and the City of Naugatuck, Connecticut entered into a long-term wastewater treatment and management contract.
44. This contract was troubled from the outset because of design defects in the upgrade plan.

45. On or about November 2003, Mr. MacRitchie learned that Gerald Grubesky, US Filter Corporation's professional engineer of record for the contract, had been stamping drawings with his professional engineering stamp without first diligently reviewing the drawings. Mr. MacRitchie was informed by Mr. Grubesky that this was a typical practice at US Filter Corporation.
46. In or about the same time, Mr. MacRitchie also learned that Jim Ignatius, US Filter Corporation's lead architect on the project had not reviewed the current State of Connecticut supplemental building codes and fire codes prior to finalizing architectural plans for the project. US Filter Corporation had submitted these architectural plans to the Borough of Naugatuck, which were subsequently used and relied upon in their approval of payments to US Filter Corporation. Mr. MacRitchie spoke with his supervisor regarding the architectural plans that did not meet the State of Connecticut's supplemental building codes and fire codes and regarding the need to spend hundreds of thousands of dollars to comply with the codes.

**MR. MACRITCHIE'S OVERALL JOB PERFORMANCE**

47. Despite the hurdles facing Mr. MacRitchie, he excelled in the management of the Lynn CSO Contract. As a major milestone, he obtained a contract modification that accelerated the schedule allowing completion of the contract three (3) years ahead of time.
48. In August 2003, Mr. MacRitchie's supervisor, David Ford, conducted a written performance review and rated Mr. MacRitchie as a 4 on a scale of 1 - 5, stating that Mr. MacRitchie met job requirements with high proficiency. Mr. Ford also made other laudatory comments regarding Mr. MacRitchie.

49. In a document dated October 31, 2003, Mr. John Lucey, the Senior Vice President and Officer of US Filter, wrote, "Mr. MacRitchie is one of our finest project managers..."

50. In or about December 2003, David Ford stated that Mr. MacRitchie's PIP allocation from the Lynn CSO contract should be paid to him.

**THE REQUEST FOR FMLA LEAVE, RETALIATION AND TERMINATION**

51. On September 26, 2003, Mr. MacRitchie's wife gave birth to the couple's daughter.

52. On April 13, 2004, Mr. MacRitchie requested four (4) weeks off under the Family Medical Leave Act, 29 U.S.C. 2601 et seq., ("FMLA") to care for his infant daughter from June 7, 2004 through July 2, 2004.

53. The request was denied. Instead, US Filter Corporation permitted Mr. MacRitchie to take two (2) weeks off from work commencing June 7, 2004.

54. While on FMLA leave beginning on June 7, 2004, Mr. MacRitchie was constantly contacted by his supervisor and fellow employees, requiring him to spend hours on the telephone and e-mail.

55. On June 18, 2004, without warning or explanation, Mr. MacRitchie was terminated from his employment.

**COUNT I - FMLA VIOLATIONS**

(Against Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., US Filter Corporation, John Lucey, Scott Recinos, Brian J. Clarke, and Michael Rodi)

56. Plaintiff realleges paragraphs 1 - 55 above and incorporates the same by reference as if specifically set forth herein.

57. As employers, Veolia Water North America Engineering & Construction, Inc., N.A.

Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation were subject to the requirements of the FMLA; its employees, John Lucey, Scott Recinos, Brian J. Clarke and Michael Rodi, were also subject to the same requirements.

58. Mr. MacRitchie timely provided written notice to his employer that he intended to take FMLA leave.
59. Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation interfered with Mr. MacRitchie's right to take FMLA by demanding that Mr. MacRitchie's daughter's pediatrician certify that the leave was medically necessary when such a requirement is not permitted by statute or regulation.
60. Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation were required to grant FMLA leave to Mr. MacRitchie to care for his infant daughter without the necessity of providing a statement from a pediatrician.
61. As a result, instead of four (4) weeks, Mr. MacRitchie was granted two (2) weeks off of what he believed to be family medical leave under the FMLA from June 7, 2004 through June 18, 2004.
62. Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation unlawfully reclassified Mr. MacRitchie's leave as sick leave rather than FMLA leave.
63. Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation

did not have a written policy in effect and did not effectuate the policy in a timely manner as required under the FMLA and the accompanying regulations, which allow for the reclassification of FMLA leave.

64. As a result of the aforementioned conduct, Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation unlawfully interfered with the exercise of Mr. MacRitchie's right to take FMLA leave.
65. Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., US Filter Corporation, John Lucey, Scott Recinos, Brian J. Clarke and Michael Rodi unlawfully retaliated against Mr. MacRitchie for taking FMLA leave by terminating his employment on June 18, 2004.

#### COUNT II - MASSACHUSETTS WAGE ACT CLAIMS

(Against Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., US Filter Corporation, Andrew D. Seidel, Matthew S. Thompson and James Brown)

66. Plaintiff realleges paragraphs 1 - 65 above and incorporates the same by reference as if specifically set forth herein.
67. On September 9, 2004, Mr. MacRitchie filed a non-payment of wage complaint form with the Office of the Attorney General for the Commonwealth of Massachusetts. A copy of the non-payment of wage complaint is attached herewith as EXHIBIT A.
68. On October 19, 2004, the Office of the Attorney General for the Commonwealth of Massachusetts granted Mr. MacRitchie the right to file a private right of action. A copy

of the authorization is attached herewith as EXHIBIT B.

69. At the time of termination, Mr. MacRitchie's base pay was in the amount of ninety two thousand seven hundred dollars (\$92,700.00) per annum.
70. Throughout Mr. MacRitchie's employment, Mr. MacRitchie received pay checks and benefits from US Filter and he was provided benefits through various US Filter programs.
71. At all times material hereto, Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation were employers pursuant to Massachusetts G. L. c. 149 sections 148 & 150.
72. As employers, Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., and US Filter Corporation were required to pay the plaintiff all earned wages in a timely manner as more particularly set forth in the attached EXHIBIT A.
73. Andrew D. Seidel, Matthew S. Thompson, James Brown, and Michael Stark as officers of the respective employers are personally liable for failure to pay wages.

COUNT III - BREACH OF CONTRACT

(Against Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., US Filter Corporation, Michael Stark, John Lucey, Scott Recinos and Michael Rodi)

74. Plaintiff realleges paragraphs 1 - 73 above and incorporates the same by reference as if specifically set forth herein.
75. On or about July 25, 2002, John Lucey, N.A. Water Systems' Executive Vice President, knowingly withheld material information from Mr. MacRitchie to induce him to accept

the position of project manager at the Lynn CSO project, including but not limited to: (a) that the Massachusetts Inspector General had conducted an investigation regarding the relationship between the City of Lynn, the Commission, and US Filter Corporation and had issued a very negative report relating to the CSO contract; (b) that the Inspector General had concluded that U.S. Filter Corporation's \$47 million design-build price was nearly double the cost for similar construction work procured through competitive bidding, making the Lynn CSO Project a bad deal for the Commission; (c) that there were warring factions within the Commission, one group supporting US Filter Corporation and the other wanting to dismiss US Filter Corporation; (d) that the opposing members of the Commission, lead by Chairman David Ellis, now held a majority position on the Board of Commissioners; (e) that the opposing members were on a mission to discredit and harm US Filter Corporation; (f) that the opposing members had already engaged in the tactic of demanding the removal of a US Filter project manager for the purposes of interfering with US Filter's execution of the project; (g) that US Filter Corporation had engaged in deceptive conduct relating to performance guarantees under the contract, which were never provided.

76. Had N.A. Water Systems' Executive Vice President, John Lucey, made the aforementioned material disclosures, Mr. MacRitchie would not have accepted the position as offered.
77. On or about January 2003, Mr. Lucey assigned Mr. MacRitchie to take over the management of the troubled Naugatuck Connecticut project. As Mr. MacRitchie gained familiarity with the project, it became apparent that cost projections for the project would fall far short of the actual project costs. Despite numerous attempts by Mr. MacRitchie,

Mr. Lucey refused to allow Mr. MacRitchie to incorporate realistic financial projections into the project. Mr. Lucey's refusal resulted in regular cost overruns, which were reported to upper management on a monthly basis. These regular cost overruns created the appearance of mismanagement of the project to those outside of Mr. Lucey's control group thereby causing damage to Mr. MacRitchie's reputation.

78. On or about April 22, 2004, Mr. MacRitchie was assigned a new supervisor, Vice President Scott Recinos, who was based in Gaithersburg, Maryland. Although Mr. Recinos was Mr. MacRitchie's supervisor, he showed no interest in the troubled Naugatuck project and communication from Mr. Recinos to Mr. MacRitchie was virtually nonexistent until Mr. MacRitchie began his FMLA leave in early June 2004.
79. Veolia Water North America Engineering & Construction, Inc., N.A. Water Systems, LLC, Veolia Water North American Operating Services, Inc., US Filter Corporation, Scott Recinos and Michael Rodi made materially untrue statements to others regarding Mr. MacRitchie's management of the Naugatuck project. Such statements, include but are not limited to, stating that problems with the Naugatuck project had arisen because of Mr. MacRitchie's poor management. In actuality, these defendants knew that the project had design flaws and that the engineer and architect, each who had been charged with approving drawings, were negligent in signing and stamping documents that they did not properly review and that did not comply with the State of Connecticut building codes and/or fire codes.
80. The aforementioned defendants made material omissions of fact in order to induce Mr. MacRitchie to accept employment with US Filter Engineering and then made false statements in order to terminate Mr. MacRitchie's employment for the purpose of

depriving him of earned compensation.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, Daniel C. MacRitchie, demands judgment and relief as follows:

1. Under Count I, II and III, award of monetary relief for the damages caused by the Defendant, Veolia Water North America Engineering & Construction, Inc., including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
2. Under Count I, II and III, award of monetary relief for the damages caused by the Defendant, N.A. Water Systems, LLC, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
3. Under Count I, II and III, award of monetary relief for the damages caused by the Defendant, Veolia Water North American Operating Services, Inc., including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.

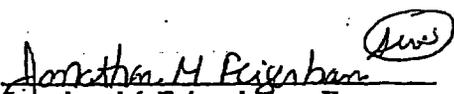
4. Under Count I, II and III, award of monetary relief for the damages caused by the Defendant, US Filter Corporation, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
5. Under Count I and III, award of monetary relief for the damages caused by the Defendant, John Lucey, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
6. Under Count I and III, award of monetary relief for the damages caused by the Defendant, Scott Recinos, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
7. Under Count I, award of monetary relief for the damages caused by the Defendant, Brian J. Clarke, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act.

8. Under Count I and III, award of monetary relief for the damages caused by the Defendant, Michael Rodi, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, liquidated damages (wages, benefits, attorneys' fees, interest) as allowed under the Family Medical Leave Act, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
9. Under Count II, award of monetary relief for the damages caused by the Defendant, Andrew D. Seidel, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
10. Under Count II; award of monetary relief for the damages caused by the Defendant, Matthew S. Thompson, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
11. Under Count II, award of monetary relief for the damages caused by the Defendant, James Brown, including interest, costs, pre-judgment interest, post judgment interest, attorneys' fees as allowed by statute, and treble damages for violations of the Massachusetts Wage Act, G. L. c. 149 section 150.
12. Under Count III, award of monetary relief for the damages caused by the Defendant, Michael Stark, including interest, costs and reasonable attorneys fees.
13. All other relief that this Court deems meet and proper.

**PLAINTIFF CLAIMS TRIAL BY JURY ON ALL ISSUES TRIABLE BY JURY.**

The Plaintiff,  
**DANIEL C. MACRITCHIE**  
By his attorneys

Date: March 21, 2005

  
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