

Executive Summary

In June of 2016, NYS Department of Environmental Conservation (“NYSDEC”) mandated that the Town of East Hampton as owners of East Hampton Airport report within thirty days any use and/or storage of a common class of firefighting foam by completing a simple three-page survey (of only eleven questions). The class of firefighting foam, Class B fire suppression foam, is known to contaminate soil and groundwater when used during training exercises, emergencies or as a result of leaks or spillage. The two contaminants associated with such foam are compounds known as PFOS and PFOA which are classified as hazardous waste. Although the Town was legally obligated to complete the PFOS/PFOA Facility Identification Survey, it was only after it had been contacted by NYSDEC five times, that the Town finally completed, certified and returned a *wholly misleading and inaccurate survey nine months later* (on March 23, 2017).

At the time, the Town of East Hampton knew that over ninety percent of residents living in Wainscott immediately downgradient from East Hampton Airport used private wells for their drinking-water.

Over the same nine-months (from June 2016 to March 2017) while the Town of East Hampton was withholding information on the use of toxic chemicals on property it owned at East Hampton Airport, residents living downgradient from the airport in Wainscott had told members of the East Hampton Town Board on twelve separate occasions of concerns they had with contamination of their drinking-water supply. The Town Board was asked on eight separate occasions to: “Please test our drinking-water.” The Wainscott CAC was told by the Town on four separate occasions that new monitoring wells had been installed “that will be routinely monitored” only to find out eight months later that this was *not* true. The Town of East Hampton was deaf to the concerns as expressed by local residents.

During the nine months that the Town of East Hampton was ignoring both local residents and NYSDEC, residents were drinking water contaminated with harmful discharges of hazardous waste of a public health concern. Over one hundred and fifty homes are within half a mile, downgradient, from East Hampton Airport. The water flowing beneath East Hampton Airport is the same water that residents drink (see Fig. 3 at p. 6 below).

On January 24, 2017, the Village of East Hampton Fire Department (“EHFD”) had completed and submitted to NYSDEC its own PFOS/PFOA Facility Identification Survey. The EHFD survey states that approximately 200 gallons of Class B fire suppression foam had been and continues to be stored on the airport site and that it had been used for training purposes between 1 and 10 times and for emergency response purposes from 2007 and 2017.¹²

¹² See [Appendix L](#) – COMPLAINT in Town of East Hampton vs. Incorporated Village of East Hampton, *et al* (case 2:20-cv-01787-SJF-AYS) US District Court for the Eastern District, April 13, 2020 (paragraph 116 at p. 14)

Two months later (on March 23, 2017), when the Town of East Hampton finally submitted to NYSDEC its PFOS/PFOA Facility Identification Survey, it did *not* contain *any* information on the use of Class B fire suppression foam during training exercises, emergency response, through spillage or leaking storage drums (see Fig 2 at p. 5 above). According to the Town’s survey, Class B fire suppression foam had *never* been used for training at the airport site (see survey question 8 in Fig. 4 below). This is *not* true.

One of many examples where Class B fire suppression foam had been used at East Hampton Airport was during a mass casualty and fire training drill in June 2008 as reported in the East Hampton Press.¹³ Airport Director James Brundige who certified that the Town’s PFOS/PFOA Facility Identification Survey was true, accurate and complete was managing the airport at the time.

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Class B Fire Suppression Foam Usage Survey Questions

8. Has Class B fire suppression foam ever been used for training purposes at the Facility?
 Yes No Unknown

If yes, please note:

a. Dates and frequency of training: [REDACTED]

i. If exact information is not available, please provide an estimate:

1. 1-10 times over 10 years

2. 11-50 times over 10 years

3. 50 or more times over 10 years

b. Manufacturer and type of Class B fire suppression foam used in training: [REDACTED]

c. Quantity of Class B fire suppression foam used in training: [REDACTED]

d. Other relevant information: [REDACTED]

Fig. 4

It was not until a year *after* the Town was first legally required to report the use of firefighting foam on the airport site, that some wells in Wainscott were tested for contamination (on August 14, 2017), but these wells were half a mile away from the airport near a multi-use industrial site known as Wainscott Sand & Gravel. It took nearly *two years* before *any* property owned by the Town of East Hampton would be tested for PFAS contamination.¹⁴

On October 11, 2017, Suffolk County issued a Water Quality Advisory for Private-Well Owners in Area of Wainscott notifying residents that “PFOS and PFOA have been detected in some of the private wells that have been tested so far.”¹⁵

¹³ [The East Hampton Press, “Emergency services practice for mass casualty events” by Aline Reynolds, June 2, 2008](#)

¹⁴ The first on-site wells at East Hampton Airport were tested for PFAS contamination on April 25, 2018.

¹⁵ See [Exhibit 31](#) – Oct 11, 2017, SCDHS - Water Quality Advisory - PFAS Contamination

A month later (on November 24, 2017), SCDHS Deputy Commissioner Capobianco wanted to “schedule an appointment to sample the wells” at East Hampton Airport and requested “contact information for facilities served with on-site wells.” In response, the Supervisor’s office for the Town of East Hampton did *not* provide SCDHS *any* information on the *nine* (9) on-site wells located on its property at East Hampton Airport. Instead, the Town of East Hampton provided a list of just three properties of which two are vacant lots (i.e. *no* on-site wells) and the other property the Town was in the process of selling.¹⁶

The East Hampton Town Supervisor’s office withheld from Suffolk County contact information regarding the number and location of on-site wells at the airport site in the same way it withheld from NYSDEC information pertaining to the use of firefighting foam at the airport site and ignored residents’ concerns and requests to have their private wells tested for contamination.

Had the Town complied with its legal obligations in June of 2016 and complete its PFOS/PFOA Facility Identification Survey, truthfully, Town residents living downgradient from East Hampton Airport could have been provided with bottled water around the same time residents living near Gabreski Airport were provided with bottled water on July 23, 2016.¹⁷

Residents living in Wainscott were neither provided with bottled water nor told the water they were drinking was contaminated with hazardous waste until October 11, 2017 – *more than a year after* residents living near Gabreski Airport had begun to receive bottled water.

By withholding for nine months information on the use and storage of Class B fire suppression foam, a known source of hazardous waste of a public health concern, in violation of Environmental Conservation Law and *then* submitting false and misleading information to NYSDEC, the Town of East Hampton exposed hundreds of its residents to the adverse health effects as described in USEPA *Fact Sheet: PFOA & PFOS Drinking Water Advisories* for much longer than they would have been exposed otherwise.

The US Environmental Protection Agency warns that exposure to PFOS and/or PFOA contaminants may cause “developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes).¹⁸ The US Agency for Toxic Substances and Disease Registry (“ATSDR”) cite epidemiology human studies that suggest links between PFHxS exposure and liver damage and decreased antibody responses to vaccines (NB: could be a concern for a coronavirus vaccine). PFHxS is reported to have a half-

¹⁶ See [Exhibit 32](#) – Nov 27, 2017, email chain between SCDHS Deputy Commissioner Capobianco and then Town Supervisor, Larry Cantwell.

¹⁷ See [Exhibit 9](#) - East End Beacon article titled: [Bottled Water, Testing Urged as “Emerging Contaminant” Leaches South of Gabreski Airport](#) – published July 22, 2016

¹⁸ See [Exhibit 10](#) – EPA *Fact Sheet: PFOA & PFOS Drinking Water Health Advisories*, Nov 2016 (at p. 1)

live in humans of 8.5 years. The ATSDR cite epidemiology studies that suggest links between PFNA exposure and increases in serum lipid levels, particularly total cholesterol and LDL cholesterol.¹⁹ PFHxS and PFNA concentration levels found in some drinking-water wells in Wainscott were higher than concentration levels of PFOS/PFOA contamination.

The evidence suggests that the Town was *not* cooperating with the investigation into drinking-water contamination, but rather obstructing it and doing so even *after* Suffolk County had issued its Water Quality Advisory notifying residents that they “may be exposed to PFOS and PFOA through air, water, or soil” citing *only* East Hampton Airport as a possible source.²⁰

The issue of contamination involves Deepwater Wind’s plans to construct infrastructure that is large enough to transmit power from *four* South Fork Wind Farms.²¹ Deepwater Wind proposes to construct its transmission infrastructure through the middle of the most contaminated square mile on the South Fork and plans to excavate approximately 14,000 cubic yards²² of potentially contaminated material from in the PFAS Contamination Zone immediately south of East Hampton Airport (see Fig. 5 at p. 10 overleaf) along residential roads. This soil contains PFAS contamination and can easily be carried on the wind into residents’ homes

In a report commissioned by NYSDEC,²³ soil samples at East Hampton Airport had detectible levels of PFOS/PFOA (combined) contamination of up to 15,800 parts per trillion. The average level of soil contamination over all twenty-one well locations at the airport site to a depth of up to one foot is 2,281 ppt and to a depth of 19 to 42 feet, is 392 ppt (see Table 5 at p. 82 and Table 6 at p. 83). For comparison, the USEPA Health Advisory Level for drinking-water contamination is *only* 70 ppt. The second highest reading of 10,180 ppt for soil contamination was recorded at a well located within 500 feet of where Deepwater Wind proposes to bury a transmission splicing vault similar in size to a forty-foot shipping container (see Fig. 17 at p. 78).

Deepwater Wind has not tested for PFAS contamination *any* part of the cable route along which it proposes to construct its high-voltage transmission infrastructure.

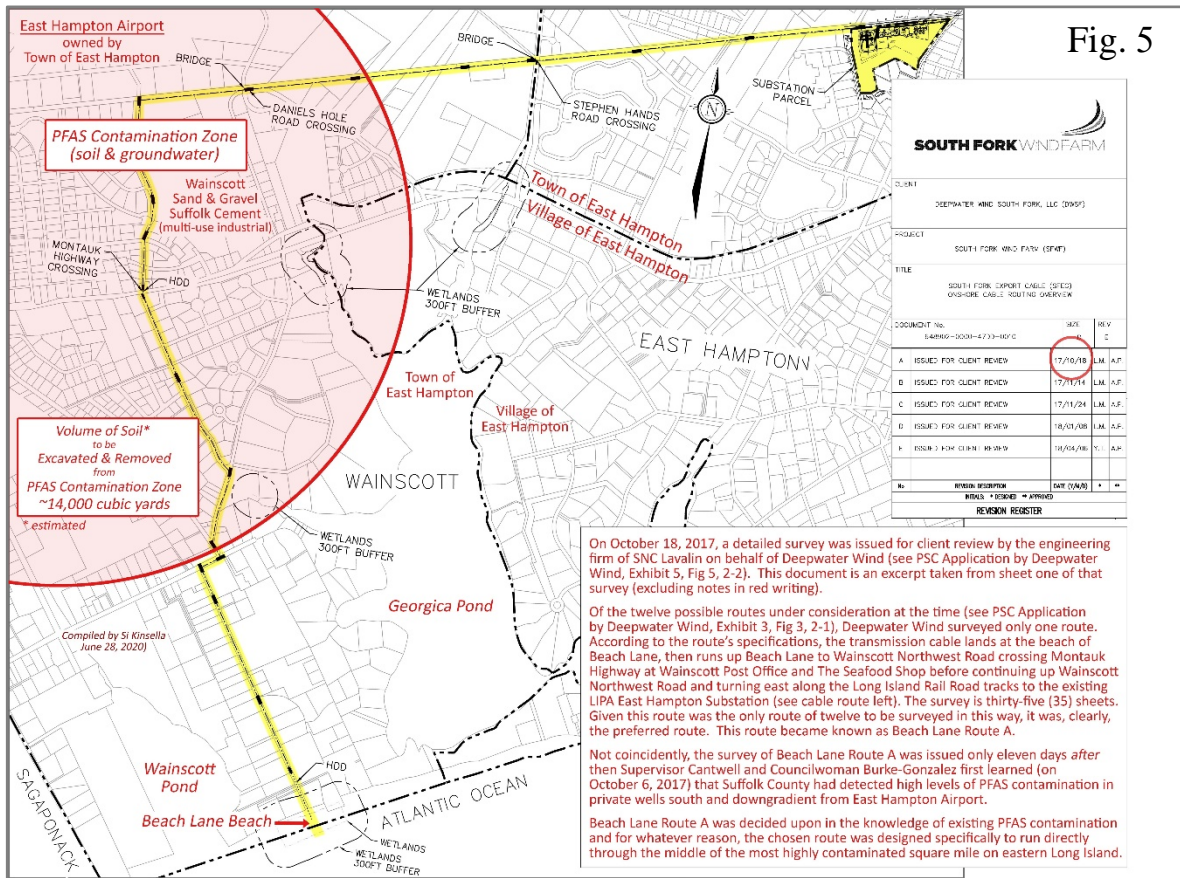
¹⁹ Agency for Toxic Substances and Disease Registry (ATSDR) - [Draft Toxicological Profile for Perfluoroalkyls](#) – June 2018 - 1.2 SUMMARY OF HEALTH EFFECTS (at pp. 4 and 25)

²⁰ See [Exhibit 31](#) - Suffolk County Department of Health Services: *Water Quality Advisory for Private-Well Owners in Area of Wainscott* issued October 11, 2017

²¹ See [Appendix R](#) (at p. 22) - NE Offshore Wind Regional Market Characterization – A Report for the Roadmap Project for Multi-State Cooperation on Offshore Wind (October 2017) which reads: “Deepwater Wind hopes to deliver up to 600 MW to the east end of Long Island, (Plummer, 2016), the first phase of which is the recently proposed 90 MW Deepwater One – South Fork project to be interconnected at East Hampton.” Deepwater Wind’s infrastructure specifications (submitted to NYSPSC on May 15, 2020) meet these requirements.

²² See Table 4 (at p. 81) of this report.

²³ See [Appendix D](#) - Characterization Report, East Hampton Airport, by AECOM for NYS DEC Division of Environmental Remediation, published November 30, 2018 (at p. 1 and Table 2). See Tables 5 (at p. 82) and Table 6 (at p. 83) of this report.



Like the Town, Deepwater Wind also submitted false information regarding PFAS contamination to the NYS Public Service Commission. In its Hazardous Materials Desktop Analysis, Deepwater Wind’s consultants conclude (erroneously) that “there were no hydraulically upgradient or adjacent properties along the study corridor [the LIRR south of East Hampton Airport] that would represent a significant environmental risk to subsurface conditions.”²⁴

Regretfully, the Town of East Hampton and its Town Board have *not* been open and honest with residents regarding the South Fork RFP 2015, Deepwater Wind South Fork, LLC and its proposed South Fork Wind Farm.

The Town entered into non-disclosure agreements (“NDAs”) that contractually prohibit it from disclosing or discussing openly with residents anything to do with the South Fork Wind Farm unless that information already has been made public by Deepwater Wind or unless PSEG Long Island has granted “prior written consent” for the Town to speak about given aspects of the South Fork Wind Farm (that had not already been made public by Deepwater Wind).

²⁴ See [Appendix Q](#) - Deepwater Wind NYSPSC Application – Appendix F Part 2, Phase I Environmental Assessment prepared by VHB Engineering, Surveying, and Landscape Architecture P.C. – Hazardous Materials Desktop Analysis, dated March 30, 2018 (at pp. 122-191)

The NDAs mean that PSEG Long Island/LIPA and Deepwater Wind between them control the information that the Town can discuss openly and freely with the residents it purports to represent. The Town willingly entered into these contracts knowing that the NDAs grant PSEG Long Island, LIPA and Deepwater Wind the legal right to prohibit the Town from disclosing and, therefore, speaking about aspects of the proposed South Fork Wind Farm that PSEG Long Island, LIPA and Deepwater Wind would rather keep secret to avoid public scrutiny and public criticism. Such information included the price residents will have to pay for electricity generated by Deepwater Wind's South Fork Wind Farm.

The NDAs are contractually binding upon the Town until May of 2021.

The Town entered into the NDAs in May of 2016, just weeks *before* the Town received notice of potential PFOS/PFOA contamination at East Hampton Airport. The Town concealed the NDAs for four years. When asked about the NDAs in August of 2017, Councilwoman Kathee Burke-Gonzalez informed the Wainscott CAC (via email) –

The Town of East Hampton is not bound by any Confidentiality or Non-Disclosure Agreements (NDA) that limits the Town from fully discussing the DeepWater [sic] Project. ... Nothing within the NDA legally binds the Town or serves as an NDA which prohibits the release of any information by the Town or any of its officials since the time the RFP was awarded by LIPA.

What Councilwoman wrote is *not* true. The NDAs are binding upon the Town of East Hampton until May of 2021 (see *Town Agrees to Keep Deepwater Wind Secret (NDAs)* at pages 83 to 87 and [Exhibit 48](#) and [Exhibit 49](#)).

...END OF EXECUTIVE SUMMARY ...