

**STATE OF MAINE**

**KNOX, ss.**

**SUPERIOR COURT**

**CIVIL ACTION**

**DOCKET NO. \_\_\_\_\_**

**THE TOWN OF CAMDEN, MAINE )  
a duly organized municipal corporation )  
located in the County of Knox, State )  
of Maine, )**

**Plaintiff )**

**COMPLAINT**

**THE TOWN OF ROCKPORT, MAINE )  
a duly organized municipal corporation )  
located in the County of Knox, State )  
of Maine, )**

**Defendant )**

Now comes the Town of Camden, Maine (“Camden”) and hereby Complains against the Town of Rockport, Maine (“Rockport”), as follows, to wit:

1. The Plaintiff is a duly organized municipal corporation located in Knox County, Maine.
2. The Defendant is a duly organized municipal corporation located in Knox County, Maine.
3. The parties signed an Interlocal Agreement for the treatment of sewage flow from Rockport to be treated by Camden, which was executed on or about February 26, 1990, entitled “Camden and Rockport Interlocal Sewer Agreement” (“Agreement”).
4. The Duration paragraph XII of the Agreement provides that it was in effect for 30 years; no extension has been signed by the parties.

5. The Town of Rockport remains connected to the Town of Camden's wastewater treatment infrastructure, facilities and sewage treatment plant ("Treatment Plant") in the same manner that it has been done for approximately the last 30 years.
6. The Camden Wastewater Department, through a third party billing entity, sends invoices on a quarterly basis to Rockport for the cost of treatment of sewage.
7. The quarterly invoices are based on the unit cost per 100 cubic feet of sewage processed through the Treatment Plant, with a guarantee that Camden accepted treatment flows from Rockport in the minimum amount of a monthly average of 150,000 gallons per day.
8. The quarterly invoices have increased in cost over the last approximate 30 years, and the user rates charged to Rockport have been consistent with the rates that Camden has charged its own resident customers of the Treatment Plant.
9. The Agreement and course of dealing by and between Rockport and Camden requires that increases or decreases in operating costs of the Treatment Plant shall serve to adjust the user fees charged to Rockport.
10. The Agreement and course of dealing by and between Camden and Rockport to apportion and charge the costs of operation of, and capital expenditures for, the Treatment Plant to Rockport includes the contractual requirement that Camden must guarantee capacity of a monthly average rate of 150,000 gallons per day of sewage flow from Rockport to the Treatment Plant.
11. The Rockport guaranteed flow volume of 150,000 gallons per day represents approximately 12.4 % of the Maine Department of Environmental Protection permitted flow limit of 1.21 million gallons per day for the Treatment Plant, based on a monthly average.

12. Per the Agreement and course of dealing by and between Camden and Rockport, Camden has sent invoices to Rockport for decades based on the budgetary assumption that Rockport must pay approximately 12.4% of the total operational costs of the Treatment Plant.

13. User fees charged to Camden residents are based on distributing the total operational costs, less the amount to be paid by Rockport, based on the measurement of the actual volume of water flowing into the facilities from each user.

14. The budget revenue Camden relies upon to pay for anticipated annual costs of operation of the Treatment Plant are distributed proportionally between the Camden users and the Rockport users, based on usage and in consideration of the guarantee of 150,000 gallons per day capacity reserved to Rockport, as calculated on an average monthly basis, which for fiscal year 2022 has also included certain capital renovation expenses.

15. For the Camden fiscal year (“FY”) 2022, which commenced on July 1, 2021, the total Treatment Plant budgeted operating cost was \$1,622,028; the fiscal year commences as of July 1 each year.

16. Camden contracts for billing services for Camden users and for the calculation of amounts billed to Rockport, which billing service is performed through the Maine Water Company (“MaineWater”).

17. For the FY 2022, for the first quarter which runs from July 1, 2021 through September 30, 2021, Rockport was sent an invoice in the amount of \$ 75,271.58, in the normal course of dealing.

18. Rockport paid \$ 9,054.54 for the first quarter invoice, instead of the billed amount due of

\$ 75,271.58, and has failed to make any payments for the second and third quarters of FY 2022.

19. Upon information and belief, the practice of Rockport self-calculating and then underpaying the quarterly invoiced amount, which resulted in the under-payment of \$ 9,054.54, has not occurred in the 30 years that Camden has treated Rockport Sewer Waste pursuant to the Agreement and the course of dealing.

20. Rockport refuses to pay the balance due for the first quarter invoice of FY 2022.

21. For the second quarter of FY 2022, which ran from October 1, 2021 through December 31, 2021, Rockport was billed \$ 77,106.87, and for the third quarter of FY 2022, which ran from January 1 through March 31, 2022, Rockport was billed \$ 70,029.07.

22. Rockport refuses to pay any portion of the second and third quarter invoices.

23. On or about March 28, 2022, Camden sent Rockport a written demand to pay the balance due of the first quarter invoice and the entire amount for the second quarter invoice.

24. Rockport has not provided any written response to Camden regarding a demand for payment letter dated and sent on March 28, 2022.

25. Camden relies on timely payments from Rockport to pay for its share of the total operating costs and some capital expenditures of the Treatment Plant which, due to rising costs, is anticipated to be approximately \$ 300,000 in FY 2023; thus, Camden's damages will continue to increase.

26. The failure of Rockport to pay for its reasonable share of the costs of operation of the Treatment Plant represents a significant and increasing burden on and deficit in the Camden

budget, as no other source of funds is available to pay for Rockport's sewage flow, nor should there be.

27. Camden has been damaged by the Rockport failure to pay its reasonable sewer user fees for the operation of the Treatment Plant and a portion of capital expenditures for the renovation of the plant.

28. Rockport has additionally refused to properly budget in FY 2023 for its share of costs of the user fees based on the traditional 30 year practice and usual course of dealing based on Rockport users paying the same rate as Camden users, and instead its public officials have issued an undated Press Release to the same effect, a copy of which is attached in Exhibit E.

29. As the Rockport Press Release makes clear, going forward Rockport intends to ignore the Agreement and course of dealing for billing and payment practices for over 30 years, which effectively serves to unilaterally modify the user fees paid to Camden, without approval of any authorized agent or official of Camden.

30. The unilateral modification of payment of Rockport's fair share of the operational costs of the Treatment Plant is an inappropriate act of municipal officials, particularly for an essential service of the highly expensive and technically complex environmental requirements of properly treating large volumes of municipal sewer wastewater.

31. This inappropriate act is further exacerbated due to Rockport's prior unreasonable refusal to pay its proportional share of a major upgrade of the Treatment Plant, which will cost approximately \$15,000,000 and is currently under construction; the Agreement requires Rockport to pay its proportional share of such a major upgrade in proportion to its average dry weather flow into the facility, and by Rockport failing to pay its share of the capital contribution,

Camden unexpectedly was required to spend hundreds of thousands of dollars from the Wastewater Capital Reserve Account as part of the requirements to obtain funding for the Treatment Plant renovation.

32. Rockport has not appropriated any funds to build its own sewer treatment facilities or otherwise taken any action to fund the cessation of sending sewage to the Treatment Plant.

33. Rockport has unilaterally adopted an unreasonable rate of paying approximately \$ .93 cents per 100 cubic feet of sewage, instead of the invoiced rate of approximately \$ 7.85 in FY 2022, which is the same rate paid by Camden users.

34. The Rockport Select Board has adopted an irrational justification for paying approximately .93 cents per 100 cubic feet of sewage, instead of the current rate of \$ 7.85, based on the flawed premise that since Rockport users do not use “the totality of infrastructure” (See Exhibit E); this irrational argument ignores the reality that no Camden or Rockport user of the Treatment Plant uses the totality of the infrastructure, but they all have their sewage processed through the Treatment Plant, regardless of whichever street they live on in either Rockport or Camden, and thereafter all treated outflow is then passed into Camden Harbor pursuant to existing DEP environmental licensing.

35. Rockport intends to continue to send sewage to Camden for treatment at the Treatment Plant.

36. Rockport is obligated to pay its proportional share of costs of operation of the Treatment Plant.

37. Rockport is obligated to pay its fair share of the cost of treating sewage, based on actual operational and capital renovation costs of the Treatment Plant.

38. Camden is not obligated to continue to treat sewage from Rockport if Rockport refuses to pay its fair share of the cost of treating sewage.

39. The payment of \$ 9,054.54 by Rockport for the first quarter of FY 2022 does not represent a fair share of payment for the sewage treatment services provided by Camden through its Treatment Plant.

40. The scheduled renovations of the Treatment Plant are necessary due to the age and state of wear and tear to the Treatment Plant, which has reached the end of its expected functional life.

41. It is fundamentally unfair for Rockport to expect that Camden rate payers will effectively supplement both Rockport's operational costs and pay for all capital expenditures for Treatment Plant renovations, with no charge to Rockport, while continuing to accept Rockport's sewage.

42. As an example of many years of past practices and the course of dealing by and between Rockport and Camden, attached hereto in Exhibit A are copies of true and accurate invoices sent to Rockport for the third and fourth quarters for FY 2021: (i) January to March, 2021 in the amount of \$ 47,890.01; and, (ii) April to June, 2021 in the amount of \$ 60,812.64.

43. Attached in Exhibit B is a true and accurate copy of three invoices sent to Rockport for the first, second and third quarters of FY 2022, as follows: July through September, 2021 in the amount of \$ 75,271.58; October through December 2021 in the amount of \$ 77,106; January through March 2022 in the amount \$ 70,029.07.

44. The three invoices attached in Exhibit B combine for a total amount due of \$ 222,407; of that sum, after applying all paid credits, there remains a balance due to Camden in the amount of \$ 201,590.06, as of June 3, 2022.

45. Attached in Exhibit C is a true and accurate Account Annexed which depicts all charges and payments received from Rockport for the period running from April 25, 2006 through June 3, 2022, as further evidenced by the Affidavit of Pamela Blackman, attached hereto in Exhibit D.

46. Through its actions described herein, public statements by the Rockport Select Board and its Officials, and through direct and indirect communications to Camden Officials, Rockport has repudiated its obligation to pay for sewage treatment in the same manner and course of dealing that it has been invoiced and paid for approximately 30 years.

47. Rockport has intentionally, unilaterally, and contrary to the Agreement and course of dealing with Camden, created its own rules and formulae for calculating and paying for the treatment of sewage.

#### **Count I -- Declaratory Judgment**

48. The allegations in paragraphs 1 through 47 are incorporated herein by reference as if fully set forth.

49. There is a case and controversy by and between the parties.

50. Pursuant to 14 MRS § 5951 et seq., it is necessary for the Court to determine the rights and responsibilities by and between the parties relating to the financial obligations of Rockport to pay for treatment of its residents' sewage and committed capital expenditures for Treatment Plant renovations.

51. Camden has been and will continue to be damaged by the failure of Rockport to pay for sewage treatment, and has been damaged by Rockport's repudiation to pay in the future,



regarding Rockport's fair share of the operation costs and ongoing and nearly complete capital expenditure costs of the Treatment Plant renovation.

52. Camden adopted a municipal budget for the 2022 FY and reasonably relied on Rockport paying its fair share of the operating costs of the Treatment Plant, pursuant to the Agreement and course of dealing over the past 30 years.

53. Camden Town Meeting in June, 2022 will adopt a budget for the 2023 FY that relies on Rockport paying its fair share of the operating costs of the Treatment Plant, consistent with the Agreement and course of dealing.

54. Rockport's failure to pay past and continuing operation costs leaves no revenue source to pay for the entire operating costs for the Treatment Plant for the current and future fiscal year budgets.

55. Rockport has essentially forced the residents of Camden into the position of paying for the sewage treatment of the residents of Rockport, and thereby requiring Camden to take such unanticipated action as spending down Wastewater Reserve accounts, sending supplemental invoices, borrowing money, or using otherwise allocated funds from other budget line items, to cover the shortfall in revenue to operate the Treatment Plant.

Wherefore, Camden prays that Rockport be Ordered by the Court to: (i) pay Camden for past due, present and future sewage treatment operational fees in the same manner as past practice pursuant to the Agreement and the decades-long course of dealing, until such time as Rockport has adopted a plan and constructed its own sewage treatment facility, (ii) pay its share of capital expenditure costs for the ongoing Treatment Plant renovations, (iii) maintain the status quo through injunctive relief during litigation and require Rockport to immediately pay Camden

past and present invoices, consistent with the Agreement and the course of dealing, subject to any final judgment and set off this Court May order, and pay all future operational fee invoices sent to Rockport for sewer treatment services rendered, (iv) compensate Camden for Rockport's intentional and unilateral change in calculation of fees, and repudiation of future obligations pursuant to the Agreement and course of dealing, and order Rockport to pay Camden's legal fees, expert fees, and costs in this matter, and (v) such other and further relief as the Court deems equitable and proper.

### **Count II – Account Annexed**

56. The allegations in Paragraphs 1 through 55 are incorporated herein by reference as if fully set forth.

57. Attached hereto in Exhibit C and D are a true and accurate accounting of all sums due to Camden for sewer treatment services rendered to Rockport up to and including June 3, 2022.

58. All just credits have been applied for all payments made by Rockport, and the balance owed as reflected in the attached Accounting demonstrates that as of June 3, 2022, Rockport owes Camden \$ 201,590.06 for services rendered for the treatment of sewage waste.

59. The Account Annexed includes fair and reasonable costs for the services rendered.

60. The Affidavit of Pamela Blackman, Revenue Services Manager of Maine Water Company, the Original of which is attached as Exhibit D, confirms under oath the sum of \$ 201,590.06 reflects the cost of services rendered, through June 3, 2022.

61. Camden has been damaged by the failure of Rockport to pay for services rendered.

Wherefore, Camden prays for judgment against Rockport in the amount of \$ 201,590.06 together with costs, attorney fees, expert fees, and such other and further relief as the Court deems proper.

### **COUNT III – UNJUST ENRICHMENT**

62. Camden re-alleges the allegations contained above in Paragraphs 1-61, as if fully set forth herein.

63. Rockport has been enriched to the value of sewage treatment services provided by Camden.

64. Camden has reasonably relied upon past practices and the course of dealing for the provision of sewer treatment services, and the billing and reimbursement for those services by Rockport over the last three decades.

65. Camden has been damaged in this matter due to the benefit received by the Rockport for unreimbursed sewer treatment services provided by Camden.

66. The Plaintiff has been damaged in the amount of \$201,590.06 as of June 3, 2022, and the damages are continuing.

Wherefore, Camden prays that the Court enter a judgment ordering Rockport to reimburse Plaintiff in the amount of \$ 201,590.06, together with costs, attorney fees, expert fees, pay all ongoing fees for sewer treatment services, and such other and further relief as the Court deems equitable and proper, including an Order requiring Rockport to pay for all ongoing and future sewer treatment services, in a timely manner.

### **COUNT IV – INJUNCTIVE RELIEF**

67. Camden re-alleges the allegations contained above in Paragraphs 1-67, as if fully set forth herein.

68. Rockport expects Camden to receive and process Rockport's sewage, without fair payment commensurate with the proportional cost of operating the Treatment Plant.

69. Rockport had repudiated and failed to make timely quarterly payment and now has a balance due of over \$ 201,590.06.

70. Camden must adopt a municipal budget and must appropriate sums to pay for budget line items as provided in the budget adopted at Town Meeting.

71. There is no money appropriated by Camden Town Meeting to pay for Rockport's sewage treatment.

72. Justice requires that Rockport pay its fair share of sewage treatment costs at the same rate as Camden users, for the identical sewer treatment services.

73. Rockport's actions leave Camden with an immediate unfunded budget shortfall.

74. An Order requiring to pay quarterly invoices as they become due will serve to maintain the status quo of the last 30 years of a course of dealing, during the pendency of this litigation.

75. An Order requiring Rockport to pay Camden for Rockport's sewer treatment until further Order from this court or the cessation of flow of sewage is fundamentally fair and necessary.

76. Upon information and belief, the Maine Department of Environmental Protection, the entity that provides required licenses to the Camden Wastewater Treatment Plant, will take affirmative legal action should Camden refuse to accept the flow of sewage from Rockport, which will place

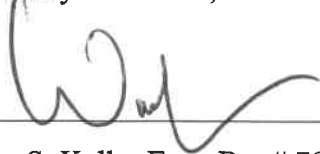
Camden in the position to accept sewage from Rockport while not receiving payment for this service.

77. Camden is presently suffering, and will continue to suffer, irreparable injury through a budget shortfall of hundreds of thousands of dollars, which is increasing as this litigation proceeds; it is fundamentally unreasonable to expect a multiplicity of legal actions by Camden such as borrowing money from a bank and requiring a supplemental budget approved at a special called Town Meeting – for the sole purpose of paying Rockport’s unpaid sewage treatment fees.

Wherefore, Camden prays that the Court provide injunctive relief, subject to set off at such time as the Court issues a dispositive Decision in this matter, as follows: (i) Order Rockport to immediately pay all sums owed to Camden as reflected on the Account Annexed as attached in Exhibit C; (ii) Order Rockport to pay all future quarterly invoices received by Rockport for sewer treatment services, to be paid when due and in a timely manner; (iii) Order Rockport to make all payments described herein until such time as Rockport no longer sends any sewage to Camden; (iv) Order Rockport to pay Camden’s legal fees, expert fees, costs and expenses, and (v) such other injunctive relief that the Court deems equitable and proper.

DATED: June 13, 2022

Respectfully submitted,



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