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October 9, 2024

VIA E-MAIL AND FACSIMILE

Conservation Commission
Town of Andover
36 Bartlett Street
Andover, MA 01810

Re: P&G Gillette, Notice of Intent, Andover Manufacturing Enhancement Project,
30 Burt Road, DEP File No. 090-1431

Dear Commissioners:

On behalf of P&G Gillette, this letter is to address the Commission's questions regarding its authority to regulate per- and poly-fluoroalkyl substances (PFAS) under the Commonwealth's Wetlands Protection Act, M.G.L. c. 131, § 40, and accompanying regulations, 310 CMR 10.00 et seq., and the Town of Andover Wetlands Protection By-Law Article XIV and accompanying Town of Andover Conservation Commission Wetland Protection Regulations.

During the October 1, 2024 continued public hearing on the above-referenced matter, Commission Staff advised the Commission that the Commission has no authority to impose a standard for PFAS concentrations discharged to wetlands. As described in more detail below, we agree with Conservation Commission Staff regarding this issue.

With respect to the Commonwealth's Wetlands Protection Act and its regulations, PFAS are beyond the Conservation Commission's authority. See e.g., In the Matter of EIP Communications I, LLC, OADR Docket No. WET-2021-030, Recommended Final Decision (January 19, 2022), adopted by Final Decision (January 26, 2022). It is our understanding that Andover Conservation Commission Staff has communicated with the Massachusetts Department of Environmental Protection (DEP) regarding this issue, and that DEP wetlands staff has advised the same. DEP is entitled to deference in interpreting its own regulation. City of Boston v. Conservation Commission of Quincy, 490 Mass. 342(2022) ("Pursuant to the act and its accompanying regulations, G.L. c. 131, § 40; 310 Code Mass. Regs. §§ 10.00 (2014), the DEP's interpretation of

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the act supersedes that of a local conservation commission.”) and we certainly agree as DEP’s interpretation is based on sound legal footing.

The Wetlands Protection Act and its regulations have established no standards for PFAS in stormwater and most especially not for PTFE – the compound proposed to be used by Gillette – which is not even regulated in drinking water standards. While DEP does regulate stormwater under the Act, DEP has clearly articulated all applicable standards and best management practices relating to stormwater and P&G Gillette’s proposed project fully complies with each and every requirement. See P&G Gillette Notice of Intent, Andover Manufacturing Enhancement Project, dated May 7, 2024, previously filed with the Conservation Commission.

With respect to the Town of Andover’s separate Wetlands Protection By-Law and Regulations, it is equally true that PFAS is beyond the scope of Conservation Commission’s regulatory authority. There are simply no provisions of the Andover Wetlands By-Law or Regulations that speak at all to PFAS in wetlands, including discharges from stormwater. Accordingly, there are no provisions of the Andover By-Law or Regulations that are more stringent than the Act with respect to PFAS. Rather, the Town’s requirements for stormwater are set forth in the Town’s Regulations, including but not limited to Appendix B thereto. Again, as set forth in the Notice of Intent, the proposed Manufacturing Enhancement Project complies with all stormwater standards in the Andover By-Law and Regulations.

Without an express PFAS standard in its By-Law or Regulations that are more stringent than the Commonwealth’s PFAS standards, the Conservation Commission is without authority to impose one in an order of conditions. Oyster Creek Preservation, Inc. v. Conservation Commission of Harwich, 449 Mass. 859, 865 (2007); Dobinski v. Conservation Commission of Eastham, Memorandum and Order January 13, 2022, Massachusetts Appeals Court. To impose a standard would be arbitrary and capricious and ultra vires of the Commission’s legal authority.¹

As the proposed project meets all applicable state and local requirements, we request that the Conservation Commission issue an Order of Conditions approving the Project. City of Boston v. Conservation Commission of Quincy, 490 Mass. 342, 347 (2022).

Sincerely,



Lauren A. Liss

cc: Robert Douglas, Conservation Division Director
Benjamin Meade, Conservation Agent
Lynn Viselli, Conservation Administrative Secretary

¹ It is certainly the case that the Andover Bylaw contains limited provisions that are more stringent than the Act. For example, the Bylaws define as resource areas both Buffer Zones and Isolated Vegetated Wetlands (which are not included as resource areas under the Act or Wetlands Regulations). However, with respect to PFAS, again, as is the case with the Act, there are absolutely no provisions in the local Bylaw or Regulatory provisions establishing standards for PFAS.