

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SIMON V. KINSELLA

*Plaintiff,*

- against -

BUREAU OF OCEAN ENERGY MANAGEMENT and in their official capacities, Director ELIZABETH KLEIN,<sup>1</sup> Environment Branch for Renewable Energy (“OREP”) Chief MICHELLE MORIN, OREP Program Manager JAMES F. BENNETT, OREP Environmental Studies Chief MARY BOATMAN, Economist EMMA CHAIKEN, Economist MARK JENSEN, Biologist BRIAN HOOKER, and JENNIFER DRAHER; and DEB HAALAND, Secretary of the Interior, U.S. Department of the Interior; LAURA DANIELS-DAVIS, in her official capacity as Principal Deputy Assistant Secretary, Land and Mineral Management; and MICHAEL S. REGAN, Administrator, U.S. Environmental Protection Agency;

*Defendants,*

and

SOUTH FORK WIND, LLC,

*Defendant-Internevor.*

Case No. **2:23-cv-02915**

(Block, J.)

(Tiscione, M.J.)

**AFFIDAVIT OF PLAINTIFF**  
**SIMON V. KINSELLA IN SUPPORT**  
**OF HIS MOTION TO FILE A**  
**SECOND AMENDED COMPLAINT**

1. In February 2022, SFW began to install underground concrete encasement through Wainscott for approximately two-and-a-half miles.
2. SFW has not publicly disclosed (i.e., concealed from public disclosure) laboratory reports, including sampling plans, borehole logs, etc., on PFAS concentration levels in groundwater and soil samples it took around January 2022 and samples it has taken since then.

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<sup>1</sup> U.S. Bureau of Ocean Energy Management (“BOEM”) Director was Amanda Lefton when filing the complaint on July 20, 2022, but Ms. Lefton resigned effective January 19, 2023.

3. SFW admits that “[t]he most likely route of encountering PFAS impacts during construction of the Project is via impacted groundwater that has migrated downgradient ... from the Airport, and thus toward a portion of the Project area ... The portion of the Upper Glacial aquifer downgradient of the East Hampton Airport release area provides a source of drinking water to local residents with private drinking water wells.”<sup>2</sup> The closest portion of the Project area downgradient from the Airport is along Wainscott Northwest Road to the west of and adjacent to the Wainscott Sand & Gravel site. *See* Exhibits 1 and 2 (maps). Therefore, according to SFW, the most likely route of encountering PFAS during construction is near the Airport, *not* as SFW claims, at the transition vault towards the southern end of Beach Lane.
4. In addition to what SFW describes as the “most likely route of encountering PFAS” (*see* ¶ 4), South Fork admitted its concrete infrastructure comes in contact with groundwater at the transition vault towards the southern end of Beach Lane in Wainscott. *See* photograph of groundwater in the transition vault (ECF 1-2, at PDF 6).
5. Groundwater in Wainscott generally flows from East Hampton Airport towards the Atlantic Ocean in a southwesterly to south-southwesterly direction. *See* Exhibit 3 (SCWA Groundwater Flow Map).
6. SFW acknowledges that a groundwater flow velocity of 335 feet per year across its construction site is “consistent with the groundwater flow I’ve seen at other sites in Southern Long Island, of approximately a foot per day for groundwater flow. So, yes that’s very consistent with the upper glacial aquifer in that area of Long Island.” *See* Transcript, December 3, 2020 (at 165:14-21), marked Exhibit D.<sup>3</sup>

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<sup>2</sup> *See* SFW Rebuttle Testimony (at 8:16 through 9:6), marked Exhibit C. Available at [dps.ny.gov—https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={06561905-33BB-4CC5-9EF5-2983BC0B4C88}](https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={06561905-33BB-4CC5-9EF5-2983BC0B4C88})

<sup>3</sup> *See* NYPSC (18-T-0604) Kinsella Cross-Examination, SFW Onshore Water Resources Panel, Dec 3, 2020. <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BA8C6CFD-8542-4731-B5C5->

7. In Wainscott, groundwater levels rise and fall in response to heavy rains and, at other times, heavy freshwater withdrawals during summer for irrigation and general use throughout the South Fork. *See* Exhibit 4 (Suffolk County Well Monitoring for Groundwater Level Map), Exhibit 5 (USGS National Water Information System Charts), and Exhibits 6 and 7 (the same well data from the USGS in Exhibit 5 but displayed in a more readable format).
8. Contaminated groundwater (containing PFAS contaminants) would generally impact SFW's underground infrastructure from the bottom up. *See* Exhibits 8 through 13. The shaded light blue areas represent the potential for groundwater level change. The changes in groundwater levels are from the USGS National Water Information System Charts (*see* ¶ 8).
9. In 2021, SFW tested for PFAS contamination at the shallow surface, away from the PFAS-contaminated groundwater (that would likely be at the *bottom* of the excavated trench). It would be less likely for SFW to encounter PFAS contamination at the shallow surface, where it took soil samples for PFAS testing. *See* Exhibit 14 (diagram). (SAC 195).
10. Well EH-1 is a known source of PFAS contamination located at East Hampton Airport, which is 500 feet upgradient from SFW's construction (*see* Exhibit 1). Groundwater would flow from Well EH-1 towards SFW's construction corridor along the western property line of the Wainscott Sand & Gravel site and encounter wells MW-3, MW-4, and MW-5. The tables next to each well show the high concentration levels of PFAS contaminants (*see* Exhibit 2). SFW's excavation and concrete duct banks or vaults would likely encounter groundwater, for example, near Well MW-4 at the corner of Sandown Court and Wainscott Northwest Road (*see* Exhibits 2 and 12).

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11. See Exhibits 8 and 9 show groundwater levels at the southern end of Beach Lane (SFW's transition vault).
12. In Exhibits 8 through 13, SFW's construction drawings indicate that underground duct banks dip deeper into and nearer to groundwater to avoid water service mains and communications cables.
13. SFW avoided testing near a known instance of a house fire at 75 Wainscott Northwest Road, where firefighting foam might have been used (*see* Exhibit 15).
14. SFW avoided public and regulatory scrutiny of its planned excavation through an area of known PFAS contamination by waiting until the NY Public Service Commission had closed its evidentiary record before testing onsite soil or groundwater for PFAS contamination.
15. SFW also avoided public and regulatory scrutiny of its onshore construction plans at the federal level by failing to acknowledge *any* groundwater PFAS contamination in its final COP, which it submitted to the lead federal agency responsible for the NEPA environmental review, BOEM. BOEM approved SFW's construction plans based on SFW's materially false representations of groundwater quality. *See* Kinsella Affidavit (ECF 93, ¶¶ 14-31).
16. The U.S. Department of Energy warns that construction materials (e.g., concrete) may “adsorb or entrain PFAS and act as a secondary source of contamination [] to groundwater ....”<sup>4</sup>
17. SFW's *own* evidence submitted during the N.Y. State Public Service Commission hearing states that “*concrete may enhance the long-term persistence of PFAS in groundwater.*”<sup>5</sup>

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<sup>4</sup> See U.S. Department of Energy, PFAS Environmental Sampling Guidance (August 2023), (at 33, PDF 44, last ¶) [www.energy.gov/sites/default/files/2023-08/PFAS%20Environmental%20Sample%20Guidance%207-31-23.pdf](http://www.energy.gov/sites/default/files/2023-08/PFAS%20Environmental%20Sample%20Guidance%207-31-23.pdf)

<sup>5</sup> See NYPSC (18-T-0604), SFW Exhibit\_(OWRP-3), ITRC, PFAS Fate & Transport (March 2018) (at 2)—<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2E939DCB-551D-4B83-9948-3F7C830E1742}> (date filed: Oct 30, 2020, item no. 198) (last accessed November 2, 2023).

18. Under cross-examination, SFW admitted that the type of concrete it installed is “*a low-grade concrete*” which is designed to be porous, *it’s actually designed to absorb moisture* ....”<sup>6</sup>
19. With groundwater’s seasonal rise and fall by as much as eight feet near East Hampton Airport,<sup>7</sup> SFW’s concrete will sometimes retain PFAS contaminants (when in contact with groundwater) and periodically release contaminants when exposed (e.g., during precipitation events).
20. SFW’s concrete infrastructure is “actually designed to absorb” groundwater with high concentrations of PFAS contaminants that will “enhance the long-term persistence of PFAS and act as a secondary source” that will contaminate our groundwater with ‘*forever* chemicals’ for a very long time.
21. The U.S. Department of Energy advises that “[t]he need to evaluate impacts in construction materials should be considered on a site-specific basis.”<sup>8</sup> Neither the N.Y. State Public Service Commission nor the federal Bureau of Ocean Energy Management (BOEM), responsible for the federal NEPA environmental review, considered impacts from construction materials or *any onsite* soil or groundwater test results for PFAS contamination.
22. The N.Y. Department of Environmental Conservation designated the PFAS contamination from East Hampton Airport SFW as “*a significant threat to public health.*”<sup>9</sup>

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<sup>6</sup> See NYPSC (18-T-0604) Kinsella Cross-Examination of SFW Onshore Water Resources Panel, Dec 3, 2020 (174:16-18, Kenneth Bowes, Eversource Energy’s VP of Transmission Performance). Transcript available at – <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BA8C6CFD-8542-4731-B5C5-E787F9D15E7B}> (dated filed Dec 17, 2020, item no. 225) (last accessed Dec 13, 2023)

<sup>7</sup> See Letter Re: URGENT: South Fork Wind, Imminent Risk to Public Health (March 11, 2022) marked Exhibit F (Figs 4 and 5, at 10-11).

<sup>8</sup> See Dept. of Energy, PFAS Environmental Sampling Guidance, *supra*, (at 34, PDF 44, 1st ¶).

<sup>9</sup> See NYDEC Superfund Site Classification Notice for East Hampton Airport at [dec.ny.gov](http://dec.ny.gov) at (link below)— [www.dec.ny.gov/data/DecDocs/152250/](http://www.dec.ny.gov/data/DecDocs/152250/) (last accessed Oct 29, 2023). Click on document (4th from the top)— “Fact Sheet.HW.152250.2019-06-19.East Hampton Airport Class 02 Listing.pdf” (at 1). *Also, see* Exhibit E -

23. SFW could have landed its cables anywhere on the South Fork but knowingly installed its concrete infrastructure through the middle of severe groundwater contamination with little regard to the damage it would cause to the Town of East Hampton's drinking water supply or surface waters.
24. SFW's underground infrastructure will act as a secondary source of contamination, continuing to periodically release PFOA, PFOS, and other harmful '*forever chemicals*' (PFAS chemicals) into groundwater, Wainscott Pond, and Georgia Pond for decades, long after the removal of the primary source of contamination at East Hampton Airport and long after SFW has ceased generating power.

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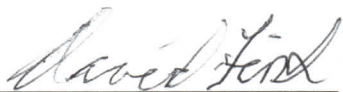
Kinsella Affidavit (¶ 90, page 26).

STATE OF NEW YORK  
COUNTY OF SUFFOLK

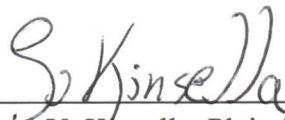
I, Simon V. Kinsella, Plaintiff *pro se*, being duly sworn, say under penalty of perjury:

I am a resident of Wainscott in the Town of East Hampton, N.Y. The contents of my affidavit supporting my motion to file a second amended complaint dated January 19, 2024, are true to the best of my knowledge, information, and belief.

Sworn to before me this  
19th day of January 2024



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David Fink, Notary Public  
State of New York  
No. 4526132  
Qualified in New York County  
Commission Expires February 28, 2024



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Simon V. Kinsella, Plaintiff *pro se*  
P.O. Box 792, Wainscott, NY 11975  
Tel: (631) 903-9154  
[Si@oswSouthFork.Info](mailto:Si@oswSouthFork.Info)  
Executed: January 19, 2024