



For a thriving New England

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March 13, 2023

*Via Registered Mail and Certified Mail, Return Receipt Requested*

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Sprague Resources GP LLC  
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Sprague Energy Solutions, Inc.  
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Hartree Partners, LP  
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Sprague Operating Resources LLC  
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Sprague HP Holdings, LLC  
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New York, NY 10036

Sprague Resources LP  
185 International Drive  
Portsmouth, NH 03801

Twin Rivers Technology Quincy, LLC  
780 Washington St.  
Quincy, MA 02169

**RE: Amended Notice of Intent to File Suit for Violations of the Resource Conservation and Recovery Act and Clean Water Act**

To Whom It May Concern:

Conservation Law Foundation (“CLF”)<sup>1</sup> hereby notifies Sprague Resources GP LLC, Sprague Resources LP, Sprague Operating Resources LLC, Sprague Energy Solutions, Inc., Hartree Partners, LP, and Sprague HP Holdings, LLC (hereinafter, “Sprague”) and Twin Rivers Technology Quincy, LLC (“Lessor”) of its intent to commence a civil action under Section 505 of the Clean Water Act, 33 U.S.C. § 1365 and Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B), for violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., and RCRA, 42 U.S.C. § 6901 et seq., at Sprague’s bulk storage and fuel terminal located at 740 Washington Street, Quincy, MA (the “Terminal”). Unless Sprague and/or the Lessor adequately resolves the violations of RCRA and the Clean Water Act described herein, CLF intends to file suit against Sprague and the Lessor in the United States District Court for the District of Massachusetts to secure appropriate relief under federal and state law for these violations.

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<sup>1</sup> CLF is a 501(c)(3) nonprofit, member-supported organization dedicated to the conservation and protection of New England’s environment. CLF’s members live and recreate near the Terminal.

As previously stated in the Notice of Intent CLF served on Sprague on or around May 21, 2021 the Terminal's waterside containment berm has eroded and is at risk of catastrophic failure in severe weather. Moreover, the condition of the Terminal's containment berms makes clear that Sprague has not designed, maintained, modified, and/or operated its Terminal to account for the impacts and risks of severe weather including those associated with climate change. Sprague's infrastructure, operational, and reporting failures at the Terminal put CLF's members, the Quincy community, and their natural resources at risk and violate RCRA and the Clean Water Act because they create an imminent risk of flooding, unpermitted discharges, and widespread contamination.

### **I. The Terminal**

Sprague, acting through officers, managers, subsidiary companies, and instrumentalities, owns, has owned, operates, or has operated the Terminal, which consists of a "tank farm," a pipeline, a marine terminal, buildings, and infrastructure located at 740 Washington Street, Quincy, MA. The Terminal is located at the confluence of the Town River and Weymouth Fore River. Sprague operates the Terminal pursuant to the National Pollutant Discharges Elimination System ("NPDES") individual permit number MA0028037, issued by the Environmental Protection Agency (the "Permit"). The Permit was issued on May 12, 2011 and is currently in force.

The Terminal receives, stores, and distributes wholesale at least the following substances: petroleum products, vegetable oil, glycerin, tallow, caustic soda, and red dye.<sup>2</sup> The facility is ten acres in size and contains ten above-ground storage tanks with capacities between 1 million and 4.2 million gallons, and two smaller above-ground storage tanks. Sprague leases the Terminal property and some or all of the facilities from Twin Rivers Technology Quincy, LLC. Sprague stores No. 2 fuel oil and diesel fuel in four tanks, and six tanks at the Terminal hold vegetable oil, glycerin, and beef tallow. The Terminal receives product at the marine terminal area it shares with the Twin River Technologies facility and distributes it either via pipeline to the Twin Rivers Technology facility or via trucks.

The Terminal's bulk storage tank farm is surrounded by a single containment berm and some of the tanks have additional, individual containment berms. According to the Terminal's recent draft NPDES permit ("Draft Permit"), stormwater is collected in the containment area around Tank 8 either via gravity or by manually operated pumps from around other tanks. Stormwater from around the truck loading rack and parking areas is collected in a 10,000-gallon underground retention tank and then pumped into the tank farm. Collected stormwater is manually pumped to an oil water separator after a visual inspection for petroleum products. From there, stormwater is pumped via a single outfall into the Town River.

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<sup>2</sup> As Sprague is in the best position to know what substances the Terminal receives, stores, or distributes, this Notice includes any relevant substances that Sprague knows or should know cause or risk violations of the type described herein. This Notice is not limited to the substances it enumerates; it includes all products at the Terminal that Sprague knows or should know pose a risk of water pollution or soil contamination. In addition to the pollutants listed above, this Notice explicitly includes storm surge, which can be a pollutant.

Sprague is a generator of hazardous waste at the Terminal and is categorized as a Very Small Quantity Generator of hazardous waste. It has contributed to the past or present handling, storage, treatment, transportation, or disposal of hazardous waste, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and solid waste, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), at the Terminal, which may present an imminent and substantial endangerment to health or the environment.

Based on the information currently available to CLF, the following pollutants are present at the Terminal: petroleum hydrocarbons and other constituents including but not limited to toxic chemicals, such as, benzene, polycyclic aromatic hydrocarbons, and toluene.

The Federal Emergency Management Agency (“FEMA”) flood map for the area where the Terminal is located, which was last revised in June 2014, shows that the entire Terminal is within a Special Flood Hazard Area (SFHA) subject to inundation by a 1% annual chance flood (i.e., a 100-year flood or “base flood”). The Terminal is adjacent to and bordered by a VE<sup>3</sup> zone on the Town River, also referred to as a coastal high hazard area, making the Terminal vulnerable to high velocity water including waves as well as wave effects 3 feet or greater.

Because The Terminal is located at the confluence of two rivers, it is subject to tidally-influenced waters. Given tidal patterns, a spill originating at the Terminal could be expected to contaminate shorelines within a 15-mile radius of the facility. This area encompasses the Town and Fore Rivers, the Quincy and Hingham Bays, the northernmost reaches the Boston Harbor and Harbor Islands and the Nantasket Beach area.

An examination of the Terminal by CLF several years ago revealed that the Terminal’s water-side containment berm has not been maintained and is at substantial risk of failure. The land between the berm and the Town River has eroded. As a result of the erosion damage, the containment berm is unstable and cannot be relied upon to provide suitable containment, let alone protection against storm-related risks of flooding and wave action. If water overtops the containment berm at the Terminal, the water could become contaminated, the tanks could float in the flooded water, and the containment structure(s) could fail.<sup>4</sup>

CLF first put Sprague on notice of these violations when it served Sprague with a Notice of Intent to File Suit for Violations of the Resource Conservation and Recovery Act and Clean Water Act on or around May 21, 2021. CLF recently returned to the area and observed that the identified erosion has not been addressed and the containment berm remains unstable and cannot be relied on to provide suitable containment or protect against storms-related risks flooding and wave action.

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<sup>3</sup> The “V Zone,” or “Velocity Zone,” “is the portion of the Special Flood Hazard Area that extends from offshore to the inland limit of a primary frontal dune along an open coast, and any other area subject to high-velocity wave action from storms or seismic sources.” Mass. Office of Coastal Zone Management, Interpreting Federal Emergency Management Agency Flood Maps and Studies in the Coastal Zone (June 2017), at 29. The designation of “VE” corresponds to the 1% annual chance coastal floodplains that have additional hazards associated with wave action.

<sup>4</sup> Sprague, Sprague TRT Terminal: One Plan (Rev. Feb 21, 2020), at E-14.

## II. Severe Weather, Climate Change, and Quincy

The present flood risks at the Terminal demonstrated by the FEMA map are, and will continue to be, exacerbated by sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surges—all of which are, and will continue to become, worse as a result of climate change.

According to the Fourth National Climate Assessment, “The frequency of dangerous coastal flooding in the Northeast would more than triple with 2 feet of sea level rise.”<sup>5</sup> Since 1900, sea level has already risen approximately one foot in the Northeast, at a rate that is three to four times higher than the global average.<sup>6</sup> Sea level trends along the Northeast Atlantic “have been higher than the global rate over the last several decades, capped by a recent multiyear jump in sea level beginning in 2009.”<sup>7</sup> This trend is projected to continue.<sup>8</sup>

From 1895 to 2011, the Northeast sustained a temperature increase of 2°F and a 10% increase in precipitation (5 inches), and from 1958 to 2016, “the number of heaviest 1% precipitation events (that is, an event that has a 1% chance of occurring in any given year) in the Northeast has increased by 55%.”<sup>9</sup> The location, elevation, and failure to operate, maintain, or design infrastructure at the Terminal to account for the impacts associated with climate change make it especially vulnerable to risks from extreme weather. As Sprague itself notes, “Hurricanes and tropical storms are no strangers to southern New England.”<sup>10</sup> Hurricanes are becoming more severe as a result of climate change, and “global climate models predict hurricanes will likely cause more intense rainfall and have an increased coastal flood risk due to higher storm surge caused by rising seas.”<sup>11</sup>

The City of Quincy, specifically the Terminal, is directly at risk from these impacts. The City has already suffered substantially from the effects of climate change.<sup>12</sup> Quincy has the fifth highest number of repetitive loss flood claims in the Commonwealth of Massachusetts.<sup>13</sup> In 2019, the

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<sup>5</sup> Ellen L. Mccray, et al., Northeast, in 2 FOURTH NATIONAL CLIMATE ASSESSMENT: IMPACTS, RISKS, AND ADAPTATIONS IN THE UNITED STATES 669, 713 (David Reidmiller et al., eds., U.S. Global Change Research Program) (2018).

<sup>6</sup> Radley Horton et al., Northeast, in CLIMATE CHANGE IMPACTS IN THE UNITED STATES: THE THIRD NATIONAL CLIMATE ASSESSMENT 371, 373 (Jerry M. Melillo et al., eds., U.S. Global Change Research Program) (2014).

<sup>7</sup> NOAA, Global & Regional Sea Level Rise Scenarios for the U.S., at 9 (Jan. 2017), [https://tidesandcurrents.noaa.gov/publications/techrpt83\\_Global\\_and\\_Regional\\_SLR\\_Scenarios\\_for\\_the\\_US\\_final.pdf](https://tidesandcurrents.noaa.gov/publications/techrpt83_Global_and_Regional_SLR_Scenarios_for_the_US_final.pdf).

<sup>8</sup> *See id.* at vii (“Along regions of the Northeast Atlantic (Virginia coast and northward) and the western Sprague of Mexico coasts, RSL [relative sea level] rise is projected to be greater than the global average for almost all future GMSL [global mean sea level] rise scenarios.”).

<sup>9</sup> Mccray, *supra* note 5, at 713.

<sup>10</sup> Sprague, Sprague TRT Terminal: One Plan (Rev. Feb 21, 2020), at E-16.

<sup>11</sup> Angela Colbert, “A Force of Nature: Hurricanes in a Changing Climate,” NASA (June 1, 2022).

<sup>12</sup> City of Quincy Massachusetts, City of Quincy Multi-Hazard Mitigation Plan: 5-Year Update (Apr. 2, 2019) (“Mitigation Plan”).

<sup>13</sup> *Id.* at 3-13.

City experienced “record setting flood events and extensive damage to coastal properties.”<sup>14</sup> The City has determined that there is close to a 100% probability of continued coastal and inland flooding every year.<sup>15</sup> The City is particularly at risk of storm surge flooding.<sup>16</sup> Quincy estimates that sea levels will rise by over half a foot by 2030 and over one foot by 2050.<sup>17</sup> According to City estimates, the Terminal will be flooded by storms modeled for 2030.<sup>18</sup>

The Terminal stores toxic pollutants known to be harmful to humans and aquatic life in an area affected by sea level rise, increased precipitation, increased magnitude and frequency of storm events, as well as increased magnitude and frequency of storm surges—all of which will become, and are becoming, worse as a result of climate change. Oil and gas infrastructure needs to be hardened to endure severe weather. In 2010, the Department of Energy published the oil and gas industry’s findings that hardening and resiliency steps needed to be taken to prepare infrastructure for severe weather.<sup>19</sup> Steps to harden terminal infrastructure include: Building and strengthening berms, levees, and floodwalls; elevating substations, control rooms, and pump stations; improving tank integrity; and relocating or constructing new facilities.<sup>20</sup>

A significant storm surge that makes landfall at the Terminal will flush hazardous and solid waste from the Terminal into the Town and Fore Rivers and through nearby communities and ecosystems; a significant rise in sea level will put the majority of the Terminal, including soils, groundwater, and treatment works, under water. The Terminal is in close proximity to residential and recreational areas with heavy public use and high habitat functions. A public beach, multiple marinas, small boat access points, playgrounds, athletic fields, community walking paths, and publicly accessible open space on both banks of the Town River draw local residents and others to the area. Sprague knows all of this but has failed to disclose required information in its possession and has not taken appropriate steps to protect the public and the environment from this certain risk.

### **III. Clean Water Act**

Sprague operates the Terminal pursuant to its NPDES Permit, number MA0028037, issued by the Environmental Protection Agency (“EPA”) on May 12, 2011. The Permit is currently in force. On January 25, 2016, Sprague completed its application for reissuance of its permit (the “Application”). On December 4, 2020, the EPA issued for public comment a Draft Permit for the Terminal. The public comment period for the Draft Permit ended on February 2, 2021. To CLF’s

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<sup>14</sup> *Id.* at iii.

<sup>15</sup> *Id.* at 3-2.

<sup>16</sup> *Id.* at 3-5.

<sup>17</sup> *Id.* at 3-19.

<sup>18</sup> *Id.* at Maps 5.1E, 5.2E.

<sup>19</sup> *See generally*, U.S. Dept. of Energy, Hardening and Resiliency: U.S. Energy Industry Response to Recent Hurricane Seasons, (Aug. 16, 2010) at 12.

<sup>20</sup> *Id.*

knowledge, the Draft Permit is not yet in force. If or when the Draft Permit becomes the governing permit, this Notice shall apply to all permit conditions that are the same or substantially similar to the Permit conditions identified below.

As explained below, the Permit requires Sprague to proactively analyze risks of pollutant discharges at the Terminal and to implement control measures to minimize the risk of unauthorized discharges. Sprague is failing to maintain its containment berms and evidently failing to plan for sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surges—all of which will become, and are becoming, worse as a result of climate change—that would impact the Terminal and surrounding communities. By failing to address these impacts of climate change, Sprague is neither maintaining nor implementing control measures that will reduce or eliminate the pollutants in the Terminal’s storm water discharges and assure compliance with the Permit, which is a violation of the Permit in itself.

#### **A. Clean Water Act Violations**

##### *1. Failure to Implement Best Management Practices to Minimize the Discharge of Pollutants*

The Permit requires that the permittee implement “appropriate best management practices (“BMP”) . . . at the facility to minimize the discharge of pollutants in stormwater to the waters of the United States and to satisfy the non-numeric technology-based effluent limitations in this permit.” Permit § I.C.4. In particular, the Permit requires BMPs “to satisfy the following nonnumeric technology-based effluent limitations,” including:

- b. Good housekeeping measures designed to maintain areas that are potential sources of pollutants.
- c. Preventative maintenance programs to avoid leaks, spills, and other releases of pollutants in stormwater discharged to receiving waters . . .
- e. Erosion and sediment controls designed to stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants.
- f. Runoff management practices to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff.

*Id.*

Sprague is failing to minimize the potential for discharges of pollutants, in violation of Section I.C.4. and the sub-paragraphs above, at least by failing to maintain its containment berms, placing the Terminal at greater risk of a catastrophic release during severe weather. Further, the erosion of the containment berm and Sprague’s failure to properly maintain that berm, despite being put on notice of the evident erosion nearly two years ago, indicates that Sprague is failing to address the potential for pollutant discharges resulting from sea level rise, increased



precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Evidence of other violations is within Sprague's custody or control. As Sprague is in the best position to know about the use of BMPs at the Terminal, this Notice includes all violations of Section I.C.4 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.C.4 of its NPDES Permit each day for at least five years prior to the date of this Notice.

### *2. Failure to Adequately Inspect Structural Controls*

The Permit requires that the permittee conduct quarterly inspections by members of the stormwater pollution prevention team. Permit § I.C.5. Among other things, these inspections include identification of “[a]ny control measures needing maintenance, repairs or replacement” and “[a]ny additional control measures needed to comply with permit requirements.”

As the eroded containment berm indicates, Sprague is failing to adequately inspect its structural controls, in violation of Section I.C.5. Sprague's failure to correct the containment berm after having been put on notice of the erosion nearly two years ago is further evidence of Sprague's failure to properly inspect and maintain its control measures. Further, the erosion of the containment berm and Sprague's failure to properly maintain that berm, despite being put on notice of the evident erosion nearly two years ago, indicates that Sprague is failing to inspect and identify control measures needed to address the threats to the Terminal resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Evidence of other violations is within Sprague's custody or control. As Sprague is in the best position to know about inspections at the Terminal, this Notice includes all violations of Section I.C.5 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.C.5 of its NPDES Permit each day for at least five years prior to the date of this Notice.

### *3. Failure to Follow Good Engineering Practices*

The Permit requires the permittee to follow “good engineering practices” in the “the selection, design, and installation of control measures,” including “both structural and nonstructural” stormwater controls. Permit § I.C.3.

Sprague is failing to satisfy “good engineering practices,” in violation of Section I.C.3 by failing to design, install, and maintain control measures appropriate to the risks severe weather poses to the Terminal. Further, Sprague's failure to properly maintain the eroded containment berm indicates that Sprague is not considering the potential for pollutant discharges, including those resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of

climate change. Any reasonable engineer must take these factors into account in designing and implementing control measures for the Terminal. Moreover, Sprague has been on notice of the erosion of its berm since May 2021 and has yet to take corrective action.

Evidence of other violations is within Sprague's custody or control. As Sprague is in the best position to know about the engineering practices employed at the Terminal, this Notice includes all violations of Section I.C.3 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.C.3 of its NPDES Permit each day for at least five years prior to the date of this Notice.

#### *4. Failure to Identify Potential Sources of Pollution*

The Permit requires that the Stormwater Pollution Prevention Plan ("SWPPP") include "[a] summary of all pollutant sources." Permit § I.C.3.c. Also, the Permit expressly incorporates "the general provisions for SWPPPs in the most current version of the [Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ["MSGP"]]." *Id.* § I.C.3. The 2015 version of the MSGP, which was in force until March 1, 2021, provides that the summary of pollutant sources must "document where potential spills and leaks could occur that could contribute pollutants to stormwater discharges." 2015 MSGP § 5.2.3.3. The 2021 MSGP includes a substantively identical provision. *See* 2021 MSGP § 6.2.3.3.

On information and belief, for at least five years prior to the date of this Notice, Sprague has failed to adequately identify all pollutant sources or document where spills could occur. One such failure is that Sprague has not described the erosion of the containment berm and the risk of a catastrophic spill in its reporting. Climate change impacts aggravate that risk. By failing to consider climate change, Sprague has failed to identify all of the places that spills could occur as a result of climate change impacts at the Terminal, including those resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Evidence of other violations is within Sprague's custody or control. As Sprague is in the best position to know about pollutant documentation at the Terminal, this Notice includes all violations of Section I.C.3.c and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.C.3.c of its NPDES Permit each day for at least five years prior to the date of this Notice.

#### *5. Failure to Amend or Update the SWPPP*

The Permit requires that the permittee:

shall amend and update the SWPPP within 14 days of any changes at the facility that result in a significant effect on the potential for the discharge of pollutants to the waters of the United States. Such changes may include, but are not limited to: a change in design, construction, operation, or maintenance, materials storage, or activities at the facility; a release of a reportable quantity of pollutants as described in 40 CFR § 302; or a



determination by the permittee or EPA that the BMPs included in the SWPPP appear to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activity.

Permit § I.C.6.

On information and belief, Sprague has not amended its SWPPP to reflect that the containment berm is eroding and that therefore its structural controls are ineffective for controlling pollutant discharges. By failing to consider climate change, Sprague has failed to identify BMPs included in the SWPPP that appear to be ineffective in controlling pollutants in stormwater discharge in light of climate change impacts at the Terminal, including those resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Evidence of other violations is within Sprague's custody or control. As Sprague is in the best position to know about changes at the facility that result in a significant effect on the potential for the discharge of pollutants at the Terminal, this Notice includes all violations of Section I.C.6 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.C.6 of its NPDES Permit each day for at least five years prior to the date of this Notice.

#### *6. Unlawful Certification*

The Permit requires that the permittee “certify, at least annually, that the previous year’s inspections and maintenance activities were conducted, results recorded, records maintained, and that the facility is in compliance with this permit. If the facility is not in compliance with any aspect of this permit, the annual certification shall state the non-compliance and the remedies which are being undertaken.” Permit § I.C.7.

On information and belief, in light of Sprague's apparent failures to properly inspect its structural controls, Sprague's annual certifications are false because, at least, they certify that the inspections were in compliance with the Permit despite the inspections' apparent failure to identify that the containment berm is eroding and that therefore its structural controls are ineffective for controlling pollutant discharges. Further, the erosion of the containment berm and Sprague's failure to properly maintain that berm, despite being put on notice of the evident erosion nearly two years ago, indicates that Sprague is failing to inspect and identify control measures needed to address the threats to the Terminal resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Evidence of other violations is within Sprague's custody or control. As Sprague is in the best position to know about the accuracy of its certified statements, this Notice includes all violations of Section I.C.4 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.C.4 of its NPDES Permit each day for at least five years prior to the date of this Notice.

### *7. Failure to Document Permit Violations in the SWPPP*

The Permit requires that “[i]f the facility is not in compliance with any aspect of this permit, the annual [SWPPP] certification shall state the non-compliance and the remedies which are being undertaken.” Permit § I.C.7.

On information and belief, in light of Sprague’s apparent failures to properly inspect its structural controls, Sprague is violating Section I.C.7 by, at least, failing to identify that the containment berm is eroding and that therefore its structural controls are ineffective for controlling pollutant discharges. Further, the erosion of the containment berm and Sprague’s failure to properly maintain that berm, despite being put on notice of the evident erosion nearly two years ago, indicates that Sprague is failing to inspect and identify control measures needed to address the threats to the Terminal resulting from sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Evidence of other violations is within Sprague’s custody or control. As Sprague is in the best position to know about inaccuracies in its certified statements, this Notice includes all violations of Section I.C.7 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.C.7 of its NPDES Permit each day for at least five years prior to the date of this Notice.

### *8. Failure to Submit Required Facts or Information to Regulators*

The Permit requires that:

The permittee shall notify the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection in writing of any changes in the operations at the facility, including the use of chemical additives and changes which have the potential to cause the maximum design flow rate through the O/W Separator to be exceeded, that may have an effect on the permitted discharge of wastewater from the facility.

Permit § I.A.12.

Sprague has violated Section I.A.12 by, at least, failing to disclose the erosion of the berm, Sprague’s failure to maintain the berm, and the resultant increased risk of a catastrophic discharge of pollutants in severe weather. Further, Sprague has failed to identify climate change impacts as changes at the facility that may have an effect on the permitted discharge of wastewater from the Terminal or exceed the maximum flow rate of the O/W Separator. Factors that could affect discharge at the Terminal include sea level rise, increased precipitation,

increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Evidence of other violations is within Sprague’s custody or control. As Sprague is in the best position to know what notifications it has failed to make to the EPA, this Notice includes all violations of Section I.A.12 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section I.A.12 of its NPDES Permit each day for at least five years prior to the date of this Notice.

#### *9. Failure to Include Stormwater Flow Estimates in Permit Application*

The regulations governing applications for NPDES permits require that applications include both (i) “a line drawing of the water flow through the facility with a water balance” that shows “average flows at intake and discharge points,” and (ii) “narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff” that includes “the average flow which each process contributes.” 40 C.F.R. § 122.21(g)(2)-(3); Form 2C. In the case of stormwater-only flows, the applicant is allowed to provide an estimate, along with “[t]he basis for the rainfall event and the method of estimation.” *Id.* § 122.21(g)(3).

Sprague is violating Section 122.21(g) because its Application did not include a water balance, an estimate of average flow, or a description of the basis for that estimate. Without any information on the average stormwater flow from the facility, the EPA and the public have no idea how much stormwater is discharging from the Terminal. Further, Sprague has failed to identify climate change impacts as changes at the facility that may have an effect on the water balance at the Terminal. Factors that could affect stormwater flow at the Terminal include sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change. Sprague’s violation is ongoing and continuous because Sprague has failed to update its Application.

Evidence of other violations is within Sprague’s custody or control. As Sprague is in the best position to know whether there were any other failures in its application, this Notice includes all violations of Section 122.21(g) and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section 122.21(g) each day for at least five years prior to the date of this Notice.

#### *10. Failure to Describe Structural Controls in Permit Application*

The regulations governing applications for NPDES permits require that applications include a description of “existing structural and nonstructural control measures to reduce pollutants in storm water runoff.” 40 C.F.R. § 122.6(c)(1)(i)(B); Form 2F.<sup>21</sup> The instructions for EPA

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<sup>21</sup> To the extent that Sprague filed its Application under a previous version of these regulations, the requirements are the same. EPA, Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity,

Application Form 2F, Item 4.3 state: “Structural controls include structures that enclose materials handling or storage areas; structures that cover materials; and berms, dikes, or diversion ditches around manufacturing, production, storage, or treatment units and retention ponds.”

Sprague is violating Section 122.26 because Sprague’s Application does not identify the containment berms as structural controls, despite the clear requirement to do so. Sprague’s violation is ongoing and continuous because Sprague has failed to update its Application.

Evidence of other violations is within Sprague’s custody or control. As Sprague is in the best position to know whether there were any other failures in its application, this Notice includes all violations of Section 122.26 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section 122.26 each day for at least five years prior to the date of this Notice.

#### *11. Failure to Describe Materials Management Practices Employed in Permit Application*

The regulations governing applications for NPDES permits require that applications include a description of “materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff.” 40 C.F.R. § 122.6(c)(1)(i)(B). Sprague is violating Section 122.26 because Sprague’s Application does not describe its materials management practices. Instead, the application states only that “[t]he facility has prepared and is subject to US EPA SPCC and Federal Response Plan requirements, and has prepared and operates in accordance with its Stormwater Pollution Prevention Plan.” Sprague’s reference to separate documents is insufficient to satisfy the requirement for the application to describe the material management practices. Sprague did not attach a copy of any of the referenced documents to its Application. Without this information, the EPA and the public do not have adequate information to evaluate the risk of pollutant discharges from the Terminal. Sprague’s violation is ongoing and continuous because Sprague has failed to update its Application.

Evidence of other violations is within Sprague’s custody or control. As Sprague is in the best position to know whether there were any other failures in its application, this Notice includes all violations of Section 122.26 and is not limited to the facts known to CLF at this time. Sprague has been violating, and continues to violate, Section 122.26 each day for at least five years prior to the date of this Notice.

### **IV. Resource Conservation and Recovery Act (“RCRA”) Violations**

#### *1. Imminent and Substantial Endangerment*

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Form 2F, OMB No. 2040-0086 (May 31, 1992), at I-2 (“structural controls [i]nclude structures which enclose material handling or storage areas, covering materials, berms, dikes, or diversion ditches around manufacturing, production, storage or treatment units, retention ponds....”)

CLF intends to include the wastes identified above in its proof of Sprague's RCRA violations. To the extent that other hazardous and solid wastes are revealed to be present at the Terminal—a fact that Sprague is in a better position to know than CLF—Sprague is put on notice that CLF also intends to include those other wastes in its proof of Sprague's RCRA violations.

The hazardous and solid waste at the Terminal is generated, handled, stored, treated, transported and/or disposed of at or near sea level in close proximity to major human population centers—the Germantown and Quincy Point neighborhoods, and the Town and Weymouth Fore Rivers in Quincy. In the face of rising sea levels and increasing major storm events, the Terminal poses an imminent and substantial risk to surrounding communities and the environment. These risks are exacerbated by climate change impacts, which include sea level rise, increased precipitation, increased magnitude and frequency of storm events and storm surge—all of which will become, and are becoming, worse as a result of climate change.

Sprague has not disclosed its creation of this imminent and substantial risk to the EPA, state regulators, or the public as it relates to the Terminal. Sprague's failure to disclose has, each day for at least the last five years, contributed to, and continues to contribute to, the imminent and substantial endangerment to health and the environment.

## *2. Open Dumping*

In addition to the hazardous waste discussed above, the petroleum products stored at the Terminal also qualify as "solid waste" under RCRA. Sprague's failure to address the eroded berm poses an imminent and substantial risk of a release of solid waste when foreseeable events, like severe weather, occur. Sprague's inaction in the face of known failures of its control measures at the Terminal represents an "intent to discard" useful products because the outcome of this inaction will occur. Sprague's failure to address the known imminent risks associated with climate change, discussed above, pose an imminent and substantial risk of a release of solid waste when these foreseeable events occur. Sprague's inaction in the face of known risks associated with climate change represents an "intent to discard" useful products because the outcome of this inaction will occur.

RCRA prohibits "open dumping" which includes "facilities or practices in floodplains" that "result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources." 40 C.F.R. 257.3-1(a). The Terminal is in a 100-year floodplain as determined by FEMA. Inundation by flood waters results in the washout and carrying away of discarded petroleum products and other contaminants. Sprague has taken no steps to prevent flooding and pollution discharges, despite the increasing severity of storms and storm surge caused due to climate change impacts, in violation of RCRA's open-dumping prohibition. Sprague has been violating, and continues to violate, RCRA's open-dumping prohibition each day for at least five years prior to the date of this Notice.

### 3. *Generator Violation*

Very Small Quantity Generators like the Terminal are required to maintain and operate their facilities in such a way as to “minimize[] the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water...” 40 C.F.R. § 262.232 (a)(4)(iii). Sprague is violating this duty by (i) failing to repair the eroded berm, (ii) failing to disclose the known and increasing risks to the Terminal from climate change impacts, and (iii) failing to take any steps to prevent flooding at the Terminal from these risks.

## **V. CIVIL ACTION**

Sprague’s violations of the Clean Water Act are ongoing and continuous. CLF intends to file suit against Sprague for its Clean Water Act violations, as authorized by 33 U.S.C. § 1365. CLF intends to seek an injunction ordering Sprague to: make necessary disclosures; take remedial steps necessary to come into compliance with its NPDES Permit, relevant regulations, and the Clean Water Act; address current and ever-increasing risks of flooding from severe weather, which is exacerbated by climate change; and restraining Sprague from conduct that continues to or further violates the Clean Water Act. CLF intends to seek civil penalties for Sprague’s violations of the Clean Water Act. CLF also intends to seek an award of litigation costs, which includes attorney and expert fees, under 33 U.S.C. § 1365(d).

Sprague’s violations of RCRA are ongoing and continuous. CLF intends to file suit against Sprague for its RCRA violations, as authorized by 42 U.S.C. § 6972. CLF intends to seek a civil injunction, ordering Sprague: to make necessary disclosures; take remedial steps necessary to come into compliance with RCRA; address current and ever-increasing risks of flooding from severe weather, which is exacerbated by climate change; and restraining Sprague from conduct that continues to or further violates RCRA. CLF intends to seek civil penalties for Sprague’s violations of RCRA. CLF also intends to seek an award of litigation costs, which includes attorney and expert witness fees, under Section 7002 of RCRA, 42 U.S.C. § 6972.

## **VI. OTHER CLAIMS**

The violations of federal law alleged herein also support pendant state law claims sounding in tort, including, but not necessarily limited to, negligence and public and private nuisance. Sprague is specifically put on notice that CLF intends to pursue such claims as warranted.

## **VII. CONCLUSION**

During the notice period, CLF is willing to discuss effective remedies for the violations noticed in this letter that may avoid the necessity of litigation. If Sprague wishes to pursue such discussions, please contact CLF within the next 20 days so that negotiations may be completed before the end of the notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the notice period.



Sincerely,



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