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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act and the Clean Air Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)¹ hereby gives notice to Twin Rivers Technologies Holdings, Inc. and Twin Rivers Technologies Manufacturing Corporation, and their agents and directors (collectively, “Twin Rivers” or “TRT”) of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), and Section 304(a) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7604(a).

This letter constitutes notice pursuant to 40 C.F.R., Part 135 and 40 C.F.R., Part 54 (the “Notice”) to the addressed persons of CLF’s intention to file suit in the United States District

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of New England’s waters and safeguarding the health and quality of life in New England communities facing the adverse effects of air pollution. CLF’s members live, recreate, and spend time near the Twin River’s Facility and are adversely affected by Twin Rivers’ violations of the Clean Water Act and Clean Air Act.

Court for the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than sixty days from the postmark date of this Notice letter.

The subject of this action is twofold. First, Twin Rivers has failed to comply with its 2010 National Discharge Elimination System individual permit (the “NPDES Permit”).² Twin Rivers has discharged and continues to discharge stormwater and non-contact cooling water into Waters of the United States in a manner that violates the terms of its NPDES Permit in at least the following ways: 1) violations of numeric effluent limitations, including for oil and grease,³ flow rate,⁴ and temperature,⁵ 2) violations of State Water Quality Standards of the receiving water;⁶ 3) violations of narrative effluent limitations;⁷ 4) failures to make necessary modifications to the Best Management Practices (“BMPs”) and control measures in its Stormwater Pollution Prevention Plan (“SWPPP”) as required;⁸ and 5) failures to conduct required temperature monitoring.⁹

Second, Twin Rivers has failed to comply with its 2012 Title V operating permit (the “Title V Permit”), its June 2015 Air Quality Plan Approval (the “June 2015 Plan Approval”), and its October 2015 Amended Air Quality Plan Approval (the “October 2015 Plan Approval,” collectively, the “Plan Approvals”). Twin Rivers has emitted, and repeatedly emitted, air pollutants into the atmosphere in a manner that violates the terms of its Air Permit and Plan Approvals in at least the following ways: 1) exceedances of numeric emission limits for carbon monoxide (“CO”);¹⁰ 2) exceedances of numeric emission limits for nitrogen oxides (“NO_x”);¹¹ 3) exceedances of numeric emission limits and operational requirements for volatile organic chemicals (“VOCs”);¹² 4) failures to demonstrate compliance of the pollution control device during testing;¹³ 5) contributions to conditions of air pollution;¹⁴ and 6) failures to immediately take appropriate steps to abate nuisance conditions.¹⁵

RESPONSIBLE ENTITY

² U.S. EPA, NPDES PERMIT MA0004073 (2010), <https://www3.epa.gov/region1/npdes/permits/2010/finalma0004073permit.pdf>, [hereinafter NPDES Permit].

³ *Id.* at 2.

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.* at 5; 314 MASS. CODE REGS. 4.00 *et seq.*

⁷ NPDES Permit *supra* note 2 at 2.

⁸ *Id.* at 9

⁹ *Id.* at 11-12.

¹⁰ MASS. DEP, Amended Air Quality Plan Approval, Transmittal No: X264320 (Oct. 1, 2015) [hereinafter “October 2015 Plan Approval”] at 4.

¹¹ *Id.*

¹² MASS. DEP, Amended Air Quality Plan Approval, Transmittal No: X264327 (June 10, 2015) [hereinafter “June 2015 Plan Approval”] at 4.

¹³ *Id.* at 6.

¹⁴ June Plan Approval *supra* note 12 at 13; October Plan Approval *supra* note 10 at 5; MASS. DEP, Final Air Quality Operating Permit, Transmittal No. X226879 [hereinafter “Title V Permit”] at 22.

¹⁵ June Plan Approval *supra* note 12 at 14; October Plan Approval *supra* note 10 at 11; Title V Permit *supra* note 14 at 22.

Twin Rivers owns and operates a fatty acid and glycerin manufacturing plant in Quincy, Massachusetts. Twin Rivers Technologies Holdings, Inc. and Twin Rivers Technologies Manufacturing Corporation, and their agents and directors are the persons, as defined by 33 U.S.C. § 1362(5) and 42 U.S.C. § 7602(e), responsible for the violations alleged in this Notice.

LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this Notice have occurred and continue to occur at the Twin Rivers oleochemical facility located at 780 Washington Street, Quincy, MA 02169 (the “Facility”).

REGULATORY BACKGROUND

A. Violations of the Clean Water Act

The Facility discharges stormwater and wastewater pursuant to the NPDES Permit No. MA0004073, issued to Twin Rivers by the Environmental Protection Agency (“EPA”). The effective date of this permit is May 1, 2010. Per 40 CFR § 122.6, the permit has been administratively continued and remains fully effective and enforceable. The Facility’s violations of its NPDES Permit, as described below, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1344, and 40 CFR §§ 122.44 and 122.26.

B. Violations of the Clean Air Act

Twin Rivers’ operations are governed by Permit No. MA0000002511900497 Title V permit issued to Twin Rivers by the Massachusetts Department of Environmental Protection (“DEP”) pursuant to Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f. The Title V Permit took effect in or around September 2012. A violation of the terms and conditions of Twin Rivers’ Title V Permit is a violation of the Massachusetts State Implementation Plan (“SIP”) and the federal Clean Air Act. 42 U.S.C. § 7661a(a) (“[I]t shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate . . . a major source . . . except in compliance with a permit issued by a permitting authority under this subchapter.”).

The Commonwealth of Massachusetts has adopted a SIP within the meaning of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), which has been approved by the Environmental Protection Agency under Section 110 of the Act, 42 U.S.C. § 7410; 40 C.F.R. § 52; 37 Fed. Reg. 23,085. The Massachusetts SIP includes the regulation at 310 C.M.R. § 7.02 (the “U Plan Approval and Emission Limitations”). Twin Rivers’ operations are governed by two Comprehensive Plan Approvals issued pursuant to 310 CMR 7.02 (“Plan Approvals”). The June 2015 Plan Approval was granted by DEP on June 10, 2015, and the October 2015 Plan Approval was granted by DEP on October 1, 2015. A violation of the terms and conditions of Twin Rivers’ Plan Approvals is a violation of the Massachusetts State Implementation Plan (310 C.M.R. § 7.02) and the federal Clean Air Act.

FACTUAL BASIS OF HARM

A. Violations of the Clean Water Act

Twin Rivers is discharging stormwater and wastewater into the Weymouth-Fore River and the Town River Bay — Waters of the United States¹⁶ that are already impaired.

The Weymouth-Fore River is designated as a Class SB waterbody pursuant to 314 CMR 4.05, Massachusetts Water Quality Standards, meaning that it is a designated habitat for fish and other aquatic life and wildlife.¹⁷ The Weymouth-Fore River is part of the Weymouth & Weir Watershed and spans about 2.29 square miles from Braintree, Massachusetts to the mouth in Quincy, Massachusetts.¹⁸

The Facility discharges stormwater into the Weymouth-Fore River at Waterbody MA74-14.¹⁹ This segment of the river is impaired for fish consumption as a result of polychlorinated biphenyls (“PCBs”) found in fish tissue; impaired for primary contact recreation as a result of Enterococcus; and impaired for shellfish harvesting as a result of fecal coliform.²⁰

The Town River Bay is designated as a Class SB waterbody pursuant to 314 CMR 4.05, Massachusetts Water Quality Standards, meaning that it is a habitat for fish and other aquatic life and wildlife.²¹ The Town River Bay is part of the Weymouth & Weir Watershed and spans about 0.46 square miles from its headwaters at the Route 3A Bridge in Quincy, Massachusetts to its mouth at the Weymouth-Fore River in Quincy, Massachusetts.²²

The Facility discharges non-contact cooling water into the Town River Bay at MA74-15.²³ The Town River Bay, including at this location, is impaired for fish consumption as a result of PCBs found in fish tissue; impaired for the use of fish and other aquatic life and wildlife as a result of dissolved oxygen; impaired for primary contact recreation as a result of Enterococcus; and impaired for shellfish harvesting as a result of fecal coliform.²⁴

1. *The Facility’s Wastewater Discharges*

The Facility discharges non-contact cooling wastewater from outfall Serial Number 003²⁵ into the segment of the Town River Bay designated as Waterbody MA74-15.²⁶ The Facility has discharged and continues to discharge effluent in excess of the NPDES Permit’s maximum daily

¹⁶ 33 U.S.C. 1362(7); 40 C.F.R. § 120.2(a).

¹⁷ *Water Quality Data Viewer*, MassDEP (2018/2020),

<https://arcgisserver.digital.mass.gov/MassDEPWaterQuality/Home/Index>; 314 CMR 4.05(4).

¹⁸ U.S. EPA, *How’s My Waterway*, 2020 Waterbody Report for Weymouth-Fore River (MA74-14), https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA74-14/2020.

¹⁹ NPDES Permit, *supra* note 2, at 1.

²⁰ U.S. EPA, *supra* note 18.

²¹ U.S. EPA, Fact Sheet No. MA0004073 at 3,

<https://www3.epa.gov/region1/npdes/permits/2010/finalma0004073fs.pdf> [hereinafter “Fact Sheet”]; 314 CMR 4.05(4).

²² *Id.* at 4; U.S. EPA, *How’s My Waterway*, 2020 Waterbody Report for Town River Bay (MA74-15), https://mywaterway.epa.gov/waterbody-report/MA_DEP/MA74-15/2020.

²³ *Id.* at 3.

²⁴ U.S. EPA, 2020 Waterbody Report for Town River Bay (MA74-15), *supra* note 22.

²⁵ NPDES Permit, *supra* note 2, at 4.

²⁶ *Id.* at 1; Fact Sheet, *supra* note 21, at 8.

flow rate limitation of 5.0 million gallons per day (“MGD”)²⁷ and above the NPDES Permit’s maximum daily effluent temperature limitation of 87° F.²⁸

Increased effluent flow is the result of increased volume and velocity of intake flow, which results in greater numbers of fish and other aquatic life being sucked into the Facility (entrained) or trapped against the Facility’s mesh intake screen (impinged).²⁹ Eggs, larvae, and small invertebrates are drawn into the Facility through the intake screen mesh, where they are killed by physical stress from mechanical pumps and high temperatures.³⁰ Larger organisms can become trapped against the Facility’s intake screens by the suction of the intake pipe.³¹ Pinned against the intake screen and unable to swim away, fish can lose scales, become exhausted, asphyxiate, and starve.³²

EPA estimates that at Twin Rivers’ 5 MGD flow limit, approximately 5.3 million eggs and 1.3 million larvae per year could be drawn into the Facility.³³ Flow higher than five MGD results in levels of drawing in and pinning higher than what EPA has deemed acceptable. Also, the discharge of excessively warm water harms aquatic life either by killing or impairing organisms directly or by causing changes in normal behavior.³⁴ Increases in water temperatures can also lead to an increase in pathogens, nutrients, algal blooms, rates of water evaporation, and invasive species.³⁵

2. *The Facility’s Stormwater Discharges*

On each day of precipitation, the Facility discharges stormwater runoff which carries pollutants from its industrial activities, including oil and grease, nitrogen, and zinc, into the Weymouth-Fore River at Waterbody MA74-14.³⁶

Oil and grease, which includes petroleum oils as well as vegetable oils and animal fats, can produce rancid odors, form toxic products, and harm aquatic life and wildlife.³⁷ When oil and grease coat animals and plants, they can suffer suffocation by oxygen depletion, hypothermia, dehydration, diarrhea, or starvation.³⁸ Oil and grease spills destroy animal food supplies and habitats and can persist in the environment for many years.³⁹

²⁷ *Id.* at 4.

²⁸ *Id.*

²⁹ Fact Sheet, *supra* note 21, at 19, 20, 22, 31.

³⁰ *Id.* at 20

³¹ *Id.* at 21-22

³² *Id.* at 21

³³ *Id.* at 22.

³⁴ *Id.* at 40.

³⁵ *Effect of Climate Change on Water Resources and Programs*, U.S. EPA, https://cfpub.epa.gov/watertrain/moduleFrame.cfm?parent_object_id=2456&object_id=2459 (last visited Jan. 27 2022).

³⁶ NPDES Permit, *supra* note 2, at 2; Fact Sheet, *supra* note 21, at 8.

³⁷ *Vegetable Oils and Animal Fats*, U.S. EPA, <https://www.epa.gov/emergency-response/vegetable-oils-and-animal-fats> (last visited Mar. 8, 2023).

³⁸ *Id.*

³⁹ *Id.*

Excess nitrogen in aquatic ecosystems contributes to eutrophication and harmful algal outbreaks.⁴⁰ Eutrophication occurs where the out-of-control growth of algae results in very low oxygen levels and murky green water that blocks sunlight from reaching bottom-dwelling plants.⁴¹ Fish and other aquatic animals struggle to survive in low oxygen conditions, so eutrophication can result in fish die-offs.⁴² Excess nitrogen combined with warm weather can result in outbreaks of harmful algae – which produce toxins dangerous or even lethal to humans and animals.⁴³

High amounts of zinc are toxic to humans and aquatic animals.⁴⁴ When ingested, zinc may cause health problems in humans, including brain damage, infertility, pancreatic damage, and anemia.⁴⁵ Zinc bioaccumulates in aquatic animals and reacts with chemicals like cadmium to intensify their toxicity.⁴⁶

B. Violations of the Clean Air Act

The Twin Rivers Facility emits air pollutants in violation of its Title V Permit and Plan Approvals, including carbon monoxide (“CO”), nitrogen oxides (“NO_x”), and volatile organic chemicals (“VOCs”).

Breathing in high concentrations of CO negatively impacts human health by decreasing the amount of oxygen in the bloodstream available for the heart and brain.⁴⁷ Exposure to elevated levels of CO is especially dangerous for people suffering from heart disease.⁴⁸

Nitrogen oxides are a family of poisonous, highly reactive gases that includes nitrogen dioxide (NO₂).⁴⁹ NO₂ is dangerous to breathe: short term exposure can aggravate asthma and other respiratory diseases, while long term exposure can cause asthma and increase susceptibility to respiratory infection.⁵⁰

⁴⁰ *The Issue*, U.S. EPA, <https://www.epa.gov/nutrientpollution/issue> (last updated on Aug. 11, 2022).

⁴¹ *Nutrients: Pollution Tutorial*, NOAA, https://oceanservice.noaa.gov/education/tutorial_pollution/010nutrients.html (last visited on Apr. 3, 2023).

⁴² *The Issue*, U.S. EPA, <https://www.epa.gov/nutrientpollution/issue> (last updated on Aug. 11, 2022)

⁴³ *Id.*; *The Effects: Human Health*, U.S. EPA, <https://www.epa.gov/nutrientpollution/effects-human-health> (last updated on March 30, 2023).

⁴⁴ Toxicological Profile for Zinc, ATSDR, <https://www.atsdr.cdc.gov/toxprofiles/tp60.pdf> (Aug. 2005).

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 97, 158

⁴⁷ *Basic Information about Carbon Monoxide (CO) Outdoor Air Pollution*, U.S. EPA, <https://www.epa.gov/co-pollution/basic-information-about-carbon-monoxide-co-outdoor-air-pollution#Effects> (last visited Mar. 8, 2023).

⁴⁸ *Id.*

⁴⁹ *Nitrogen Oxides (NO_x) Control Regulations*, U.S. EPA, <https://www3.epa.gov/region1/airquality/nox.html> (last visited Apr. 4, 2023).

⁵⁰ *Basic Information about NO₂*, U.S. EPA, <https://www.epa.gov/no2-pollution/basic-information-about-no2> (last updated on Aug. 2, 2022).

VOCs are very harmful to human health, causing difficulty breathing and nausea, and eye, nose, and throat irritation.⁵¹ VOCs also cause damage to the central nervous system and organs in the body, and some VOCs cause cancer.⁵²

ACTIVITIES ALLEGED TO BE CLEAN WATER ACT VIOLATIONS

The Facility's violations of its NPDES Permit, as described below, are violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1344, and 40 CFR §§ 122.44 and 122.26.

A. Twin Rivers Has Discharged, Is Discharging, and Will Continue to Discharge Stormwater and Wastewater Effluent to Waters of the United States in Violation of the NPDES Permit's Numeric Effluent Limits.

1. *Twin Rivers has violated, is violating, and will continue to violate the NPDES Permit's limitation for oil and grease.*

The NPDES Permit contains a daily maximum stormwater effluent limitation for oil and grease of 15 milligrams per liter.⁵³

Over the last five years, the Facility's own monitoring data has documented at least one violation of the NPDES Permit's effluent limitation for oil and grease.

2. *Twin Rivers has violated, is violating, and will continue to violate the NPDES Permit's limitation for flow rate.*

The NPDES Permit contains a daily maximum wastewater effluent limitation for flow rate of 5 MGD.⁵⁴

Over the last five years, the discharge flow rate of the Facility's non-contact cooling water has exceeded the 5 MGD limitation on at least two separate occasions, in violation of the Facility's NPDES Permit.

3. *Twin Rivers has violated, is violating, and will continue to violate the NPDES Permit's effluent limitation for temperature.*

The NPDES Permit contains a maximum daily wastewater effluent limitation for temperature of 87° F.⁵⁵

Over the last five years, the discharge temperature of the Facility's non-contact cooling water has exceeded the 87° F limitation on at least eight separate occasions, in violation of the Facility's NPDES Permit.

⁵¹ Volatile Organic Compounds, AMERICAN LUNG ASSOCIATION, <https://www.lung.org/clean-air/at-home/indoor-air-pollutants/volatile-organic-compounds> (last visited Mar. 8, 2023).

⁵² *Id.*

⁵³ NPDES Permit, *supra* note 2, at 2.

⁵⁴ *Id.* at 4.

⁵⁵ *Id.*

B. Twin Rivers Has Discharged, Is Discharging, and Will Continue to Discharge Effluent to Waters of the United States in Violation of the NPDES Permit's Prohibition Against Violating State Water Quality Standards.

The NPDES Permit requires that “discharges either individually or in combination shall not cause a violation of State Water Quality Standards of the receiving waters.”⁵⁶

Massachusetts’ State Water Quality Standards for Class SB waters (such as the Town River Bay and Weymouth-Fore River) include prohibitions on conditions that would impair any use of the water, be aesthetically objectionable, and/or harm aquatic life, such as floating, suspended and settleable solids; color and turbidity; oil, grease, and petrochemicals that produce visible film; and taste and odor.⁵⁷ Further, for Class SB waters, temperature “shall not exceed 85°F (29.4°C) nor a maximum daily mean of 80°F (26.7°C), and the rise in temperature due to a discharge shall not exceed 1.5°F (0.8°C) during the summer months (July through September) nor 4°F (2.2°C) during the winter months (October through June).”⁵⁸

Massachusetts also has State Water Quality Standards for all surface waters relating to 1) aesthetics, including prohibiting debris, objectionable odor, color, taste or turbidity;⁵⁹ 2) pollutants that adversely affect the bottom of the waterbody;⁶⁰ 3) nutrients, including a prohibition on nutrients in concentrations that would cause or contribute to impairment of existing or designated uses;⁶¹ and 4) toxic concentrations or combinations of pollutants.⁶² For all waterbodies, “existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.”⁶³

Twin Rivers’ wastewater and stormwater discharges have caused or contributed to the violation of the above-referenced Massachusetts Water Quality Standards.

C. Twin Rivers Has Violated, Is Violating, and Will Continue to Violate the NPDES Permit's Narrative Effluent Limitations.

Twin Rivers’ NPDES Permit contains discharge prohibitions relating to 1) objectionable discoloration; 2) oil sheen, foam, and floating solids; 3) materials that are hazardous or toxic or impair designated uses; and 4) color, taste, turbidity, toxicity, radioactivity or other properties which cause waters to be unsuitable for the designated uses.⁶⁴

Upon information and belief, Twin Rivers has discharged, and continues to discharge, pollutants (including but not limited to oil and grease, thermal pollution, nitrogen, and zinc), that violate the NPDES Permit’s narrative effluent limitations.

⁵⁶ *Id.* at 5.

⁵⁷ 314 CMR 4.05(4)(b)(5), (6), (7), (8).

⁵⁸ 314 CMR 4.05(4)(b)(2).

⁵⁹ 314 CMR 4.05(5)(a).

⁶⁰ 314 CMR 4.05(5)(b).

⁶¹ 314 CMR 4.05(5)(c).

⁶² 314 CMR 4.05(5)(e).

⁶³ 314 CMR 4.04(1).

⁶⁴ NPDES Permit, *supra* note 2, at 5.

D. Twin Rivers Has Violated, Is Violating, and Will Continue to Violate the NPDES Permit’s Requirement to Make Necessary Modifications to All Best Management Practices (BMPs) and Control Measures in its Stormwater Pollution Prevention Plan (SWPPP) Until the Running Four-Quarter Average No Longer Exceeds the Benchmark Concentration.

The NPDES Permit requires that the Facility conduct quarterly benchmark monitoring of nitrogen and total recoverable zinc. If the average of four monitoring values for a parameter in any calendar year exceeds the benchmark concentration, or if an exceedance of the four-quarter average in any year is mathematically certain, the NPDES Permit requires that the Facility “review the selection, design, installation, and implementation of all BMPs and control measures in the SWPPP, and make necessary modifications until the running four (4) quarter average for the parameter no longer exceeds the benchmark concentrations.”⁶⁵

The NPDES Permit sets benchmark concentrations of 0.68 milligrams per liter for nitrogen and 0.095 milligrams per liter for total zinc.⁶⁶

Upon information and belief, Twin Rivers has neither reviewed nor made necessary modifications to its BMPs and control measures following exceedances of the four-quarter average pollutant benchmark values for nitrogen and zinc. Over the last five years, Twin Rivers has exceeded the four-quarter average pollutant benchmark values at least 14 times for nitrogen and at least 16 times for zinc.

E. Twin Rivers Has Failed to Conduct Temperature Monitoring as Required by the NPDES Permit.

The NPDES Permit requires that the Facility collect temperature readings from the Town River Bay during seven consecutive days in March and seven consecutive days of August using a specified array of thermistors at specified locations and depths.⁶⁷ The Facility is required to submit the results of this study to EPA and MassDEP as part of its monthly DMR submission.⁶⁸

Upon information and belief, Twin Rivers has neither collected temperature readings from the Town River Bay as required by the NPDES Permit, nor has it submitted the results of this study to EPA and MassDEP.⁶⁹

ACTIVITIES ALLEGED TO BE CLEAN AIR ACT VIOLATIONS

⁶⁵ The NPDES Permit also requires that the Facility “make necessary modifications immediately, without waiting for results from a full 4 quarters of monitoring data, if an exceedance of the 4 quarter average in any year is mathematically certain.” *Id.* at 9.

⁶⁶ *Id.* at 3.

⁶⁷ *Id.* at 11.

⁶⁸ *Id.*

⁶⁹ CLF requested the results of the temperature study from U.S. EPA on April 6, 2023 and were provided with no documents indicating that such study was conducted.

The Facility’s violations of its Title V Permit and Plan Approvals, as described below, are violations of the Massachusetts State Implementation Plan (“SIP”) and the federal Clean Air Act. 42 U.S.C. § 7661a(a).

A. Twin Rivers has violated, is violating, and will continue to violate the October 2015 Approval’s emission limitation for carbon monoxide.

Section 4A of Twin Rivers’ October 2015 Plan Approval, and Section 3A of the June Plan Approval contain the following emission limitation for CO: 0.32 pounds per hour for the combined emissions from Emissions Units 5 and 6 (“EU5” and “EU6”).⁷⁰

On at least 1 occasion in 2018, Twin Rivers exceeded the emission limitation for CO at EU5 in violation of Section 4A of the October 2015 Approval and 310 CMR 7.26(43).

B. Twin Rivers has violated, is violating, and will continue to violate the October 2015 Approval’s emission limitation for Nitrogen Oxide.

Section 4A of Twin Rivers’ October 2015 Approval contains the following emission limitation for NO_x: 0.54 pounds per hour for the combined emissions from Emissions Units 5 and 6 (“EU5” and “EU6”).⁷¹

On at least 1 occasion in 2019, Twin Rivers has exceeded the emission limitation for NO_x at EU5 in violation of Section 4A of its October 2015 Approval and 310 CMR 7.26(43).

C. Twin Rivers has violated, is violating, and will continue to violate the Title V Permit and/or the June 2015 Approval’s emission limitation and operational requirements for Volatile Organic Chemicals (“VOCs”).

Section 3A of Twin Rivers’ June 2015 Approval contains the following emission limitations for VOCs from Emissions Unit 4 (“EU4”):

Operational And/Or Production Limits and Restrictions on VOC			
EU#	Pollution Control Device (“PCD”)	Air Contaminant	Operational/Emission Limit
EU4	Regenerative Thermal Oxidizer (“RTO-PCD1”)	VOC and Hazardous Air Pollutants (“HAP”)	RTO-PCD1 shall provide a minimum VOC destruction efficiency of 97 percent by weight or a maximum outlet VOC emission rate of 0.15 pounds per hour, whichever is less stringent.
		VOC	0.15 Pounds/hour, 0.62 tons per year (“TPY”)
		HAP	0.0046 Pounds/hour, 0.02 TPY

⁷⁰ October 2015 Approval, *supra* note 10, at 4; June 2015 Approval, *supra* note 12, at 5.

⁷¹ *Id.*

Operational And/Or Production Limits and Restrictions on VOC			
EU#	Pollution Control Device ("PCD")	Air Contaminant	Operational/Emission Limit
	PCD2/ PCD2A	VOC	PCD2A shall provide a minimum VOC control efficiency of 95 percent by weight. 0.0046 Pounds/hour, 0.02 TPY

Section 4A of Twin Rivers' Title V Permit contains the following emission limitation for VOCs from Emissions Unit 4 ("EU4"):

Operational And/Or Production Limits and Restrictions on VOC			
EU#	Pollution Control Device ("PCD")	Air Contaminant	Operational/Emission Limit
EU4	PCD1	VOC	94.0% overall control efficiency by weight Emission rate of PCD1, after control, is no more than 0.12 pounds VOC per hour.
	PCD2	VOC	85.0% overall control efficiency by weight Emission rate of PCD2, after control, is no more than 0.03 pounds VOC per hour.

On at least 64 occasions between 2018 and 2023, Twin Rivers has exceeded the emission limitation for VOCs at EU4 in violation of Section 3A of its June 2015 Approval.

On at least one occasion in 2022, Twin Rivers failed to meet the minimum VOC destruction efficiency as required by the June 2015 Approval.

On at least one occasion in 2023, Twin Rivers failed to meet the percent recovery standard and/or control efficiency standard as required by the June 2015 Approval and/or the Title V Permit.

D. Twin Rivers has failed to demonstrate the compliance of its pollution control devices during EU4 stack testing and compliance demonstration in violation of the June 2015 Approval.

Twin Rivers' June 2015 Approval requires that PCD2 (the hydrogen scrubber installed at EU4) provide a minimum VOC control efficiency of 95 percent by weight.⁷²

⁷² June 2015 Approval, *supra* note 12, at 4.

Twin Rivers is required to complete compliance testing on RTO-PCD1 (one of the pollution control devices for Emissions Unit 4) every three years.⁷³ The compliance testing of RTO-PCD1 must demonstrate, at minimum, that 1) each applicable enclosure complies with the EPA Method 204; or 2) the actual EU4 capture system complies with the required overall, minimum VOC capture efficiency of 100%; and 3) the VOC destruction efficiency of RTO-PCD1 is a minimum of 97% by weight or a maximum outlet VOC emission rate of 0.15 pounds per hour, whichever is less stringent.⁷⁴

Twin Rivers failed its stack testing for EU4 in June 2022 and in the first quarter of 2023.

E. Twin Rivers has violated, is violating, and will continue to violate the Title V Permit and Plan Approvals' prohibition on contributing to a condition of air pollution.

Twin Rivers' Title V Permit requires that it operate the Facility "in such a manner as to prevent the occurrence of noise, dust, odor, and/or visible emissions from the Facility, which cause or contribute to a condition of air pollution."⁷⁵ Twin River's June 2015 Approval requires that it "shall install and use an exhaust stack . . . on RTO-PCD1 and re-use the existing stack on PCD2/PCD2A, that are consistent with good air pollution control engineering practice and that discharges so as to not cause or contribute to a condition of air pollution."⁷⁶ Twin Rivers' October 2015 Approval requires that it "take necessary precautions to ensure that the facility complies with MassDEP's noise regulation and that the facility does not cause a condition of air pollution."⁷⁷ The October 2015 Approval includes a table listing allowable noise levels generated by the operation of the facility.⁷⁸

Through an examination of public records, communications with community members living near the Facility, and site visits, CLF has documented that on at least 8 occasions since 2018, air emissions from the Facility have created odors and/or noise in violation of these permit and plan approval provisions. Additionally, through an examination of public records, including compliance reports, permit excursion reports, and notifications of permit excursions, CLF has documented that Twin Rivers has contributed to a condition of air pollution by emitting CO, NO_x, and VOCs in violation of its Title V Permit and Plan Approvals.

These violations also constitute nuisance claims under Massachusetts common law because they cause a substantial and unreasonable interference with the use and enjoyment of the property of community members. Twin Rivers has created a common law nuisance by releasing, and continuing to release, noxious odors that invade nearby residents' property and cause property damage.

⁷³ *Id.* at 6.

⁷⁴ *Id.*

⁷⁵ Title V Permit, *supra* note 14, at 22.

⁷⁶ June 2015 Approval *supra* note 12, at 13.

⁷⁷ October 2015 Approval *supra* note 10, at 5.

⁷⁸ *Id.* at 6.

F. Twin Rivers has failed, is failing, and will continue to fail to immediately take appropriate steps to abate nuisance conditions in violation of the Title V Permit and the Plan Approvals.

The Title V Permit requires that Twin Rivers “take immediate steps to abate any nuisance condition(s), including but not limited to noise, dust, odor, and/or visible emissions, that may be generated by the operation of this facility.”⁷⁹ The June 2015 Approval requires that should any nuisance condition(s), including but not limited to smoke, dust, odor, or noise, occur as the result of the operation of the Facility, then the Permittee shall immediately take appropriate steps including shutdown, if necessary, to abate said nuisance condition(s).⁸⁰ The October 2015 Approval requires that “[s]hould any nuisance condition(s) be generated by the operation of the above-described equipment, then appropriate steps shall immediately be taken by [Twin Rivers] to abate said nuisance condition(s).”⁸¹

As discussed *supra*, public records, communications with community members, and site visits confirm that Twin Rivers has created nuisance conditions by permitting emissions which cause or contribute to odor and/or noise. Twin Rivers has not taken appropriate steps to abate the nuisance conditions of odor and/or noise from its facility.

DATES OF THE VIOLATIONS

Each day that Twin Rivers operated the Facility while failing to comply with the terms of the NPDES Permit constitutes a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Twin Rivers has not been in compliance with the NPDES Permit since at least July 2018. Twin Rivers’ CWA violations are ongoing and continuous. Barring a change in the wastewater and stormwater management controls at the Facility and full compliance with the permitting requirements of the CWA, Twin Rivers’ violations will continue indefinitely.

Each day Twin Rivers operated the Facility while failing to comply with the terms of the Title V Permit constitutes a separate and distinct violation of Section 502 of the CAA, 42 U.S.C. § 7661a(a). Each day Twin Rivers operated the Facility while failing to comply with the terms of the Plan Approvals constitutes a separate and distinct violation of a federally enforceable SIP under Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Since June 2018, Twin Rivers has repeatedly violated its Title V Permit and Plan Approvals.

RELIEF REQUESTED

Twin Rivers is liable for the above-described violations. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$64,618 per day per violation for all violations occurring after November 2, 2015, where penalties are assessed on or after January 6, 2023, pursuant to sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d), 1365(a); and 40 C.F.R. §§ 19.1–19.4. Each separate violation of the Clean Air Act subjects the violator to a penalty up to \$117,468 per day per violation for all violations occurring after November 2, 2015,

⁷⁹ Title V Permit, *supra* note 14, at 22.

⁸⁰ June 2015 Approval, *supra* note 12, at 14.

⁸¹ October 2015 Approval, *supra* note, 10, at 11.

where penalties are assessed on or after January 6, 2023, pursuant to sections 113(b) and 304 of the CAA, 42 U.S.C. §§ 7413(b), 7604(a), and 40 C.F.R. §§ 19.1–19.4. CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act, pursuant to Sections 505(a), 33 U.S.C. § 1365(a), and the Clean Air Act, pursuant to Section 304, 42 U.S.C. §7604(a), and such other relief as permitted by law. CLF will seek an order from the Court requiring Twin Rivers to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance. Pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and Section 304 of the Clean Air Act, 42 U.S.C. §7604(d), CLF will also seek recovery of costs and fees associated with this matter.

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

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Erica Kyzmir-McKeon by August 14, 2023 so that negotiations may be completed before the end of the 60-day 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 60 days.

Sincerely,

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