



September 22, 2020

Via Email and U.S. Certified Mail – Return Receipt Requested

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cc:
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Kevin A. Brown
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Re: Notice of Violations and Intent to Sue Under Clean Air Act

Dear Mr. Knight, Mr. Harwell, and Mr. Brown:

This letter is sent to inform you, Jasper Pellets, LLC (“Jasper Pellets”), the South Carolina Department of Health and Environmental Control (“DHEC”), and the United States Environmental Protection Agency (“EPA”) that the South Carolina Coastal Conservation League (“Conservation League”) has identified significant, repeated, and ongoing Clean Air Act

("CAA" or "Act")¹ violations at Jasper Pellets' facility in Ridgeland, South Carolina. The Conservation League hereby notifies you that, if these violations are not resolved within 60 days from the date of this letter, the Conservation League is prepared to file an action against you in the United States District Court for the District of South Carolina pursuant to Section 304(a) of the CAA.²

The Jasper Pellets' facility currently holds Air Permit No. 1360-0050-CC, issued pursuant to South Carolina's federally approved and federally enforceable state implementation plan ("SIP"). This permit was issued on April 9, 2020, as a modification to the existing construction permit issued in 2013. The facility does not hold, nor has it ever held, a federal operating permit. As discussed below, the Jasper Pellets' facility has been illegally operating its wood pellet mill for over a year and a half without having applied for or obtained the required permit under Title V of the CAA. Jasper Pellets also illegally constructed new manufacturing equipment aimed at expanding the facility's production capabilities prior to receiving a permit authorizing such construction. In fact, when Air Permit No. 1360-0050-CC was eventually issued, it authorized a much more limited scope of production than what was contemplated by Jasper Pellets' application and what the company actually constructed prior to the permit issuance. These actions violate the CAA and are enforceable under the Act's citizen suit provision.

I. BACKGROUND

A. Persons Responsible & Location of Violations

Jasper Pellets owns and operates a wood pellet manufacturing facility located at 523 Nimmer Turf Road, Ridgeland, South Carolina 29936,³ from which it is emitting harmful air pollutants in violation of the Clean Air Act and implementing regulations. Wood pellet manufacturing facilities process raw wood materials into compressed pellets that are then often shipped overseas to be burned for electricity in power plants. Operation of wood pellet facilities, including Jasper Pellets' operations, emit hundreds of tons of harmful pollutants each year. These pollutants, including volatile organic compounds ("VOCs"), nitrogen oxides, carbon monoxide, sulfur dioxide, hazardous air pollutants, and fine particulate matter, are regulated under state and federal law due to their negative impacts on public health. VOCs, in particular, are a class of pollutants that create smog and ground-level ozone, contribute to secondary fine particulate matter pollution, and contain numerous individual hazardous air pollutants that are known to be carcinogenic or highly toxic even in low amounts.

* Email citations in this letter are provided to the specific, time-stamped email correspondence in which the relevant information was conveyed. The entire email chain, as obtained through a DHEC Freedom of Information request, is provided in the attachment.

¹ 42 U.S.C. § 7401 *et seq.*

² 42 U.S.C. § 7604(a).

³ The most recent permitting documents filed with DHEC list the facility's address as 523 Nimmer Turf Road. Other documents, however, have listed the address as 579 Nimmer Turf Road. Both addresses refer to the same facility at issue in this notice letter.

B. Operating History

The Jasper Pellets facility received its original construction permit in 2010 (Air Permit No. 1360-0050-CA), under the name and ownership of Champion Wood Pellets.⁴ The facility received a modified construction permit in 2013 (Air Permit No. 1360-0050-CB)⁵ and eventually commenced operations by January 2014.⁶ Champion Wood Pellets never submitted a notification of commencement of operations to DHEC, nor did it apply for a federal operating permit. Operations of the facility continued from January 2014 until March 2016, when it was “shut down due to poor market conditions.”⁷ The facility remained idle until it was purchased by Ridgeland Pellet Company (now, Jasper Pellets) in 2018.⁸

Shortly after purchasing the facility, Jasper Pellets sought a permit modification to significantly expand the facility’s production capabilities.⁹ According to DHEC, the Jasper Pellets facility was “not suppose[d] to be in operation until after they get their latest construction permit.”¹⁰ However, unbeknownst to DHEC, the Jasper Pellets’ facility recommenced operation in February 2019.¹¹ DHEC learned of the facility’s operations during a November 20, 2019, site visit.¹² At that time, DHEC representatives observed ongoing operations of the facility and received confirmation from the facility’s manager, Beau Harwell (“Mr. Harwell”), that operations recommenced in February of that year.¹³ As of the date of this letter, Jasper Pellets has not applied for a federal operating permit.

⁴ Email from Diane Humphries, Manager, Coastal Plains & Power Permitting Section, DHEC, to Steven McCaslin, Dir., Air Permitting Div., DHEC (Oct. 18, 2019, 2:43 PM) [hereinafter Humphries Email] (Attachment A).

⁵ *Id.*

⁶ An email exchange between Trinity Consultants and DHEC about the operating history of the Jasper Pellets facility implies that the facility originally commenced operations in January 2014. *See* Email from Brad James, Trinity Consultants, to James Robinson, Env’tl. Eng’r, Air Permitting Div., Bureau of Air Quality, DHEC (May 2, 2019, 9:19:46 AM) (Attachment B) [hereinafter James Email]. The exact date operations commenced, however, is known only to Jasper Pellets.

⁷ *Id.* Champion Wood Pellets was also known as Low Country Biomass, although it does not appear that the facility’s name was ever officially changed in the permitting record. *See* Humphries Email, *supra* note 4 (noting the alternative name of Low Country Biomass, but stating that “[t]here aren’t any permits or forms with Low Country Biomass listed as the facility name”). The facility was subsequently transferred to a new owner under the name Ridgeland Pellet Company, before finally changing the name to Jasper Pellets. *Id.*

⁸ *See* James Email, *supra* note 6 (discussing facility’s operating history); Humphries Email, *supra* note 4 (discussing facility’s ownership history). This latest name change and transfer of ownership was due to a small change in the ownership makeup of the company, which remained largely the same as it was under Ridgeland Pellet Company. Email from Chase Knight, Eng’r, Jasper Pellets, LLC, to Pamela Whiteside, Air Permitting Div., Bureau of Air Quality, DHEC (Oct. 24, 2018, 12:08 PM) (“The ownership makeup changed a little bit and our Bond council recommended that we change the name.”) (Attachment C).

⁹ Ridgeland Pellet Company, Excerpt from Air Permit Application Form DHEC 2569 (June 26, 2018) [hereinafter 2018 Air Permit Application] (Attachment D).

¹⁰ Email from James Robinson, Env’tl. Eng’r, Air Permitting Div., Bureau of Air Quality, DHEC, to Kelsey Timmerman, Env’tl. Health Manager, DHEC (Nov. 20, 2019, 9:03 AM) (Attachment E).

¹¹ *Id.* (stating that the facility should not be currently operating); *see also* South Carolina DHEC, Environmental Affairs Bureau of Air Quality Inspection/Investigation Report at 2 (Nov. 20, 2019) [hereinafter Inspection Report] (“Mr. Harwell [the plant manager] also stated that they have been in operation since February 2019, but only operating the existing equipment.”) (Attachment F).

¹² *See* Email from Kelsey Timmerman, Env’tl. Health Manager, DHEC, to James Robinson, Env’tl. Eng’r, Air Permitting Div., Bureau of Air Quality, DHEC (Nov. 21, 2019, 9:32 AM) (email within Attachment E).

¹³ Inspection Report, *supra* note 11, at 2.

C. Recent Modification

In June 2018, Jasper Pellets submitted an application to DHEC to modify the facility's existing construction permit to authorize the construction of new manufacturing equipment, including a wood dryer and new pelletizing line, in order to expand the facility's production capacity and capabilities.¹⁴ In particular, Jasper Pellets sought to install a 40 MMBtu burner fueling a new wood dryer (BU1/DR1), two new pellet machines (PM4 and PM5), a feed hopper (WH1), a green hammermill (HMG), a fuel hammermill and fuel bin (FHM1 and FB1), a chip storage pad and screener (CSP and SCG), and two cyclones (CY1 and FCY1).¹⁵ This new equipment allows the facility to process wet wood and expand the number of pellets it can produce annually.

DHEC published a draft permit for Jasper Pellets' requested modification on October 11, 2019 and received public comments on that draft permit through November 9, 2019.¹⁶ On November 9, 2019, the Conservation League and several other local, regional, and national organizations submitted comments on the draft permit.¹⁷ These comments, submitted on behalf of the Conservation League and others by the Southern Environmental Law Center and the Environmental Integrity Project, identified several deficiencies in the draft permit, including a concern that Jasper Pellets had significantly underestimated the potential VOC and hazardous air pollutant emissions from the proposed modification.¹⁸ We argued that, as a result, the facility's potential VOC emissions would exceed the major-source threshold under the CAA's Prevention of Significant Deterioration ("PSD") program, requiring the facility to undergo preconstruction review and obtain a required PSD major-source permit.¹⁹ In response to these comments, DHEC made significant changes to the final permit, including by substantially limiting the facility's production capacity and requiring additional testing and other monitoring requirements.²⁰ DHEC issued the final permit to Jasper Pellets authorizing this limited modification on April 9, 2020.²¹

Despite the ongoing public comment period and the fact that DHEC was still reviewing Jasper Pellets' application materials, by November 20, 2019, Jasper Pellets had nearly completed

¹⁴ See 2018 Air Permit Application, *supra* note 9. In April and September 2019, Jasper Pellets submitted revised permit applications. See Jasper Pellets, LLC, Air Construction Permit Application Submittal (Apr. 12, 2019); Jasper Pellets, LLC, Final Construction Permit Application (Sept. 25, 2019) [hereinafter Sept. 2019 Air Permit Application].

¹⁵ Sept. 2019 Air Permit Application, *supra* note 14, at PDF 9-10.

¹⁶ South Carolina DHEC, Notice of a Draft Air Synthetic Minor Construction Permit – Public Notice #19-057-TV-C (Oct. 11, 2019).

¹⁷ Environmental Integrity Project & Southern Environmental Law Center, Comments on the Draft Synthetic Minor Construction Permit No. 1360-0050-CC for Jasper Pellets, LLC (Nov. 9, 2019) (submitted on behalf of South Carolina Coastal Conservation League, South Carolina Chapter of the Sierra Club, Dogwood Alliance, Partnership for Policy Integrity, Natural Resources Defense Council, Our Children's Earth, and the Rachel Carson Council) [hereinafter Public Comments on Proposed Modification] (Attachment G).

¹⁸ *Id.* at Sections II (VOCs) and III (HAPs).

¹⁹ *Id.* at Section II.

²⁰ South Carolina DHEC, Statement of Basis at 16-17 (Apr. 9, 2020) [hereinafter 2020 Statement of Basis] (Attachment H).

²¹ South Carolina DHEC, Bureau of Air Quality, Synthetic Minor Construction Permit No. 1360-0050-CC (Apr. 9, 2020).

construction on the modification originally requested.²² Specifically, Jasper Pellets constructed the following equipment without authorization from the state:

- 1 acre Concrete Storage Pad for green chips;
- 16 ton per hour Feed Hopper for green chips;
- 16 ton per hour Screener for green chips;
- 16 ton per hour Hammermill for green chips;
- 2.5 ton per hour Hammermill for fuel bin;
- 3,000 cubic feet per minute Cyclone for fuel bin;
- 16 ton per hour Fuel Bin to store wood for Dryer Burner;
- 14.4 oven dried ton per hour Rotary drum dryer with 40 Million BTU/hour wood fired burner;
- 40,000 cubic feet per minute Dual Cyclone for dried wood furnish transport; and
- One of two 6 ton per hour Pellet Mills.²³

All of this occurred well before Jasper Pellets received an air permit from DHEC authorizing such construction and, as noted above; when DHEC finally permitted Jasper Pellets' construction activities it was done only after DHEC significantly modified the scope of that activity.²⁴

II. CLEAN AIR ACT VIOLATIONS

A. *Illegal Operations*

Under Title V of the Clean Air Act, a facility is considered a major source if the facility emits or has the potential to emit 100 tons per year or more of any regulated pollutant, including VOCs.²⁵ "Potential to emit" is defined as "the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design," taking into account any enforceable permit restrictions on the facility's capacity or operations that limit emissions.²⁶ Title V major sources must submit an application for a Title V operating permit within 12 months of the facility commencing operations,²⁷ and no source subject to Title V "may operate after the time that it is required to submit a timely and complete application . . . except in compliance with a permit" issued under the Title V regulations.²⁸ In some circumstances a facility may continue operating after the 12-month period without having obtained a Title V permit, but *only* if the facility has timely submitted an application for such a permit:

²² Inspection Report, *supra* note 11, at 2 ("Mr. Harwell stated that all proposed equipment in the list above, apart from one of the 6 ton/hr Pellet Mills, is on-site and construction is almost complete."). The exact date construction commenced and was completed, however, is known only to Jasper Pellets.

²³ *Id.*

²⁴ For instance, in response to public comment, DHEC reduced the allowable production from 108,000 tons per year to 60,200 tons per year, and made numerous other revisions. *See* 2020 Statement of Basis, *supra* note 20, at 16.

²⁵ 40 C.F.R. § 70.2.

²⁶ *Id.*

²⁷ 40 C.F.R. § 70.5(a)(1)(i). The Title V requirements are incorporated into South Carolina's federally approved state implementation plan ("SIP") at S.C. Code Regs. 61-62.70 (Title V Operating Permit Program).

²⁸ 40 C.F.R. § 70.7(b); *see* 42 U.S.C. § 7661a(a).

[I]f an applicant has submitted a timely and complete application for a permit required by [Title V], but final action has not been taken on such application, the source's failure to have a permit shall not be in violation of [Title V], unless the delay in final action was due to the failure of the applicant to timely submit information required.²⁹

This exception is often referred to as the Title V “application shield.” Illegal operation of a Title V facility without a required permit is subject to citizen enforcement under the Clean Air Act.³⁰

Jasper Pellets is currently operating a Title V major source without the facility having timely applied for a Title V operating permit. The Jasper Pellets facility was originally constructed and commenced operations in 2014, under the name of Champion Wood Pellets. When operations commenced in approximately January 2014, the facility had the potential to emit well over the Title V major-source threshold of 100 tons per year. Jasper Pellets itself acknowledged this fact in its June 2018 application submitted to DHEC. In that application, Jasper Pellets estimated that the facility's potential VOC emissions pre-modification (i.e., as originally constructed) were 110.38 tons per year.³¹ Moreover, even disregarding Jasper Pellets' own emission quantifications, the most reliable emission rates for the wood pellet industry—published by the Georgia Environmental Protection Division—show that the facility had the potential to emit VOCs at rates well in excess of the Title V threshold.³²

Since the facility was a Title V major source when operations commenced, which occurred in approximately January 2014, the facility had 12 months from that date to apply for its initial Title V permit. No such application was ever submitted, and the facility continued to operate illegally until March 2016 when it closed down due to poor market conditions.³³ Despite the unambiguous prohibitions under Title V, Jasper Pellets recommenced operations of the facility in February 2019 without having timely applied for or obtained the required Title V permit.³⁴ Moreover, Jasper Pellets was well aware of this issue prior to recommencing operations, having received a letter from the Environmental Integrity Project in September 2018, highlighting this concern and cautioning Jasper Pellets to apply for and obtain the required permit prior to operating the facility.³⁵ Two years have passed since Jasper Pellets received this warning, yet they have taken no steps to remedy this violation. As of the date of this letter, Jasper

²⁹ 42 U.S.C. § 7661b(d).

³⁰ 42 U.S.C. § 7604(a)(1); *id.* § (f)(4) (defining “emission standard of limitation” to include “any requirement to obtain a permit as a condition of operations”).

³¹ 2018 Air Permit Application, *supra* note 9, at PDF 12 (estimating “Emission Rates Prior to Construction / Modification”), PDF 18 (estimating the “current as built” emissions).

³² Memorandum from Manny Patel, VOC Unit Manager, Air Protection Branch, Georgia EPD, to Eric Cornwell, Stationary Source Permitting Manager, Air Protection Branch, Georgia EPD re: “Emission Factors for Wood Pellet Manufacturing” (Jan. 29, 2013) (Attachment I). These emission factors—2.5 lb/ODT for the dry hammermills and 0.5 lb/ODT for the pellet presses and coolers—show that the facility, as originally built and as operated by Jasper Pellets prior to the modification, had the potential to emit VOCs at a rate of 157.68 tons per year (excluding VOC emissions from pellet storage). Notably, these are the same emission factors approved for use by DHEC for this facility in the April 2020 permit issuance. *See* 2020 Statement of Basis, *supra* note 20, at 9-10.

³³ James Email, *supra* note 6.

³⁴ *See* Inspection Report, *supra* note 11.

³⁵ Letter from Patrick Anderson, Of Counsel, Envntl. Integrity Project, to Charles Knight, CEO, Ridgeland Pellet Co. (Sept. 6, 2018) (Attachment J).

Pellets has still failed to even submit a Title V permit application. Regardless, because such application would not be *timely* at this point, the Title V application shield does not apply.

Jasper Pellets' illegal operations without a Title V permit are ongoing and will continue until a final Title V permit is obtained. Specifically, each day Jasper Pellets has operated the facility is a violation of section 7661 *et seq.* of the Clean Air Act and its implementing regulations, and is enforceable under the Act's citizen suit provision. While we do not have specific dates that Jasper Pellets has operated this facility, this information is known to Jasper Pellets. To our knowledge, Jasper Pellets has operated the facility on numerous dates since acquiring the facility, and this letter provides notice of a violation for each such date.

B. Illegal Construction

South Carolina's federally approved SIP prohibits any source of air pollution from commencing construction or modification without first obtaining a construction permit with the state:

[A]ny person who plans to construct, alter, or add to a source of air contaminants, including installation of any device for the control of air contaminant discharges, shall first obtain a construction permit from the Department prior to commencement of construction.³⁶

The owner or operator of an air pollution source is also required to submit written notification to DHEC within thirty days after construction commences.³⁷ Violation of a state's federally approved SIP is subject to citizen enforcement under the Clean Air Act.³⁸

Moreover, under the Clean Air Act's PSD program, a wood pellet manufacturing facility is considered a major source if it emits or has the potential to emit 250 tons per year of any regulated pollutant, including VOCs.³⁹ "Potential to emit" has the same definition in the PSD context as it does in the Title V context, meaning that potential emissions are calculated based on the maximum design capacity of the facility, taking into account any enforceable permit restrictions.⁴⁰ The PSD program explicitly prohibits the construction of a "major emitting facility" unless the facility has received a PSD permit and has undergone preconstruction review.⁴¹ Illegal construction of a PSD major source without a PSD permit is subject to citizen enforcement under the Clean Air Act.⁴²

As noted above, beginning in 2018 Jasper Pellets sought permissions from DHEC to construct new equipment at its facility aimed at expanding the facility's manufacturing capacity.

³⁶ S.C. Code Regs. 61-62.1 § II(A)(1)(a).

³⁷ *Id.* § II(A)(3).

³⁸ 42 U.S.C. § 7604(a)(1), (f)(4).

³⁹ 40 C.F.R. § 52.21(b)(1)(i)(b).

⁴⁰ *Id.* § 52.21(b)(4) ("Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant . . . shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.").

⁴¹ 42 U.S.C. § 7475(a).

⁴² 42 U.S.C. § 7604(a)(3) (authorizing suit "against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I [PSD]").

The comment period for the draft permit closed on November 9, 2019, and the final permit was not issued by DHEC for another five months, on April 9, 2020. Despite knowing that the permitting process was still ongoing and that DHEC was expecting to receive significant public comments,⁴³ Jasper Pellets commenced and nearly completed construction of the requested equipment before receiving a permit from DHEC authorizing such construction. DHEC first identified the illegal construction during a November 20, 2019, site visit.⁴⁴ At that time, Mr. Harwell told DHEC staff that “all proposed equipment . . . , apart from one of the 6 ton/hr Pellet Mills, is on-site and construction is almost complete.”⁴⁵ Specifically, Jasper Pellets illegally constructed the following equipment:

- 1 acre Concrete Storage Pad for green chips;
- 16 ton per hour Feed Hopper for green chips;
- 16 ton per hour Screener for green chips;
- 16 ton per hour Hammermill for green chips;
- 2.5 ton per hour Hammermill for fuel bin;
- 3,000 cubic feet per minute Cyclone for fuel bin;
- 16 ton per hour Fuel Bin to store wood for Dryer Burner;
- 14.4 oven dried ton per hour Rotary drum dryer with 40 Million BTU/hour wood fired burned;
- 40,000 cubic feet per minute Dual Cyclone for dried wood furnish transport; and
- One of two 6 ton per hour Pellet Mills.⁴⁶

Moreover, the modification and expansion as contemplated in Jasper Pellets’ application materials and in the draft permit issued by DHEC resulted in the facility’s potential VOC emissions exceeding the PSD major-source threshold. Specifically, as raised in the Conservation League’s public comments, the modification as proposed omitted significant VOC emissions from wood pellet storage and otherwise overestimated the VOC control efficiency from the proposed pollution control devices.⁴⁷ Thus, Jasper Pellets installed equipment subject to PSD (i.e., commenced construction) without having undergone preconstruction review and without obtaining a PSD permit. Nor, at the time of construction, did Jasper Pellets have a synthetic minor permit putting in place sufficient, enforceable conditions to limit the facility’s PTE for purposes of PSD avoidance. According to DHEC’s calculation, without the synthetic minor limits, the modified facility had a PTE for VOCs of 639.8 tons per year, well in excess of the 250

⁴³ See Email from James Robinson, Env’tl. Eng’r, Air Permitting Div., Bureau of Air Quality, DHEC, to Brad James, Principal Consultant, Trinity Consultants (Apr. 11, 2019, 2:12:32 PM) (denying request for expedited processing “because of the high number of comments we expect to receive during public notice”) (Attachment K); Email from James Robinson, Env’tl. Eng’r, Air Permitting Div., Bureau of Air Quality, DHEC, to Brad James, Principal Consultant, Trinity Consultants (Nov. 20, 2019, 12:01:34 PM) (sending comments submitted by the Environmental Integrity Project and Southern Environmental Law Center to Trinity Consultants and Jasper Pellets, and stating that DHEC is “currently working through them”) (Attachment L).

⁴⁴ Inspection Report, *supra* note 11, at 2 (noting as a violation, “Installing equipment before a Construction Permit was issued to the facility”).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Public Comments on Proposed Modification, *supra* note 17, at Section II (demonstrating that even under the proposed operating limits, Jasper Pellets potential VOC emissions exceed the PSD major-source threshold).

tons per year major-source threshold.⁴⁸ As acknowledged by DHEC, Jasper Pellets' construction without a permit constitutes a violation of the CAA's PSD provision.⁴⁹

By commencing construction on the proposed modification and, in fact, nearly completing that construction, prior to receiving a permit from DHEC authorizing such construction, Jasper Pellets violated South Carolina's federally approved SIP. Additionally, by commencing construction on a major emitting facility without undergoing preconstruction review and without obtaining a required PSD permit, Jasper Pellets violated section 7475 of the Clean Air Act and its implementing regulations. While we do not have access to the precise dates Jasper Pellets began and completed construction of the above units, this information is known to Jasper Pellets, and this letter provides notice for violations for any such dates.

III. NOTICE OF INTENT TO SUE

Under Section 304(a) of the CAA, citizens are authorized to take action to bring facilities into compliance with the Act when federal and state authorities have failed to do so.⁵⁰ Specifically, the Act authorizes citizens to sue for violations of an "emission standard or limitation,"⁵¹ which includes "any other standard, limitation, or schedule established . . . under any applicable state implementation plan approved by the Administrator, or any permit term or condition, and any requirement to obtain a permit as a condition of operations."⁵² As set out above, Jasper Pellets has violated Title V of the CAA by operating without a Title V permit, as well as South Carolina's SIP and section 7475 of the CAA by commencing construction on a modification subject to PSD without either a state synthetic minor construction permit or a PSD major-source permit.

Therefore, the Conservation League gives notice that it is prepared to initiate a civil action in the United States District Court for the District of South Carolina 60 days from the date of this letter or soon thereafter.⁵³ The lawsuit will seek redress for the CAA violations described in this letter, including a daily penalty of up to \$101,439 per violation.⁵⁴ In addition to civil penalties, the Conservation League will seek an order requiring Jasper Pellets to come into full compliance with the CAA, which may include an injunction to force Jasper Pellets to cease operations of its facility until it has obtained a Title V permit. The Conservation League will also seek an order requiring Jasper Pellets to pay litigation costs, including attorney fees.⁵⁵ The

⁴⁸ See 2020 Statement of Basis, *supra* note 20, at 13.

⁴⁹ An original draft of the inspection report, drafted after DHEC's November 20, 2019 inspection of the Jasper Pellets facility, included the following in its summary of violations: "Installing equipment, subject to Prevention of Significant Deterioration (PSD) requirements, before a Synthetic Minor Construction permit, per PSD avoidance, was issued." Email from J. Curt Branham, Manager, Enf't Section, Bureau of Air Quality, DHEC, to Kelsey Timmerman, Evtl. Health Manager, DHEC re: suggestions for inspection report (Nov. 22, 2019, 3:41:01 PM) (Attachment M). Although this violation does not appear in the final inspection report, DHEC seemingly still considered Jasper Pellets' activities as a violation that would be sent to the enforcement division. See *id.* at PDF 4 (commenting, in association with the decision to remove the PSD violation from the summary of violations, "Talked with Cindy K and Michael Shroup regarding the PSD violation. We will address this in enforcement").

⁵⁰ 42 U.S.C. § 7604.

⁵¹ *Id.* § 7604(a)(1).

⁵² *Id.* § 7604(f)(4).

⁵³ *Id.* § 7604(b)(1)(A).

⁵⁴ See 40 C.F.R. § 19.4 (adjustment of civil monetary penalties for inflation).

⁵⁵ 42 U.S.C. § 7604(d).

Conservation League reserves the right to add additional claims to the specific CAA violations set forth above based on the same or similar fact pattern of violations, and to add additional factual information as it becomes available. The Conservation League also reserves the right to seek additional remedies under state and federal law and does not intend, by giving notice, to waive any rights or remedies.

IV. PARTIES GIVING NOTICE

The South Carolina Coastal Conservation League is a non-profit corporation with its principal office at 131 Spring Street, Charleston, South Carolina 29403. The Conservation League's mission is to protect the threatened resources of the South Carolina coastal plain—its natural landscapes, abundant wildlife, clean air and water, and quality of life. The Conservation League is a membership organization with members who live and recreate near the Jasper Pellets' facility. The violations identified above have negatively impacted the Conservation League and its members. The name, address, and telephone number of the person giving notice of intent to sue are:

Laura Cantral, Executive Director
South Carolina Coastal Conservation League
131 Spring Street
Charleston, SC 29403
(843) 723-8035

V. CONCLUSION

If you have any questions concerning this letter or the described violations, or if you believe it is incorrect in any respect, please contact the undersigned counsel at the Southern Environmental Law Center and Environmental Integrity Project. During the notice period, we are available to discuss effective actions and remedies that will bring the Jasper Pellets' facility into compliance with the Clean Air Act. Though prepared to initiate a civil action, the Conservation League believes that a negotiated settlement of the identified violations, codified through a court-approved agreement, would be more productive than protracted litigation. If you wish to pursue negotiations in the absence of litigation, you should initiate such negotiations within the next twenty (20) days so that they may be completed prior to completion of the notice period.

Thank you for your prompt attention to this matter.

Sincerely,



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Enclosures: Attachments A - M

cc (via certified mail, with enclosures):

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Mary S. Walker, Acting Administrator
U.S. Environmental Protection Agency, Region IV
Sam Nunn Atlanta Federal Center
Mail Code 9T25
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

W. Marshall Taylor Jr., Acting Director
South Carolina Department of Health & Environmental Control
2600 Bull Street
Columbia, SC 29201
(cc: Former Director Rick Toomey, at the same address)

Governor Henry McMaster
State House
1100 Gervais Street
Columbia, SC 29201