



October 29, 2024

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Rain Carbon Inc.  
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**RE: Notice of Intent (NOI) to Sue for Violations of the Clean Water Act, LA0087777, Rain CII Carbon LLC Gramercy Coke Plant (AI No. 32804)**

Dear all:

I am writing to provide you with notice that Healthy Gulf intends to file a civil lawsuit against Rain CII Carbon, LLC (“Rain CII”) for significant and ongoing violations of the federal Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*, at the Rain CII Gramercy Coke Plant, located at 1140 Jefferson Highway, Gramercy, Louisiana, 70052, St. James Parish. Rain CII holds the National Pollutant Discharge Elimination System (NPDES) permit for the Rain CII Gramercy Coke Plant, LA0087777.

As explained more fully below, the Gramercy Coke Plant is discharging harmful toxic pollutants without NPDES authorization and has failed to correct or supplement its incorrect permit application. By failing to comply with the CWA in these ways, Rain CII has injured and will continue to injure or threaten to injure, the health, environmental, aesthetic, and economic interests of Healthy Gulf and its members. These injuries or risks are traceable to these CWA violations, and this litigation will redress Healthy Gulf members’ injuries.

Section 505(a) of the CWA permits citizen suits in federal court against persons “alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.” 33 U.S.C. § 1365(a)(1). For purposes of citizen suits, “effluent standard or limitation,” includes not only violations of numeric effluent limits in a permit but discharges without a permit and violations of

a permit's procedural requirements. *See* 33 U.S.C. § 1365(f) (defining the term for purposes of Section 505).

Pursuant to 33 U.S.C. § 1365(b)(1)(A), this NOI serves to notify Rain CII that Healthy Gulf intends to file suit for CWA violations, unless corrected, in the United States District Court for the Eastern District of Louisiana at any time beginning 60 days after the postmarked date of this NOI. 40 C.F.R. § 135.2(c). This NOI includes sufficient information to allow Rain CII to identify the specific activities alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice. 40 C.F.R. § 135.3(a). Additionally, Healthy Gulf notifies Rain CII of their intention to sue for ongoing violations of the same type that occur after the violations outlined in this NOI.

## **I. Factual Background**

The Rain CII Gramercy Coke Plant is a petroleum coke (petcoke) calcining facility. The plant discharges process area washdown water, process cooling water streams, wet scrubber overflow, periodic boiler water, stormwater runoff, and treated sanitary wastewater to Blind River Swamp via local drainage (Outfall 001). 2023 Rain CII Gramercy LA0087777 Permit and Fact Sheet at PDF 19 (“2023 Rain CII Gramercy Permit”).<sup>1</sup> The plant also discharges green coke barge stormwater runoff to the Mississippi River (Outfall 002). *Id.*

Rain CII applied for renewal of the Gramercy Coke Plant's NPDES permit in June 2022. Rain CII Gramercy Permit Application at 1.<sup>2</sup> Louisiana Department of Environmental Quality (LDEQ) issued Rain CII its current NPDES permit in 2023. 2023 Gramercy Permit at PDF 19.

The Rain CII Gramercy Permit limits Total Organic Carbon (TOC), Biological Oxygen Demand (BOD), oil and grease, pH, Total Suspended Solids (TSS), and fecal coliform. Rain CII Gramercy Permit at 19-21. The permit does not include any limits for metals or PAHs.

### **A. Discharge of Toxic Pollutants by the Gramercy Coke Plant**

The raw material used at petcoke calciners is “green,” or raw petcoke. Green petcoke is the “bottom of the barrel” high-temperature boiling residual hydrocarbons by-product that is left behind after refineries extract gasoline, diesel, and other higher-value products from crude oil. Petcoke includes ash and can be fairly soft due to its residual moisture and liquid hydrocarbon content.

While the exact components of green petcoke will depend upon the crude oil source, the EPA data available shows that petcoke consistently includes lead, nickel, vanadium, and a wide array of polycyclic aromatic compounds (PAHs). PAHs are a group of chemicals created when products like coal, oil, gas, and garbage are burned but the burning process is not complete. EPA, *Polycyclic Aromatic Compounds Fact Sheet* (Jan. 2008).<sup>3</sup> Below is a list of the metals and PAHs

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<sup>1</sup> <https://edms.deq.louisiana.gov/app/doc/view?doc=13974026>

<sup>2</sup> <https://edms.deq.louisiana.gov/app/doc/view?doc=13379573>

<sup>3</sup> <https://archive.epa.gov/epawaste/hazard/wastemin/web/pdf/pahs.pdf>

found in green petcoke using two sources: EPA’s June 2011 Screening-Level Hazard Characterization for the Petroleum Coke Category (“EPA Hazard Screening”)<sup>4</sup>; and a 2014 analysis of samples taken from pet coke storage piles at the KCBX facilities in southeast Chicago by EPA, found the presence of similar metals and PAHs (“EPA Chicago Study”).<sup>5</sup> When constituents are listed in both documents, the chart states “both.”

*Table 1, Constituents of Green Petcoke*

<b>Metals</b>	<b>PAHs</b>
Antimony (EPA Hazard Screening)	1-Methyl naphthalene (both)
Aluminum (both)	2-methyl naphthalene (both)
Arsenic (EPA Hazard Screening)	Acenaphthene (EPA Hazard Screening)
Barium (both)	Acenaphthylene (EPA Hazard Screening)
Beryllium (EPA Hazard Screening)	Anthracene (both)
Bismuth (EPA Hazard Screening)	Benzo[a]anthracene (both)
Boron (EPA Hazard Screening)	Benzo[a]pyrene (both)
Cadmium (EPA Hazard Screening)	Benzo[b]fluoranthene (both)
Calcium (EPA Hazard Screening)	Benzo(g,h,i)perylene (EPA Hazard Screening)
Chromium (both)	Chrysene (both)
Cobalt (EPA Hazard Screening)	Dibenzo[a,h]anthracene (both)
Copper (EPA Hazard Screening)	Dibenzo[g,h,i]perylene (EPA Chicago Study)
Iron (both)	Fluoroanthene (EPA Hazard Screening)
Lead (both)	Indeno(1,2,3-cd)pyrene (EPA Hazard Screening)
Lithium (EPA Hazard Screening)	Naphthalene (both)
Magnesium (both)	Phenanthrene (both)
Manganese (both)	Pyrene (EPA Hazard Screening)
Molybdenum (EPA Hazard Screening)	
Nickel (both)	
Palladium (EPA Hazard Screening)	
Phosphorus (EPA Hazard Screening)	
Platinum (EPA Hazard Screening)	
Potassium (EPA Hazard Screening)	
Selenium (EPA Hazard Screening)	
Silicon (EPA Hazard Screening)	
Sodium (both)	
Strontium (EPA Chicago Study)	
Sulfur (EPA Hazard Screening)	
Tin (EPA Hazard Screening)	
Titanium (both)	
Vanadium (both)	
Zinc (both)	

<sup>4</sup> <https://archive.epa.gov/epa/petroleum-coke-chicago/screening-level-hazard-characterization-petroleum-coke.html>

<sup>5</sup> [https://19january2017snapshot.epa.gov/petroleum-coke-chicago/lab-analyses-pet-coke-samples\\_.html](https://19january2017snapshot.epa.gov/petroleum-coke-chicago/lab-analyses-pet-coke-samples_.html)

Some of the largest wastestreams at the Rain CII Gramercy plant, including those discharged through Outfall 001 to Blind River Swamp and Outfall 002 to the Mississippi, come into direct contact with green petcoke. These include process area washdown water and stormwater runoff (Outfall 001) and green coke barge stormwater runoff (Outfall 002). 2023 Gramercy Permit at PDF 19. It is highly likely that when these wastestreams come into contact with green petcoke, the wastestreams pick up petcoke debris, petcoke ash, and the pollutants found in green petcoke. For instance, EPA has found that as stormwater flows over an industrial site, it can “pick up pollutants like sediment, debris, and chemicals.” EPA, *NPDES Electronic Reporting Rule*, 79 Fed. Reg. 71,066 (Dec. 1, 2014).

Rain CII’s own reports to EPA under the Toxics Release Inventory (TRI) confirm that the Gramercy plant is discharging several pollutants found in green petcoke, specifically lead, nickel, vanadium, and PAHs. The TRI program requires facilities in certain industries, including petcoke calcining facilities, to report annually on their releases of certain toxic chemicals if the facilities meet certain criteria. 40 CFR §§ 372.5, 372.22. Facilities report their releases of toxic pollutants to air, surface water, and off-site facilities.

For the last five years, the Rain CII Gramercy plant has reported to EPA through the TRI that it is discharging stormwater containing lead, nickel, vanadium, overall PAHs, and a specific PAH (benzo[g,h,i]perylene) to the Blind River Swamp. As noted, Outfall 001 is Rain CII’s only authorized outfall to Blind River Swamp.

*Table 2, Rain CII Gramercy TRI Stormwater Data*

<b>Pollutant</b>	<b>2019 TRI Releases to Blind River Swamp</b>	<b>2020 TRI Releases to Blind River Swamp</b>	<b>2021 TRI Releases to Blind River Swamp</b>	<b>2022 TRI Releases to Blind River Swamp</b>	<b>2023 TRI Releases to Blind River Swamp</b>
<b>Lead</b>	.024 lbs	.03 lbs	.101 lbs	.044 lbs	.043 lbs
<b>Nickel</b>	0	3.68 lbs	18.75 lbs	9.208 lbs	4.134 lbs
<b>Vanadium</b>	0	4.94 lbs	11.56 lbs	13.54 lbs	9.301 lbs
<b>PAHs total</b>	.339 lbs	.419 lbs	.914 lbs	0.622 lbs	0
<b>Benzo[g,h,i]perylene</b>	.052 lbs	.064 lbs	.14 lbs	0	.092 lbs

Given the presence of lead, nickel, and vanadium in the Rain CII Gramercy stormwater discharging to the Blind River Swamp through Outfall 001, it is highly likely that these pollutants are also present in green coke barge stormwater runoff discharging to the Mississippi River through Outfall 002. 2023 Gramercy Permit at PDF 19. As noted, lead, nickel, and vanadium are all components of green petcoke and would be expected to be present in petcoke runoff.

## II. Specific Activities Alleged to Constitute a CWA Violation, Including the Dates of Such Violations

### A. Unpermitted Discharges of Lead, Nickel, and Vanadium

Rain CII has violated and is violating CWA Section 301, 33 U.S.C. § 1311(a), by discharging lead, nickel, and vanadium through Outfalls 001 and 002 without permit authorization.

The CWA prohibits the discharge of a pollutant from a point source into “waters of the United States” unless authorized by and in compliance with an NPDES permit. 33 U.S.C. §§ 1311(a), 1342(b), 1342. Once a permit is obtained, the CWA contains a “permit shield” provision whereby “[c]ompliance with a permit issued pursuant to this section shall be deemed compliance” with the CWA. 33 U.S.C. § 1342(k).

There are exceptions to this permit shield, however. An NPDES permit only shields its holder from liability under the Clean Water Act when:

- (1) the permit holder complies with the express terms of the permit and with the Clean Water Act's disclosure requirements and
- (2) the permit holder does not make a discharge of pollutants that was not within the reasonable contemplation of the permitting authority at the time the permit was granted.

*Piney Run Pres. Ass'n v. Cnty. Comm'r*, 268 F.3d 255, 259 (4th Cir. 2001).

Under the first *Piney Run* prong, the permit shield is not available to a permittee who is violating its permit or the CWA's permit application requirements. *Piney Run Pres. Ass'n*, 268 F.3d at 259; *see also Kleinman v. City of Austin*, 310 F.Supp.3d 770, 779 (W.D.Tex. 2018) (no permit shield when permittee was out of compliance with permit); *Southern Appalachian Mountain Stewards v. A&G Coal Corp.*, 758 F.3d 560, 568 (4th Cir. 2014) (stating the availability of the permit shield defense is predicated upon “permittee's full compliance with all applicable application requirements, any additional informational requests made by the permit authority and any applicable notification requirements”).

Under the second *Piney Run* prong, the permit shield is not available if the discharge of these pollutants was not reasonably contemplated by the permitting agency, here LDEQ. For instance, in *Southern Appalachian Mountain Stewards v. A&G Coal Corporation*, the Fourth Circuit held that when a coal mine failed to disclose discharges of selenium from two artificial ponds in its NPDES permit application, that selenium was not within the reasonable contemplation of the permitting agency. 750 F.3d 560 at 564.

Here, Rain CII has discharged, and, to the best of our knowledge, continues to discharge lead, nickel, and vanadium through Outfalls 001 and 2. *Supra*, Section I.C. The Rain CII Gramercy permit does not have monitoring requirements, effluent limits, or any other evidence that the permit authorizes the discharge of lead, nickel, or vanadium to either the Blind River Swamp or the Mississippi River. 2023 Gramercy Permit and Fact Sheet.

The permit shield does not protect these discharges. First, Rain CII is not in compliance with its

permit or the CWA's permit application requirements. Rain CII is violating the Rain CII Gramercy Permit and 40 CFR § 122.41(l)(8) as described in Section II.B. Second, lead, nickel and vanadium were not reasonably contemplated by LDEQ because Rain CII failed to disclose the presence of these pollutants in its permit application and LDEQ does not discuss these pollutants in the permit or the fact sheet. In sum, Rain CII cannot "claim ignorance about the contents of its own discharges ... and expect to receive the protection of the permit shield." *Parris v. 3M Co.*, No. 4:21-CV-40-TWT, 2022 WL 976007, at \*12 (N.D. Ga. Mar. 30, 2022).

Without a permit shield, Rain CII's discharges of lead, nickel, and vanadium are discharges of pollutants without a permit, in violation of CWA Section 301, 33 U.S.C. § 1311(a).

Rain CII has violated and continues to violate CWA Section 301, 33 U.S.C. § 1311(a) by discharging pollutants without a permit any day Rain CII discharges lead, nickel, or vanadium into federal waters from Outfalls 001 or 002, including any day it discharges stormwater from Outfalls 001 or 002. Penalties can be assessed under the CWA for each day of violation.

## **B. Failure to Correct Permit Application**

Any noncompliance with the Rain CII Gramercy Permit constitutes a violation of the Clean Water Act. 40 C.F.R. § 122.41(a).

Rain CII is continuously violating the standard permit provision that "[w]here the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information." 2023 Gramercy Permit at PDF 38. Federal regulations also require that permittees correct and supplement their applications. 40 CFR § 122.41(l)(8).

Federal regulations require that when applying for an NPDES permit, an industrial applicant like Rain CII must "indicate whether it knows or has reason to believe" that a long list of pollutants are present in the facility's wastewater. 40 CFR §§ 122.21(g)(7)(vi), (vii). Similarly, in the standard EPA application used by Louisiana, a petcoke calcining plant will be asked to sample its process water for these pollutants or mark that they are "believed absent." NPDES Form 2C Instructions at Section 7, Effluent and Intake Characteristics.<sup>6</sup> When applicants fill out their permit application and state whether pollutants are believed absent or present, permit applicants must be truthful. *See* 40 CFR § 122.22(d) (requiring that the permittee certify that the information submitted in its application is, "to the best of my knowledge and belief, true, accurate, and complete"). Moreover, as EPA established in 1980, "dischargers have a duty to be aware of any significant pollutant levels in their discharge." 45 Fed. Reg. 33,516, 33,526 (May 19, 1980) (establishing permit application regulations); *see also Southern Appalachian Mountain Stewards v. A & G Coal Corp.*, 758 F.3d 560, 567 (4th Cir. 2014) (rejecting "willful blindness," regarding the presence of pollutants in wastewater discharges).

EPA's standard application form provides the following instructions regarding whether a pollutant is believed present or absent:

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<sup>6</sup> NPDES Form 2C Instructions at Section 7, Effluent and Intake Characteristics, [https://www.epa.gov/sites/default/files/2020-04/documents/form\\_2c\\_epa\\_form\\_3510-2cr.pdf](https://www.epa.gov/sites/default/files/2020-04/documents/form_2c_epa_form_3510-2cr.pdf)

For all other pollutants, you must check the box in either the “Believed Present” or “Believed Absent” columns based on your best estimate and test for those you believe to be present (with some exceptions). **Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, maintenance chemicals, intermediate and final products and byproducts, and any previous analyses known to you of your effluent or similar effluent.** For example, if you manufacture pesticides, you should expect those pesticides to be present in contaminated stormwater runoff.

NPDES Form 2C Instructions at 2C-3 (emphasis added). Under these instructions, Rain CII is to consider the pollutants in the raw petcoke itself, Rain CII’s existing information about these discharges, and data from other petcoke calcining plants. The Fourth Circuit notes that “[t]he need to ‘indicate whether’ a pollutant is present requires that an applicant affirmatively disclose after appropriate inquiry its knowledge or lack of knowledge of that presence.” *Southern Appalachian Mountain Stewards v. A & G Coal Corp.*, 758 F.3d at 567.

In its 2023 Gramercy permit application, Rain CII stated that lead, nickel, and vanadium were “believed absent” from the process water and stormwater discharged to Blind River Swamp through Outfall 001 and from the green coke barge stormwater discharged to the Mississippi through Outfall 002. 2022 Gramercy Permit Application at PDF 42-79, 54-60.<sup>7</sup> Rain CII subsequently did not provide any sampling data for these pollutants.

These statements are incorrect. Rain CII itself has provided evidence that lead, nickel, and vanadium are present in its Outfall 001 discharges. The only outfall in the Gramercy permit discharging to the Blind River Swamp is Outfall 001, and Outfall 001 includes process area stormwater. 2023 Rain CII Gramercy Permit at PDF 19. As described in Section I.C above, Rain CII has reported to EPA through the TRI that it has discharged stormwater to Blind River Swamp containing measurable quantities of lead, nickel, and vanadium. In addition, given the presence of lead, nickel, vanadium, and PAHs in the Rain CII Gramercy stormwater discharging to the Blind River Swamp through Outfall 001, it is highly likely that these pollutants are also present in green coke barge stormwater runoff discharging to the Mississippi River through Outfall 002. 2023 Rain CII Gramercy Permit at PDF 19. As noted, lead, nickel, vanadium, and PAHs are all components of green petcoke and would be expected to be present in petcoke runoff.

The presence of these pollutants is logical in Rain CII’s stormwater. Green petcoke includes lead, nickel, and vanadium. *Supra*, Table 1. Outfall 001 discharges several kinds of effluent that come directly into contact with green petcoke, including process area washdown water and stormwater. 2023 Rain CII Gramercy Permit at PDF 19.

As an NPDES permittee, Rain CII has an ongoing duty to both correct information in the Gramercy permit application and to supplement the application with any relevant facts. *See* 2023 Rain CII Gramercy Permit at PDF 38 (“Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information”);

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<sup>7</sup> <https://edms.deq.louisiana.gov/app/doc/view?doc=13379573>

*see also* 40 C.F.R. § 270.30(1)(11) (same). Rain CII violates this requirement every day it does not correct the erroneous statements in its permit applications that lead, nickel, vanadium, and benzo[g,h,i]perylene are believed absent in the Outfall 001. In order to comply with its permit, Rain CII must correct its application by noting that these pollutants are believed to be present in the Outfall 001.

Rain CII has violated and continues to violate its permit and 40 CFR § 122.41(l)(8) every day from the date that Rain CII submitted its incorrect permit application to the future date when Rain CII submits a corrected permit application. Penalties can be assessed under the CWA for each day of violation.

### **III. The Person or Persons Responsible for the Alleged Violations**

The person or persons responsible for the alleged violations is Rain CII Carbon, LLC. Under the CWA, the term ‘person’ “means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5). As a corporation, Rain CII Carbon, LLC is a person for purposes of the CWA. Rain CII Carbon, LLC is the holder of the LA0054062 permit. As the permit holder, Rain CII is responsible for the permit violations and, consequently, the CWA violations. As the owner and operator of the Rain CII Gramercy Carbon Plant, Rain CII is also responsible for the unpermitted discharges of lead, nickel, and vanadium and, consequently, the CWA violations.

### **IV. The Location of the Alleged Violations**

The location of the alleged violations is:

Rain CII Carbon LLC  
Gramercy Coke Plant  
1140 Jefferson Highway  
Gramercy, Louisiana 70052

### **V. The Full Name, Address, and Phone Number of the Person Giving the Notice**

Andrew Whitehurst  
Water Program Director  
Healthy Gulf  
(601) 954-7236  
PO Box 2245  
New Orleans, LA 70176

### **VI. Conclusion**

Rain CII is violating the Rain CII Gramercy Permit, 40 CFR § 122.41(l)(8), and CWA Section 301, 33 U.S.C. § 1311(a). Accordingly, EIP intends to file suit on behalf of Healthy Gulf in the United States District Court for the Eastern District of Louisiana pursuant to 33 U.S.C. § 1365(a)(1) and 33 U.S.C. § 1365(b)(1)(A) any time after 60 days from the postmarked date of this NOI. This lawsuit will seek to enjoin and abate the violations described above, ensure future

compliance with federal law, obtain civil penalties, recover attorneys' fees and costs of litigation, and obtain any other appropriate relief.

If you believe any of the facts described above are in error or have any information indicating that you are not violating and have not violated the CWA, or if you are interested in an early and prompt resolution of this matter, I urge you to contact me immediately.

Respectfully submitted,

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