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Office of the Regional Administrator

July 12, 2017

Via Certified Mail – Return Receipt Requested

Seneca Foods, LLC
Attn: Managing Agent
P.O. Box 357
Sunnyside, WA 98944

Seneca Foods, LLC
Attn: Managing Agent
1525 S. 4th Street
Sunnyside, WA 98944

Re: Notice of Intent to Sue under the Clean Water Act and Request for Copy of Stormwater Pollution Prevention Plan.

Dear Managing Agent,

This letter is submitted by Columbia Riverkeeper ("Riverkeeper"), 111 Third Avenue, Hood River, OR 97031. Any response or correspondence related to this letter should be directed to Brian Knutsen or Miles Johnson at the addresses provided at the end of this letter. This letter is to provide you with 60 days notice of Riverkeeper's intent to file a citizen suit against Seneca Foods, LLC ("Seneca Foods") under section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below. This letter is also a request for a copy of the complete and current stormwater pollution prevention plan ("SWPPP") required by Seneca Foods' National Pollutant Discharge Elimination System ("NPDES") permit.

Independent Foods, LLC, was granted coverage under the previous iteration of the Washington Industrial Stormwater General Permit ("ISGP") issued by the Washington Department of Ecology ("Ecology") on January 1, 2010, and modified on July 1, 2012 ("the 2010 Permit"), under NPDES Permit No. WAR011411. Seneca Foods acquired Independent Foods, LLC, and NPDES Permit No. WAR011411 was transferred to Seneca Foods in 2013. The 2010 Permit expired January 1, 2015. Subsequently, Ecology granted Seneca Foods coverage under the current Washington ISGP effective January 2, 2015, which is set to expire December 31, 2019, under the NPDES Permit No. WAR011411 ("the 2015 Permit").

Seneca Foods violated and continues to violate the 2010 Permit and the 2015 Permit (collectively "the Permits") with respect to operations of, and discharges of stormwater and pollutants from, its facility located at or near 1525 S. 4th Street, Sunnyside, Washington 98944 (hereinafter "the facility"). The facility subject to this notice includes any contiguous or adjacent properties owned, operated, or used by Seneca Foods.

I. Riverkeeper's Commitment to Protecting a Fishable and Swimmable Columbia River and its Tributaries.

Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. This includes the entire Columbia River watershed, including tributaries in the Yakima River sub-basin. Riverkeeper is a non-profit organization with members who live, recreate, and work throughout the Columbia River basin, including nearby and downstream of the Yakima River tributaries in Sunnyside, Washington, where Seneca Foods' facility discharges stormwater.

Threats facing the Columbia River are severe by any measure. *See* Environmental Protection Agency Region 10, *Columbia River Basin State of River Report for Toxics* (January 2009) (available online at: http://yosemite.epa.gov/r10/ecocomm.nsf/Columbia/SoRR/). In fact, the vast majority of rivers and streams in Washington fail to meet basic state water quality standards for pollutants such as toxics and temperature. *See State of Washington 303(d) List* (available online at: http://www.ecy.wa.gov/programs/wq/303d/ index.html). These standards are designed to protect designated uses, including aquatic life, fishing, swimming, and drinking water.

Stormwater runoff is "one of the great challenges of water pollution control" and "is a principal contributor to water quality impairment of waterbodies nationwide." *See* National Research Council, *Urban Stormwater Management in the United States* (Oct. 15, 2008) (available online at: http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf). When rain sends runoff across industrial facilities, city streets, and construction projects, the water picks up contaminants that drain into waterways such as the Yakima River and the Columbia River. These toxics accumulate in local fish, wildlife, and birds. To address this leading cause of water quality impairment, Riverkeeper invests significant time and resources in reducing pollutant loads from industrial, municipal, and construction stormwater sources.

This Notice of Intent to Sue Seneca Foods is part of Riverkeeper's efforts to improve water quality in the Columbia River basin for purposes including swimming, habitat quality, and subsistence, recreational, and commercial fishing. Riverkeeper has serious concerns about the impacts of Seneca Foods' operations and industrial stormwater discharges on the Yakima River and the Columbia River. As discussed below, Seneca Foods has consistently violated permit conditions and exceeded the Permits' benchmark pollutant discharge levels. Seneca Foods' operations and stormwater discharges contribute to degradation of water quality and aquatic life in the Yakima River sub-basin and, subsequently, the Columbia River and place at risk the health and well-being of those who use these waters.

II. Compliance with Standards.

A. Violation of Water Quality Standards.

Condition S10.A of the Permits prohibits discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA's and Washington's efforts to protect clean water. Water quality standards represent the U.S. Environmental Protection Agency's ("EPA") and Ecology's determination, based on scientific studies, of the thresholds at which pollution starts to cause significant adverse impacts on fish and other beneficial uses. Notably, Ecology determined that the tributary of the Yakima River into which Seneca Foods discharges industrial stormwater—Joint Drain 33.4 or DID #3—is not meeting water quality standards for dissolved oxygen, bacteria, and pH. *See* Ecology, *2015 Water Quality Atlas* (http://www.ecy.wa.gov/programs/wq/303d/currentassessmt.html).

A discharger must comply with both narrative and numeric water quality standards. WAC 173-201A-010; *see also* WAC 173-201A-510 ("No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria . . . ."). Narrative water quality standards provide legal mandates that supplement the numeric standards. Furthermore, narrative water quality standards apply with equal force, even when Ecology has established numeric water quality standards. Specifically, Condition S10.A of the Permits requires that Seneca Foods neither cause nor contribute to violations of Washington's water quality standards.

Seneca Foods discharges industrial stormwater into tributaries of the Yakima River directly and/or through a stormwater conveyance system. Seneca Foods discharges stormwater that contains elevated levels turbidity, zinc, copper, biological oxygen demand ("BOD"), and nitrate/nitrite as nitrogen. *See* Table 1, below. These discharges cause and/or contribute to violations of water quality standards for turbidity, zinc, copper, dissolved oxygen, pH, fecal coliform, and aesthetic criteria in the tributary of the Yakima River into which Seneca Foods discharges industrial stormwater—Joint Drain 33.4 or DID #3—and the Yakima River and Columbia River and have occurred each and every day during the last five years on which there was 0.1 inch or more of precipitation, and continue to occur. These water quality standards include those set forth in WAC 173-201A-200; -240; and -260(2).

TABLE 1 Monitoring Data Reported by Seneca Foods					
Monitoring Period	**Turbidity** (units: NTU) Benchmark: 25	**Zinc** (units: µg/L) Benchmark: 117	**Copper** (units: µg/L) Benchmark: 32	**Biological Oxygen Demand** (units: mg/L) Benchmark: 30	**Nitrate/Nitrite, as Nitrogen** (units: mg/L) Benchmark: 0.68
1Q 2010	**463.5** (**535** / **392**)	**752.5** (**515** / **990**)	**42** (**37.8** **46.2**)	**51.75** (**73.5** / 30)	0.285 (0.38 / 0.19)
2Q 2010					
3Q 2010					
4Q 2010					
1Q 2011					
2Q 2011	**393**	**2,920**	**92**	**1,050**	**1.43**
3Q 2011	**28.2**	**9,850**	29.5	**32.2**	**4.52**
4Q 2011	0.26	71	BD	BD	**12**
1Q 2012	0.14	91	6.8	BD	**12.2**
2Q 2012	0.97	**920**	BD	BD	**1.5**
3Q 2012					
4Q 2012	**>1,000**	**10,800**	**1,080**	**915**	BD
1Q 2013	0.78	**640**	BD	BD	**10.13**
2Q 2013	0.36	23.3	BD	BD	**13.1**
3Q 2013					
4Q 2013					
1Q 2014	2.97	**1,180**	2.9	BD	**5.58**
2Q 2014	3.3	**2,340**	4.25	4.8	**4.3**
3Q 2014	1.47	**655**	**61.5**	15.2	**5.15**
4Q 2014	**25.1** (3.03 / 0.48 / **71.8**)	**462.3** (**545** / **454** / **388**)	19.87 (2.12 / 2 / **55.5**)	**50.63** (7.9 / 2 / **142**)	**7.14** (**7.88** / **8.88** / **4.66**)
1Q 2015	2.03 (2.95 / 1.11)	**1,025** (**820** / **1,230**)	2 (2 / 2)	5.2 (8.4 / 2)	**7.53** (**5.28** / **9.78**)
2Q 2015	1.8	**750**	2.06	<2	**13.5**
3Q 2015					
4Q 2015	**286.2** (**353** / **498** / 7.61)	**2,124.3** (**4,700** / **1,500** / **133**)	**98.82** (**230** / **58.0** / 8.45)	**1,228.8** (**3,620** / **57.5** / 9.0)	**18.75** (**38.5** / **14.02** / **3.72**)
1Q 2016	**377.16** (**754** / 0.32)	**534.75** (**990** / 79.5)	29.25 (**56.5** / 2)	**196.5** (**390** / 3.0)	**5.65** (0 / **11.3**)
2Q 2016					
3Q 2016	**139**	**580**	22.7	**52.5**	**4.52**
4Q 2016	**500.51** (**1,000** / 1.02)	**1,194.75** (**2,320** / 69.5)	**36.745** (**71.5** / 1.99)	**190.45** (**375** / 5.9)	**10.09** (**14.37** / **5.81**)
1Q 2017	4.19	54.5	2.0	2.2	**5.7**
2Q 2017	**92.79** (7.58 / **178.0**)	91.45 (24.9 / **158.0**)	8.34 (2.68 / 14.0)	**37** (3.8 / **70.2**)	**12.48** (**12.7** / **12.26**)

Amounts exceeding the Permits' Benchmark limits are in bold.
"BD" stands for "Below Detection" and indicates that Seneca reported that the pollutant parameter was below the detection level for the analysis conducted.

B. Compliance with Permitting Standards.

Condition S10.C of the Permits requires Seneca Foods to apply all known and reasonable methods of pollution prevention, control, and treatment ("AKART") to all discharges, including preparing and implementing a SWPPP and best management practices ("BMP"). Seneca Foods violated and continues to violate these conditions by failing to apply AKART to its discharges by, among other things, failing to implement an adequate SWPPP and BMPs as evidenced by the elevated levels of pollutants in its discharge indicated in Table 1 above and as described below. These violations have occurred each and every day during the last five years and continue to occur every day.

Condition S1.A of the Permits requires that all discharges and activities be consistent with the terms and conditions of the permits. Seneca Foods violated this condition by discharging and acting inconsistent with the conditions of the Permits as described in this Notice of Intent to Sue.

III. Stormwater Pollution Prevention Violations.

The extensive violations of the Permits and the ongoing discharges of polluted industrial stormwater documented in the publically available records indicate that Seneca Foods is not fully implementing a SWPPP that includes adequate BMPs and that otherwise includes all of the required SWPPP components. Riverkeeper therefore provides notice based on information and belief that Seneca Foods has not developed and/or is not implementing a SWPPP that complies with the requirements of the Permits as described below. These violations have occurred on each and every day during the last five years and continue to occur every day.

Condition S3.A.1 of the Permits requires Seneca Foods to develop and implement a SWPPP as specified in these permits. Condition S3.A.2 of the Permits requires the SWPPP to specify the BMPs necessary to provide AKART and ensure that discharges do not cause or contribute to violations of water quality standards. On information and belief, Seneca Foods violated these requirements of the Permits by failing to prepare and/or implement a SWPPP that includes AKART BMPs and BMPs necessary to meet state water quality standards.

Condition S3.A of the Permits requires Seneca Foods to have and fully implement a SWPPP that is consistent with permit requirements and update the SWPPP as necessary to maintain compliance with permit conditions. On information and belief, Seneca Foods violated these requirements of the Permits because its SWPPP is not consistent with permit requirements, is not fully implemented, and has not been updated as necessary.

The SWPPP fails to satisfy the requirements of condition S3 because it does not adequately describe BMPs. Condition S3.B.4 of the Permits requires that the SWPPP include a description of the BMPs that are necessary for the facility to eliminate or reduce the potential to contaminate stormwater. Condition S3.A.3 of the Permits requires that the SWPPP include BMPs consistent with approved stormwater technical manuals or document how stormwater BMPs included in the SWPPP are demonstratively equivalent to the practices

contained in the approved stormwater technical manuals, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs. Seneca Foods' SWPPP does not comply with these requirements because it does not adequately describe BMPs, does not include BMPs consistent with approved stormwater technical manuals, does not include BMPs that are demonstrable equivalent to such BMPs with documentation of BMP adequacy, and/or fails to document any BMPs.

Seneca Foods' SWPPP fails to satisfy the requirements of Condition S3.B.2 of the Permits because it fails to include a facility assessment. The SWPPP fails to include an adequate facility assessment because it does not describe the industrial activities conducted at the site; the general layout of the facility, including buildings and storage of raw materials; the flow of goods and materials through the facility; the regular business hours; and the seasonal variations in business hours or in industrial activities.

Seneca Foods' SWPPP fails to satisfy the requirements of Condition S3.B.1 of the Permits because it does not include a site map that identifies significant features, the stormwater drainage and discharge structures, the stormwater drainage areas for each stormwater discharge point off-site, a unique identifying number for each discharge point, each sampling location with a unique identifying number, paved areas and buildings, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, surface water locations, areas of existing and potential soil erosion, vehicle maintenance areas, and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes.

Seneca Foods' SWPPP fails to comply with Condition S3.B.2.b of the Permits because it does not include an inventory of industrial activities that identifies all areas associated with industrial activities that have been, or may potentially be, sources of pollutants. The SWPPP does not identify all areas associated with: loading and unloading of dry bulk materials or liquids; outdoor storage of materials or products; outdoor manufacturing and processing; on-site dust or particulate-generating processes; on-site waste treatment, storage, or disposal; vehicle and equipment fueling, maintenance, and/or cleaning; roofs or other surfaces exposed to air emissions from a manufacturing building or a process area; and roofs or other surfaces composed of materials that may be mobilized by stormwater as required by these permit conditions.

Seneca Foods' SWPPP does not comply with Condition S3.B.2.c of the Permits because it does not include an adequate inventory of materials. Specifically, the SWPPP does not include: an inventory of materials that lists the types of materials handled at the site that potentially may be exposed to precipitation or runoff and that could result in stormwater pollution; a short narrative for each of the materials describing the potential for the pollutants to be present in stormwater discharge (which is updated when data becomes available to verify the presence or absence of the pollutants); a narrative description of any potential sources of pollutants from past activities or from materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater, as required. The SWPPP does not include the method and location of on-site storage or

disposal of such materials and a list of significant spills and significant leaks of toxic or hazardous pollutants, as these permit conditions require.

Seneca Foods' SWPPP does not comply with Condition S3.B.4.b.i of the Permits because it does not include adequate required operational source control BMPs in the following categories: good housekeeping (including defining ongoing maintenance and cleanup of areas that may contribute pollutants to stormwater discharges, and a schedule/frequency for each housekeeping task); preventive maintenance (including BMPs to inspect and maintain stormwater drainage, source controls, treatment systems, and plant equipment and systems, and the schedule/frequency for each task); spill prevention and emergency cleanup plan (including BMPs to prevent spills that can contaminate stormwater, material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs); employee training (including an overview of what is in the SWPPP, how employees make a difference in complying with the SWPPP, spill response procedures, good housekeeping, maintenance requirements, material management practices, how training will be conducted, the frequency/schedule of training, and a log of the dates on which specific employees received training); inspections and recordkeeping (including documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping, including identification of personnel who conduct inspections, provision of a tracking or follow-up procedure to ensure that a report is prepared and appropriate action taken in response to visual monitoring, definition of how Seneca Foods will comply with signature and record retention requirements, and certification of compliance with the SWPPP and Permit).

Seneca Foods' SWPPP does not comply with Condition S3.B.4.b.i.7 of the Permits because it does not include measures to identify and eliminate the discharge of process wastewater, domestic wastewater, noncontact cooling water, wash water, and other illicit discharges to stormwater sewers or to surface waters and ground waters of the state.

Seneca Foods' SWPPP does not comply with Condition S3.B.4.b.ii of the Permits because it does not include required structural source control BMPs to minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff. Seneca Foods' SWPPP does not comply with Condition S3.B.4.b.iii of the Permits because it does not include treatment BMPs as required.

Seneca Foods' SWPPP fails to comply with Condition S3.B.4.b.v of the Permits because it does not include BMPs to prevent the erosion of soils or other earthen materials and prevent off-site sedimentation and violations of water quality standards.

Seneca Foods' SWPPP fails to satisfy the requirements of Condition S3.B.5 of the Permits because it fails to include an adequate stormwater sampling plan. The SWPPP does not: include a sampling plan that identifies points of discharge to surface waters, storm sewers, or discrete ground water infiltration locations; document why each discharge point is not sampled; identify each sampling point by its unique identifying number; identify staff responsible for conducting stormwater sampling; specify procedures for sampling collection and handling; specify procedures for sending samples to the a laboratory; identify parameters

for analysis, holding times, preservatives, laboratory quantization levels, and analytical methods; or specify the procedure for submitting the results to Ecology.

Seneca Foods' SWPPP fails to satisfy the requirements of Condition S6.C and Table 5, footnote (h) of the 2010 Permit and the requirements of Condition S6.C and Table 6, footnote (i) of the 2015 Permit because it does not contain the required BMPs for facilities discharging into a segment of a waterway that is listed as impaired for fecal coliform bacteria on Washington's 303(d) list. Specifically, the SWPPP does not: use all known, available and reasonable methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility; require at least one annual dry weather inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections; require structural source control BMPs to address on-site activities and sources that could cause bacterial contamination (e.g., dumpsters, compost piles, food waste, and animal products); or require operational source control BMPs to prevent bacterial contamination from any known sources of fecal coliform bacteria (e.g., animal waste).

IV. Monitoring and Reporting Violations.

A. Failure to Collect Quarterly Samples.

Condition S4.B of the Permits requires Seneca Foods to collect a sample of its stormwater discharge once during every calendar quarter. Conditions S3.B.5.b and S4.B.2.c of the Permits require Seneca Foods to collect a stormwater sample at each distinct point of discharge offsite, except for substantially identical outfalls, in which case only one of the substantially identical outfalls must be sampled. These conditions set forth sample collection criteria, but require the collection of a sample even if the criteria cannot be met.

Seneca Foods violated these requirements by failing to collect stormwater samples at any of its discharge points during the following quarterly monitoring periods: the third quarter of 2012; the third and fourth quarters of 2013; the third quarter of 2015; and the second quarter of 2016.

Seneca Foods also violated and continues to violate these conditions because the facility discharges from distinct points of discharge that are not substantially identical to the outfall monitored by Seneca Foods from which Seneca Foods does not collect samples. These violations have occurred and continue to occur each and every quarter during the last five years that Seneca Foods was and is required to sample its stormwater discharges, including the quarters in which it collected stormwater discharge samples from some, but not all, points of discharge. These violations will continue until Seneca Foods commences monitoring all points of discharge that are not substantially identical.

B. Failure to Analyze Quarterly Samples.

Conditions S5.A and S5.B of the Permits require Seneca Foods to analyze all quarterly stormwater samples for turbidity, pH, oil sheen, total copper, total zinc, BOD, nitrate/nitrite as nitrogen, and total phosphorous. Additionally, Condition S6.C.1 and Table 5 of the 2010

Permit and Condition S6.C.1 and Table 6 of the 2015 Permit require Seneca Foods to analyze all quarterly stormwater samples for fecal coliform bacteria.

Seneca Foods violated these requirements by failing to analyze stormwater samples for any of the required parameters during the following quarterly monitoring periods: the third quarter of 2012; the third and fourth quarters of 2013; the third quarter of 2015; and the second quarter of 2016. Further, Seneca Foods violated these requirements by failing to analyze samples for fecal coliform bacteria each and every quarterly monitoring period during the past five years.

C. Failure to Comply with Visual Monitoring Requirements.

Condition S7.A of the Permits requires that monthly visual inspections be conducted at the facility by qualified personnel. Per Condition S7.B of the Permits, each inspection is to include: observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged; observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharges; observations for the presence of illicit discharges; a verification that the descriptions of potential pollutant sources required by the permit are accurate; a verification that the site map in the SWPPP reflects current conditions; and an assessment of all BMPs that have been implemented (noting the effectiveness of the BMPs inspected, the locations of BMPs that need maintenance, the reason maintenance is needed and a schedule for maintenance, and locations where additional or different BMPs are needed).

Condition S7.C of the Permits requires Seneca Foods to record the results of each inspection in an inspection report or checklist that is maintained on-site and that documents the observations, verifications, and assessments required by the Permits. The report/checklist must include: the time and date of the inspection; the locations inspected; a statement that, in the judgment of the person conducting the inspection and the responsible corporate officer, the facility is either in compliance or out of compliance with the SWPPP and the 2010 Permit or 2015 Permit (whichever applicable); a summary report and schedule of implementation of the remedial actions that Seneca Foods plans to take if the site inspection indicates that the facility is out of compliance; the name, title, signature, and certification of the person conducting the facility inspection; and a certification and signature of the responsible corporate officer or a duly authorized representative.

Seneca Foods is in violation of these requirements of Condition S7 of the Permits because, during the last five years, Seneca Foods has failed to conduct the requisite visual monitoring and inspections, failed to prepare and maintain the requisite inspection reports or checklists, and failed to make the requisite certifications and summaries each time these activities were required by the Permits.

V. Corrective Action Violations.

A. Violations of the Level One Requirements.

Condition S8.B of the Permits requires Seneca Foods to take specified actions, called a "Level One Corrective Action," each time quarterly stormwater sample results exceed a benchmark value or are outside the benchmark range for pH. Condition S8.A of the 2015 Permit requires Seneca Foods to implement any Level One Corrective Action required by the 2010 Permit.

For a Level One Corrective Action, Condition S8.B.1.a of the Permits requires Seneca Foods to "[c]onduct an inspection to investigate the cause" of the benchmark exceedance. Additionally, for a Level One Corrective Action, Condition S8.B of the Permits requires Seneca Foods to: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits and contains the correct BMPs from the applicable Stormwater Management Manual; (2) make appropriate revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark values in future discharges and sign and certify the revised SWPPP in accordance with the Permits; and (3) summarize the Level One Corrective Action in the Annual Report required under Condition S9.B of the Permits. Condition S8.B of the Permits requires Seneca Foods to implement the revised SWPPP as soon as possible, and no later than the DMR due date for the quarter the benchmark was exceeded.

Conditions S5.A and S5.B and Tables 2 and 3 of the Permits establish the following applicable benchmarks: turbidity 25 NTU; total copper 14 µg/L; total zinc 117 µg/L; BOD 30 mg/L; and nitrogen 0.68 mg/L.

Seneca Foods violated the Level One Corrective Action requirements of the Permits described above by failing to conduct a Level One Corrective Action in accordance with permit conditions, including the required investigation, the required review, revision, and certification of the SWPPP, the required implementation of additional BMPs, and the required summarization in the annual report each time in the past five years that quarterly stormwater sampling results were greater than a benchmark, including the benchmark excursions listed in Table 1 in Section II.A of this letter.

These benchmark excursions are based upon information currently available to Riverkeeper from Ecology's publicly available records. Riverkeeper provides notice of its intent to sue Seneca Foods for failing to comply with all of the Level One Corrective Action requirements described above each time during the last five years that quarterly stormwater sampling results were greater than a benchmark.

B. Violations of the Level Two Requirements.

Condition S8.C of the Permits requires Seneca Foods take specified actions, called a "Level Two Corrective Action," each time quarterly stormwater sample results exceed an applicable benchmark value for any two quarters during a calendar year. Condition S8.A of

the 2015 Permit requires that Seneca Foods implement any Level Two Corrective Action required by the 2010 Permit.

As described by Condition S8.C of the Permits, a Level Two Corrective Action requires Seneca Foods: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional structural source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and sign and certify the revised SWPPP in accordance with Condition S3 of the Permits; and (3) summarize the Level Two Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the Permits. Condition S8.C.4 of the Permits requires that Seneca Foods implement the revised SWPPP according to condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than August 31 of the following year.

The Permits establish the benchmarks applicable to Seneca Foods described in Section V.A of this notice of intent to sue letter.

Seneca Foods violated the requirements of the Permits described above by failing to conduct a Level Two Corrective Action in accordance with permit conditions—including the required review, revision, and certification of the SWPPP; the required implementation of additional BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge), including additional structural source control BMPs; and the required summarization in the annual report—each time since 2010 that Seneca Foods quarterly stormwater sampling results were greater than a benchmark for any two quarters during a calendar year. As indicated in Table 1 in Section II.A of this letter, these violations include, but are not limited to, Seneca Foods failure to fulfill these obligations triggered by: exceedances in 2011 for turbidity, zinc, and BOD; exceedances in 2012 for zinc and nitrogen; and exceedances in 2013 for nitrogen.

The benchmark excursions identified in Table 1 of this letter are based upon information currently available to Riverkeeper and from Ecology's publically available records. Riverkeeper provides notice of its intent to sue Seneca Foods for failing to comply with all of the Level Two Corrective Action requirements each and every time quarterly stormwater sample results exceeded an applicable benchmark value for any two quarters during a calendar year, including any such excursions that are not reflected in Table 1 above, since 2010.

Condition S8.C.4.e of the 2015 Permit states, "For the year following the calendar year the Permittee triggered a Level 2 Corrective Action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions." *See also 2010 Permit*, Condition S8.C.4.d (same). These Conditions do not waive Seneca Foods' duty to complete any Level Two Corrective Actions because Seneca Foods failed to develop and implement previously triggered Level Two Corrective Actions pursuant to Condition S8.C of the Permits.

C. Violations of the Level Three Requirements.

Condition S8.D of the Permits requires Seneca Foods take specified actions, called a "Level Three Corrective Action," each time quarterly stormwater sample results exceed an applicable benchmark value for any three quarters during a calendar year. Condition S8.A of the 2015 Permit requires that Seneca Foods implement any Level Three Corrective Action required by the 2010 Permit.

As described by Condition S8.D of the Permits, a Level Three Corrective Action requires Seneca Foods to: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and additional operational and/or structural source control BMPs if necessary for proper function and maintenance of treatment BMPs; and (3) summarize the Level Three Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the Permits, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.

Condition S8.D.2.b of the 2010 Permit requires that a licensed professional engineer, geologist, hydrogeologist, or certified professional in stormwater quality must design and stamp the portion of the SWPPP that addresses stormwater treatment structures or processes. Condition S8.D.3 of the 2010 Permit requires that, before installing BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, Seneca Foods submit an engineering report, plans, specifications, and an operations and maintenance manual to Ecology for review in accordance with chapter 173-204 of the Washington Administrative Code. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3 of the 2010 Permit requires that the plans and specifications and the operations and maintenance manual must be submitted to Ecology at least 30 days before construction/installation.

Condition S8.D.2.b of the 2015 Permit requires that a Qualified Industrial Stormwater Professional shall review the revised SWPPP, sign the SWPPP Certification Form, and certify that it is reasonably expected to meet the ISGP benchmarks upon implementation. Additionally, Condition S8.D.3 of the 2015 Permit requires that, before installing any BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, Seneca Foods submit an engineering report, certified by a licensed professional engineer, to Ecology for review. The report must contain: (1) a brief summary of the treatment alternatives considered and why the proposed option was selected, including cost estimates of ongoing operation and maintenance and disposal of any spent media; (2) the basic design data, including characterization of stormwater influent and sizing calculations for the treatment units; (3) a description of the treatment process and operation, including a flow diagram; (4) the amount and kind of chemicals used in the treatment process, if any; (5) the expected results from the treatment process including the predicted stormwater discharge characteristics; and (6) a statement,

expressing sound engineering justification—through the use of pilot plant data, results from similar installations, and/or scientific evidence—that the proposed treatment is reasonably expected to meet the permit benchmarks. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3.c of the 2015 Permit requires that an operations and maintenance manual must be submitted to Ecology at least 30 days after construction/installation of the treatment BMPs is complete.

Condition S8.D.5 of the Permits requires that Seneca Foods fully implement the revised SWPPP according to Condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than September 30 of the following year.

The Permits establish the benchmarks applicable to Seneca Foods described in Section V.A of this notice of intent to sue letter.

Seneca Foods violated the requirements of the Permits described above by failing to conduct a Level Three Corrective Action in accordance with applicable permit conditions—including the required review, revision and certification of the SWPPP, including the requirement to have a specified professional design and stamp the portion of the SWPPP pertaining to treatment; the required implementation of additional BMPs, including additional treatment BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge); the required submission of an engineering report, plans, specifications, and an operations and maintenance plan; and the required summarization in the annual report—each time since 2010 that Seneca Foods' quarterly stormwater sampling results were greater than a benchmark for any three quarters during a calendar year. As indicated in Table 1 in Section II.A of this letter, these violations include, but are not limited to, Seneca Foods' failure to fulfill these obligations triggered by: exceedances in 2011 for nitrogen; exceedances in 2014 for zinc and nitrogen; exceedances in 2015 for zinc and nitrogen; and exceedances in 2016 for zinc, turbidity, nitrogen and BOD.

The benchmark excursions identified in Table 1 are based upon information currently available to Riverkeeper from Ecology's publicly available records. Riverkeeper provides notice of its intent to sue Seneca Foods for failing to comply with all of the Level Three Corrective Action requirements each and every time quarterly stormwater sample results exceeded an applicable benchmark value for any three quarters during a calendar year, including any such excursions that are not discussed herein, since 2010.

Condition S8.D.5.e of the 2015 Permit states, "For the year following the calendar year the Permittee triggered a Level 3 Corrective Action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions." *See also 2010 Permit*, Condition S8.D.5.d (same). These Conditions do not waive Seneca Foods' duty to complete any Level Three Corrective Actions because Seneca Foods failed to develop and implement previously triggered Level Three Corrective Actions pursuant to Condition S8.D of the Permits.

VI. Violations of the Annual Report Requirements.

Condition S9.B of the Permits requires Seneca Foods to submit an accurate and complete annual report to Ecology no later than May 15 of each year. The annual report must include Corrective Action documentation as required in Condition S8.B – D of the Permits. If a Corrective Action is not yet completed at the time of submission of the annual report, Seneca Foods must describe the status of any outstanding Corrective Action. Each annual report must: (1) identify the conditions triggering the need for Corrective Action review; (2) describe the problem and identify the dates when the problem was discovered; (3) summarize any Level 1, 2, or 3 Corrective Actions completed during the previous calendar year and include the dates those Corrective Actions were completed; and (4) describe the status of any Level 2 or 3 Corrective Actions triggered during the previous calendar year and identify the date Seneca Foods expects to complete those Corrective Actions. Seneca Foods violated these permit requirements by failing to include all of the required information in each annual report that Seneca Foods submitted in the last five years, including but not limited to the following actions.

Seneca Foods' 2012 annual report (due May 15, 2013) does not contain required information for the Level Two Corrective Actions for zinc and nitrogen triggered in 2012. Further, the 2012 annual report does not contain required information for the Level Two Corrective Actions for turbidity, zinc, and BOD and for the Level Three Corrective Action for nitrogen that were triggered in 2011 (and which remained outstanding in 2012). Specifically, the 2012 annual report should have:

- Identified the conditions triggering Corrective Actions in 2012 for turbidity, nitrogen, copper, zinc, phosphorus, and BOD. Furthermore, as part of this requirement, it should have rectified inconsistencies between the annual report and the DMR results delivered to Ecology. (2010 Permit, Condition S9.B.3.a).
- Described the problem(s) that caused the turbidity, nitrogen, copper, zinc, phosphorus, and BOD exceedances and the dates on which they were discovered. (2010 Permit, Condition S9.B.3.b).
- Summarized the Level Two Corrective Actions for zinc and nitrogen planned or taken due to benchmark exceedances in 2012, including the dates on which these actions were or would be completed. (2010 Permit, Conditions S9.B.2-3, and S8.C.3).
- Described the implementation or status of the Level Two Corrective Actions for turbidity, zine, and BOD that were triggered in 2011 (2010 Permit, Conditions S8.C.4 and S9.B.3).
- Described the implementation or status of Level Three Corrective Action for nitrogen that was triggered in 2011 (2010 Permit, Conditions S8.D.4 and S9.B.3). The annual report should have also provided information on how monitoring, assessment, or evaluation was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed for Level Three Corrective Actions triggered. (2010 Permit, Condition S8.D.4).

Seneca Foods' 2013 annual report (due May 15, 2014) does not contain required information for the Level Two Corrective Action triggered for nitrogen in 2013. Further, the 2013 annual report does not contain required information for the Level Two Corrective Actions for zinc and nitrogen that were triggered in 2012 (and which remained outstanding in 2013). Specifically, the 2013 annual report should have:

- Identified the conditions triggering Corrective Actions in 2013 for zinc and nitrogen. (2010 Permit, condition S9.B.3.a).
- Described the problem(s) that caused the nitrogen and zinc exceedances and the dates on which they were discovered. (2010 Permit, Condition S9.B.3.b).
- Summarized the Level Two Corrective Actions for nitrogen planned or taken due to benchmark exceedances in 2013, including the dates on which these actions were or would be completed. (2010 Permit, Conditions S9.B.2-3, and S8.C.3).
- Described the implementation of all outstanding Corrective Actions.

Seneca Foods' 2014 annual report (due May 15, 2015) does not contain required information for the Level Three Corrective Actions triggered for nitrogen and zinc in 2014. Further, the 2014 annual report does not contain required information for the Level Two Corrective Action for nitrogen that was triggered in 2013 (and which remained outstanding in 2014). The annual report also does not include the required information for the Level One Corrective Actions triggered for BOD, turbidity, and copper in 2014. Specifically, the 2014 annual report should have:

- Identified the conditions triggering the Corrective Actions in 2014 for nitrogen, zinc, BOD, turbidity and copper (2015 Permit, Condition S9.B.3).
- Described the problem(s) that caused the exceedances for nitrogen, zinc, BOD, turbidity and copper and the dates on which they were discovered (2015 Permit, Condition S9.B.3).
- Summarized the Level Three Corrective Actions for zinc and nitrogen planned or taken due to benchmark exceedances in 2014, including the dates on which these actions were or would be completed. The annual report should have also provided information on how monitoring, assessment, or evaluation was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed for Level Three Corrective Actions triggered. (2015 Permit, Conditions S9.B.2-3, and S8.D.4). Instead, the annual report asserted for zinc: "No viable treatment BMPs available at this time." This is wholly inconsistent with Permit requirements. Notably, the permit prescribes procedures for a permittee seeking a waiver of treatment requirements where it is claimed that treatment is not feasible—those procedures require approval by Ecology of a Modification of Permit Coverage. *See* 2015 Permit, Condition S8.D.5b-c.
- Described the implementation or status of Level Two Corrective Action for nitrogen that was triggered in 2013 (2015 Permit, Conditions S8.C.3 and S9.B.3)

- Described the implementation of all outstanding corrective action requirements from previous years.

Seneca Foods' 2015 annual report (due May 15, 2016) does not contain required information for the Level Three Corrective Actions triggered for nitrogen and zinc in 2015. Further, the 2015 annual report does not contain required information for the Level Three Corrective Actions for zinc and nitrogen that were triggered in 2014 (and which remained outstanding in 2015). The annual report also does not contain required information for the Level One Corrective Actions triggered for turbidity, copper, and BOD in 2015. The 2015 annual report should have:

- Identified the conditions triggering the Corrective Actions in 2015 for turbidity, zinc, copper, BOD, and nitrogen (2015 Permit, Condition S9.B.3).
- Described the problem(s) that caused the exceedances of turbidity, zinc, copper, BOD, and nitrogen in 2015 and the dates on which they were discovered (2015 Permit, Condition S9.B.3).
- Summarized the Level Three Corrective Actions for zinc and nitrogen planned or taken due to benchmark exceedances in 2015, including the dates on which these actions were or would be completed. The annual report should have also provided information on how monitoring, assessment, or evaluation was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed for Level Three Corrective Actions triggered. (2015 Permit, Conditions S9.B.2-3, and S8.D.4). Instead, the annual report asserted for zinc: "No viable treatment BMPs available at this time." This is wholly inconsistent with Permit requirements. Notably, the permit prescribes procedures for a permittee seeking a waiver of treatment requirements where it is claimed that treatment is not feasible—those procedures require approval by Ecology of a Modification of Permit Coverage. *See* 2015 Permit, Condition S8.D.5b-c.
- Described the implementation or status of Level Three Corrective Actions for zinc and nitrogen that were triggered in 2014 (2015 Permit, Conditions S8.D.4 and S9.B.3).
- Described the implementation of all outstanding corrective action requirements from previous years.

Seneca Foods' 2016 annual report (due May 15, 2017) does not contain required information for the Level Three Corrective Actions triggered for turbidity, zinc, BOD, and nitrogen in 2016. Further, the report does not contain required information for the Level Three Corrective Actions for zinc and nitrogen that were triggered in 2015 (and which remained outstanding in 2016). The annual report also does not include required information for the Level One Corrective Action triggered in 2016 for copper. Specifically, none of the implementation requirements for Level Three Corrective Actions were ever completed, as is evident from the lack of documentation and continued benchmark exceedances. The 2016 annual report should have:

- Identified the conditions triggering the Corrective Actions in 2016 for turbidity, zinc, copper, BOD, and nitrogen (2015 Permit, Condition S9.B.3).
- Described the problem(s) that caused the exceedances for turbidity, zinc, copper, BOD, and nitrogen and the dates on which they were discovered. (2015 Permit, Condition S9.B.3.b).
- Summarized the Level Three Corrective Actions for turbidity, zinc, BOD, and nitrogen planned or taken due to benchmark exceedances in 2016, including the dates on which these actions were or would be completed. The annual report should have also provided information on how monitoring, assessment, or evaluation was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed for Level Three Corrective Actions triggered. (2015 Permit, Conditions S9.B.2-3, and S8.D.4). Instead, the annual report asserted for zinc and nitrogen that there are no viable treatment BMPs available. This is wholly inconsistent with Permit requirements. Notably, the permit prescribes procedures for a permittee seeking a waiver of treatment requirements where it is claimed that treatment is not feasible—those procedures require approval by Ecology of a Modification of Permit Coverage. *See* 2015 Permit, Condition S8.D.5b-c.
- Described the implementation or status of Level Three Corrective Actions for zinc and nitrogen that were triggered in 2015 (2015 Permit, Conditions S8.D.4 and S9.B.3).
- Described the implementation of all outstanding corrective action requirements from previous years.

VII. Violations of the Recordkeeping Requirements.

A. Failure to Record Information

Condition S4.B.3 of the 2010 Permit requires Seneca Foods to record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if Seneca Foods collected the sample within the first 30 minutes of stormwater discharge event, an explanation of why Seneca Foods could not collect a sample within the first 30 minutes of a stormwater discharge event, the sample location, method of sampling and preservation, and the individual performing the sampling. Condition S4.B.3 of the 2015 Permit requires Seneca Foods to record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if Seneca Foods collected the sample within the first 12 hours of a stormwater discharge event, an explanation of why Seneca Foods could not collect a sample within the first 12 hours of a stormwater discharge event, the sample location, method of sampling and preservation, the individual performing the sampling, and the weather conditions. Upon information and belief, Seneca Foods violated and violates these conditions because it failed to record each of these specified items for each sample taken during the last five years.

B. Failure to Retain Records

Condition S9.C of the Permits requires Seneca Foods to retain, for a minimum of five years, a copy of the Permits, a copy of Seneca Foods' coverage letter, records of all sampling information, inspection reports including required documentation, any other documentation of compliance with permit requirements, all equipment calibration records, all BMP maintenance records, all original recordings for continuous sampling instrumentation, copies of all laboratory results, copies of all required reports, and records of all data used to complete the application for the 2015 Permit. Upon information and belief, Seneca Foods is in violation of these conditions because it has failed to retain records of such information, reports, and other documentation during the last five years.

VIII. Request for SWPPP

Pursuant to Condition S9.F of the 2015 Permit, Riverkeeper hereby requests that Seneca Foods provide a copy of, or access to, its SWPPP complete with all incorporated plans, monitoring reports, checklists, and training and inspection logs.

Should Seneca Foods fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the 2015 Permit, it will be in violation of that condition, which violation shall also be subject to this notice of intent to sue and any ensuing lawsuit.

IX. Party Giving Notice of Intent to Sue.

The full name, address, and telephone number of the party giving notice is:

Columbia Riverkeeper
111 Third St.
Hood River, OR 97031
(541) 387-3030

X. Attorney's Representing Riverkeeper

The attorneys representing Riverkeeper in this matter are:

Miles Johnson
Columbia Riverkeeper
111 Third St.
Hood River, OR 97031
(541) 490-0487

Brian A. Knutsen
Kampmeier & Knutsen, PLLC
833 S.E. Main Street, No. 318
Portland, OR 97214
(503) 841-6515

XI. Conclusion

The above-described violations reflect those indicated by the information currently available to Riverkeeper. These violations are ongoing. Riverkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the Clean Water Act, 33 USC § 1319(d), each of the above-described violations subjects Seneca Foods to a penalty of up to $37,500 per day. In addition to civil penalties, Riverkeeper will seek injunctive relief to prevent further Clean Water Act violations under Sections 505(a) and (d) of the Clean Water Act, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the Clean Water Act, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Riverkeeper believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. Riverkeeper intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Seneca Foods under Section 505(a) of the Clean Water Act.

Riverkeeper is willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if settlement discussions are ongoing when the notice period ends.

Very truly yours,

Brian A. Knutsen

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am co-counsel for Columbia Riverkeeper and that on July 12, 2017, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act and Request for Copy of Stormwater Pollution Prevention Plan to be served on the following by depositing them with the U.S. Postal Service, postage prepaid, via certified mail, return receipt requested:

Seneca Foods, LLC
Attn: Managing Agent
P.O. Box 357
Sunnyside, WA 98944

Seneca Foods, LLC
Attn: Managing Agent
1525 S. 4th Street
Sunnyside, WA 98944

Administrator Scott Pruitt
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Acting Regional Administrator Michelle Pirzadeh
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code: RA-210
Seattle, WA 98101

Director Maia D. Bellon
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Gary Stapleton
Registered Agent for Seneca Foods, LLC
1525 S. 4th St.
Sunnyside, WA 98944

Brian A. Knutsen