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July 8, 2020

Via Certified Mail/Return Receipt Requested

Plant Manager
IMACC Corporation
2303 Dalton Industrial Court
Dalton, Georgia 30721

CT Corporation System
Registered Agent – IMACC Corporation
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Lawrenceville, Georgia 30046-4805

Richard E. Dunn, Director
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Environmental Protection Division
2 Martin Luther King Jr. Drive, SE
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James A. Capp, Chief
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Ms. Mary S. Walker
Regional Administrator
US EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

Mr. Andrew Wheeler, Administrator
Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: <u>Notice of Intent to File Citizen Suit Pursuant to the Federal Clean Water Act</u>

Ladies and Gentlemen:

The purpose of this letter is to notify IMACC Corporation,[1] owner and operator of an industrial plastic recycling and reconditioning facility located at 2303 Dalton Industrial Court, Dalton, Georgia, 30721 (hereinafter "IMACC"), that Mr. Jarrod Johnson intends to file suit in sixty (60) days under 33 U.S.C. § 1365(a)(1) of the Federal Clean Water Act ("CWA") in Federal District Court against IMACC for violations of the CWA arising out of the operation of its Dalton facility and its associated discharges of per- and polyfluoroalkyl substances ("PFAS") to the City of Dalton, Georgia's sewerage system, operated by Dalton Utilities and consisting of three (3) Water Pollution Control Plants ("WPCPs") that discharge into the Riverbend Land Application System ("LAS") (collectively "Dalton POTW"). Specifically, IMACC's discharges of PFAS into

[1] This Notice of Intent ("NOI") was previously mailed on June 25, 2020, to all entities receiving this mailing. However, it is being resent due to a clerical error, specifically the original NOI being addressed to "IMAAC Corporation" instead of "IMACC Corporation." While the undersigned believe the original NOI was sufficient for purposes of the CWA, the NOI is being resent out of an abundance of caution correcting the above-referenced clerical error.

the Dalton POTW constitute prohibited discharges that violate the national pretreatment standards promulgated under Section 307 of the CWA, 33 U.S.C. § 1317, Dalton Utilities' Sewer Use Rules and Regulations ("SURR"), and the Georgia Water Quality Control Act, as these discharges cause Pass Through as they are not susceptible to treatment by the Dalton POTW and are discharged from the LAS into waters of the State of Georgia and the United States contaminating those waters with PFAS.

This letter also provides the required notice to the Environmental Protection Agency and the Georgia Department of Natural Resources. As required by 40 C.F.R. § 135.3(a), Mr. Johnson's address and telephone number are:

(b) (6)

However, Mr. Johnson should only be contacted through his legal counsel:

Gary A. Davis James S. Whitlock DAVIS & WHITLOCK, P.C.[2] 21 Battery Park Avenue, Suite 206 Asheville, NC 28801	F. Jerome Tapley Ryan Lutz Brett Thompson Cory Watson, P.C. 2131 Magnolia Avenue South Birmingham, AL 35205	Ryals D. Stone William S. Stone Stone Law Group, Trial Lawyers LLC 589 College St. Blakely, GA 39823

Mr. Johnson is an owner and occupant of real property in Rome, Floyd County, Georgia, and receives his domestic water supply from the City of Rome Water and Sewer Division ("RWSD" or "City of Rome"). He has a particular interest in protecting the water quality of the Conasauga River and its tributaries in and around, and downstream from, Dalton Utilities' LAS, as well as the downstream Oostanaula River. The LAS borders the Conasauga River, which then flows into the Oostanaula River, the source of the primary water intake for the RWSD. The illegal discharges by Shaw addressed herein have contaminated both the Conasauga River and the Oostanaula River, as well as the City of Rome's drinking water supply, with toxic chemicals known collectively as PFAS. As a result, Mr. Johnson has suffered and continues to suffer concrete and particularized injuries that are redressable in a CWA citizen suit.

BACKGROUND

Dalton Utilities

The City of Dalton is known as the carpet capital of the world and contains over 150 carpet manufacturing plants and 100 outlet stores, accounting for approximately 80% of the carpet manufactured and sold worldwide. The Water, Light, and Sinking Fund Commission of the City of Dalton, Georgia, governs the operations of Dalton Utilities, which operates the Riverbend, Loopers Bend, and Abutment Road Water Pollution Control Plants ("WPCPs") as well as the

[2] Applications for admission *Pro Hac Vice* pending in *Johnson v. 3M Company, et al,* Civil No. 4:20-cv-0008 AT (N.D. Ga.).

Riverbend LAS ("Dalton POTW").[3] After collection/treatment of wastewater at these WPCPs, the wastewater effluent is applied to the approximate 9,800 acre LAS using approximately 19,000 sprayheads. The treatment technology utilized by these mechanical preapplication WPCPs cannot remove PFAS from the wastewater prior to application of this effluent to the LAS, and IMACC is fully aware of this fact.

Dalton Utilities' wastewater collection and disposal system is a "no discharge" system, the operation of which is governed by the terms and conditions of Land Application Permit No. GAJ020056 ("LAS Permit"). The LAS Permit authorizes Dalton Utilities to administer its approved pretreatment program, and further to discharge up to 30 million gallons per day ("MGD") of wastewater effluent to the LAS; however, among other things, the LAS Permit expressly prohibits <u>any</u> discharge from the LAS to surface waters.

Per- and Polyfluoroalkyl Substances ("PFAS")

PFAS are a group of toxic man-made chemicals not found naturally in the environment. Because of their strong carbon-fluorine bonds, PFAS are extremely stable, repel water and oil, and are resistant to heat and chemical reactions. These properties have made these chemicals particularly useful in many industrial and commercial applications, including surface protection products used in the manufacturing of carpets. However, these same properties also make PFAS an environmental hazard in that they are extremely mobile and persistent in the environment, will leach from soil to groundwater, and past contamination will remain for a long time and not breakdown. Further, PFAS resist degradation during the treatment process at Dalton Utilities' WPCPs, and in fact increase in concentration as these chemicals accumulate in and are discharged from the LAS into groundwater and surface waters.

PFAS are also toxic and known to be harmful to human health. As these chemicals are highly mobile and water soluble, groundwater and surface water are particularly vulnerable to contamination, and a main source of human exposure to PFAS is through ingestion of contaminated drinking water. As reflected by recent governmental and other comprehensive reviews and assessments,[4] the clear weight of the epidemiological, toxicological, and other evidence demonstrates that human exposure to PFAS through ingestion of contaminated drinking water can cause an array of serious health effects. The human diseases caused by exposure to PFAS include certain cancers, immunotoxicity, thyroid disease, liver disease, high cholesterol, pregnancy-induced hypertension, and ulcerative colitis. Indeed, long-term ingestion of even low levels of PFAS in drinking water, including below regulatory limits, can result in exposures substantially higher than those of the general population and result in adverse health effects.

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[3] According to the Environmental Protection Agency ("EPA"), approximately 90% of the wastewater which enters these treatment facilities for disposal at the LAS originates from industrial sources, primarily carpet manufacturers. EPA, *Region 4 Enforcement and Compliance Assurance Accomplishments Report*, FY 2001; EPA, *Fact Sheet: Perfluorochemical (PFC) Contamination of Compost from Dalton Utilities, Dalton, Georgia,* Oct. 2010.

[4] *See, e.g.,* United States Environmental Protection Agency ("EPA"), *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, May 2016; EPA, *Drinking Water Health Advisory for Perfluorooctane Sulfonate Acid (PFOS)*, May 2016; US Department of Health and Human Services, National Toxicology Program, *Systematic Review of Immunotoxicity Associated with Exposure to PFOA or PFOS*, June 6, 2016; US Department of Health and Human Services, Agency For Toxic Substances and Disease Registry, *Draft Toxicological Profile for Perfluoroalkyls*, June 2018.

VIOLATIONS OF THE CLEAN WATER ACT

I. NATIONAL PRETREATMENT STANDARDS/PROHIBITED DISCHARGES

IMACC has violated, and continues to violate, the national pretreatment standards promulgated under Section 307 of the CWA, 33 U.S.C. 1317, by discharging PFAS from its Dalton facility into the Dalton sewerage system. 40 C.F.R. § 305(a)(1) provides, in pertinent part, that a "User shall not introduce into a POTW any pollutant(s) which cause Pass Through or Interference." "Pass Through" is defined as a discharge which:

> exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

40 C.F.R. § 403.3(p); *see also* GA. COMP. R. & REGS. § 391-3-6-08(2)(n). As discussed *supra,* the treatment technology utilized by the Dalton POTW cannot remove PFAS from the wastewater prior to its application at the LAS. Thus, IMACC's prohibited discharges of PFAS into the Dalton POTW have been and continue to be discharged to waters of the State and waters of the United States, including the Conasauga River and/or tributaries thereto, resulting in violations of the LAS Permit.[5]

On at least the following date(s), as evidenced by sampling of IMACC's industrial discharge to the Dalton POTW, IMACC discharged PFAS into the Dalton POTW in violation of the national pretreatment standards, Georgia law, and the CWA:

- July 7, 2016: PFBA, PFPA, PFHpA, PFOA, PFHxA

IMACC continues to utilize PFAS in its manufacturing processes in Dalton; therefore, these illegal and prohibited discharges of PFAS into the Dalton POTW are ongoing and likely to recur.

II. DALTON UTILTIIES SEWER USE RULES AND REGULATIONS

The Water, Light and Sinking Fund Commission of the City of Dalton has enacted the SURR to incorporate federal and state pretreatment standards for discharges of industrial wastes into the Dalton POTW, so that Dalton Utilities can "comply with all State and Federal laws, including the Clean Water Act, the General Pretreatment Regulations, the Georgia Water Quality

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[5] In fact, the United States Environmental Protection Agency ("EPA") has determined that a "significant amount" of the effluent sprayed onto the LAS "leaves the [LAS] via surface waters and enters the Conasauga River." EPA, *Region 4 Enforcement and Compliance Report,* FY 2001.

Control Act, and Georgia Department of Natural Resources Rules." SURR, at § 1.1; *see also* GA. COMP. R. & REGS. § 391-3-6-0(9)(a).

Section 2.4.1 of the SURR ("General Prohibitions") provides that "No User shall contribute or cause to be contributed directly or indirectly to the POTW any Pollutant or Wastewater that causes Pass Through or Interference." Section 1.4 of the SURR defines "Pass Through" as:

> A discharge that exits any point from the Wastewater Treatment Plants into the waters of the State of Georgia containing quantities or concentrations, which, alone or in conjunction with a discharge or discharges from other sources, are a cause of a violation of any requirement of Dalton Utilities' LAS Permit including an increase in the magnitude or duration of a violation.

On at least the date(s) specified in Section I of this Notice, *supra,* IMACC has violated Section 2.4.1 of the SURR, the CWA and Georgia law by discharging PFAS into the Dalton POTW, where these chemicals Pass Through and are discharged into waters of the State and the United States, including the Conasauga River and/or tributaries thereto. As IMACC continues to utilize PFAS at its Dalton facility, these illegal and prohibited discharges of PFAS into the Dalton POTW are ongoing and likely to recur.

III. THE GEORGIA WATER QUALITY CONTROL ACT

Pursuant to the Georgia Water Quality Control Act, O.C.G.A. § 12-5-30, *et seq.* ("GWQCA"), it is the declared policy of the State of Georgia that:

> that the water resources of the state shall be utilized prudently for the maximum benefit of the people, in order to restore and maintain a reasonable degree of purity in the waters of the state and an adequate supply of such waters, and to require where necessary reasonable usage of the waters of the state and reasonable treatment of sewage, industrial wastes, and other wastes prior to their discharge into such waters.

O.C.G.A. §12-5-21(a). To effectuate this policy, the GWQCA provides, *inter alia*:

> Whenever any substance which would endanger the health or property of downstream users of the waters of this state is discharged into such waters, it shall be the duty of any person in charge of such substance to immediately notify the division of the location and nature of the discharge and to immediately take all reasonable steps to prevent injury to the health or property of such downstream users.

O.C.G.A. § 12-5-30.4(a); *see also* O.C.G.A. § 12-5-29(a) ("It shall be unlawful to use any waters of the state for disposal of sewage, industrial wastes, or other wastes ....).

As discussed above, IMACC is aware that Dalton Utilities cannot remove PFAS during its treatment process prior to application of wastewater effluent at the LAS, and thus knows that its

prohibited discharges of PFAS to the Dalton POTW will Pass Through and be discharged to the Conasauga River and/or its tributaries. As a result, since at least June of 2015, IMACC has violated and continues to violate the GWQCA, O.C.G.A. § 12-5-30.4(a) and § 12-5-29(a), and the CWA, by using waters of the State for disposal of industrial wastes and failing to notify the division of these PFAS discharges or to immediately take all reasonable steps to prevent injury to the health or property of downstream users.

CONCLUSION

Thank you for your prompt attention to the ongoing, serious violations of federal law and permitting requirements. Please be advised that Mr. Johnson, at the expiration of sixty (60) days from the date of this letter, intends to file a citizen suit against IMACC under Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), for the violations set forth above. In addition to the violations explicitly set forth herein, this Notice covers all CWA violations of the same type evidenced by information which becomes available after the date of this Notice. Pursuant to the CWA, we will seek civil penalties for the violations of up to $55,800 per day, attorney's fees and costs, as well as an injunction against continued violations.

Any and all communication related to this matter should be directed to Gary A. Davis and James S. Whitlock, attorneys for Mr. Johnson, at the address and telephone number listed at the top of this letter.

Respectfully,

James S. Whitlock

cc: William P. Barr
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Co-Counsel (*via email*)