UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 3 0 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Darrell Monk, Plant Manager
Norlite, LLC
628 South Saratoga Street
P.O. Box 684
Cohoes, NY 12047

Re: **COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**
In the matter of: Norlite, LLC - Docket No. CAA-02-2020-1004

Dear Mr. Monk,

Enclosed is a copy of the above-referenced Complaint and Notice of Opportunity to Request a Hearing (Complaint) issued to Norlite, LLC (Norlite), pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d). The Complaint alleges violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) general provisions set forth in 40 C.F.R. Part 63 Subpart A, and the NESHAP for Hazardous Air Pollutants from Hazardous Waste Combustors (HWC) set forth in 40 C.F.R. Part 63 Subpart EEE, at Norlite's shale aggregate production facility located in Cohoes, New York. The total amount of the penalty proposed by the Complaint is $326,278.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22, and as stated in the section of the Complaint entitled "Notice of Opportunity to Request a Hearing," if you wish to contest any of the allegations in the Complaint or the amount of the proposed penalty, you must file a written Answer to the Complaint within thirty (30) days of receipt, as established by the Certified Mail Return Receipt, or you may lose the opportunity for a hearing and EPA may file a motion for default judgment. If such a motion were to be granted, the penalty proposed in the Complaint would become due and payable thirty (30) days after the effective date of a Final Order. A copy of the Consolidated Rules of Practice is enclosed for reference.

If you have any question, please contact EPA's attorney for this matter, Christopher Saporita, who can be reached at (212) 637-3203 or by email at saporita.chris@epa.gov.

Sincerely,

Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Michael Cronin
Director, Bureau of Stationary Sources
Division of Air Resources
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3254

Donald Spencer
Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation, Region 4
1150 North Westcott Rd.
Schenectady, NY 12306

Kevin M. Young, Esq.
Young Sommer LLC
Executive Woods
Five Palisades Drive
Albany, NY 12205

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re: Norlite, LLC, **Respondent** In a proceeding under Section 113(d) of the Clean Air Act	**COMPLAINT** **and** **NOTICE OF OPPORTUNITY** **TO REQUEST A HEARING** CAA-02-2020-1004

PRELIMINARY STATEMENT

The United States Environmental Protection Agency issues this Complaint and Notice of Opportunity for Hearing (Complaint) under the authority of Section 113(d), 42 U.S.C. § 7413(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice, CROP). The Complainant in this matter is the Director of the Enforcement and Compliance Assurance Division (ECAD), EPA Region 2. Complainant is delegated, on behalf of Region 2, the authority to issue administrative Complaints under Section 113(d) of the CAA for violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

Section 113(d) of the Act authorizes EPA to bring an administrative penalty action in a matter involving a violation that occurred more than twelve months prior to the initiation of an action where the Administrator and the Attorney General, through their respective delegates, jointly determine that such an action is appropriate. On October 15, 2018, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the time limitation provided in Section 113(d) of the Act.

In this Complaint, the ECAD Director finds that Respondent's, Norlite LLC, facility located at 628 South Saratoga St, Cohoes, New York is subject to and has violated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories set forth in 40 C.F.R. Part 63 Subpart A, and the NESHAP for Hazardous Air Pollutants from Hazardous Waste Combustors set forth in 40 C.F.R. Part 63 Subpart EEE.

Pursuant to Sections 113(d) and (e) of the CAA, the Clean Air Act Stationary Source Civil Penalty Policy (CAA Penalty Policy), and the Debt Collection Improvement Act (DCIA) of 1996, EPA proposes a civil administrative penalty of $326,278.

STATUTORY, REGULATORY, and PERMITTING BACKGROUND

EPA Authority to Impose Civil Penalties for CAA Violations

1. Section 113(d) of the Act authorizes the EPA Administrator to issue an Order assessing civil administrative penalties against any "person" that has violated or is violating any requirement or prohibition of Subchapters I, III, IV-A, V, or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit, or plan promulgated pursuant to any of those Subchapters, including but not limited to any regulation promulgated pursuant to Sections 111, 112, and 114 of the Act.

2. Section 302(e) of the Act provides that the term "person" within the Act includes any individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

3. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to Complainant, Director of ECAD, through the Region 2 Regional Administrator, the authority to make findings of violations and issue CAA

Section 113 administrative penalty complaints for CAA violations that occur in the State of New York, State of New Jersey, Commonwealth of Puerto Rico, and Territory of the U.S. Virgin Islands.

CAA Section 112- Hazardous Air Pollutants

4. Section 112 of the CAA requires the EPA Administrator to: (i) publish a list of Hazardous Air Pollutants (HAPs), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each category and subcategory.

5. Section 112(i)(3)(A) of the CAA, inter alia, prohibits operating a source in violation of any emission standard, limitation, or regulation issued pursuant to Section 112.

6. Section 112(a) of the CAA contains definitions relevant to Section 112. Specifically:

   a. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

   b. Section 112(a)(3) of the Act defines "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant.

   c. Section 112(a)(6) of the Act defines "hazardous air pollutant" as any air pollutant listed pursuant to Section 112(b) of the Act.

   d. Section 112(a)(9) defines "owner or operator" as any "person" who owns, leases, operates, controls or supervises a stationary source.

Part 63 Subpart EEE- National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors

7. Emission standards promulgated pursuant to Section 112 are commonly known as NESHAPs. NESHAPs promulgated under the 1990 Amendments to the CAA are set forth in 40 C.F.R. Part 63. The NESHAPs established under Part 63 are also referred to as MACT standards

because Section 112(d) of the 1990 Amendments to the CAA requires EPA to promulgate emissions standards based on the maximum achievable control technology (MACT).

8. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated a general NESHAP (NESHAP Subpart A), which applies to all sources that are subject to NESHAP/MACT regulations in 40 C.F.R. Part 63. 40 C.F.R. §§ 63.1-63.16.

9. Under NESHAP Subpart A, each relevant NESHAP/MACT must identify which NESHAP Subpart A regulations apply to the sources covered by that NESHAP/MACT. 40 C.F.R. § 63.1(a)(4)(i).

10. 40 C.F.R. Part 63 applies to the owner or operator of a stationary source that: (i) emits or has the potential to emit any HAP listed in or pursuant to CAA Section 112(b) and is (ii) subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to 40 C.F.R. Part 63.1(b).

11. Pursuant to 40 C.F.R. § 63.2, NESHAP Subpart A sets forth definitions that apply to other NESHAP/MACT regulations, including Subpart EEE.

12. 40 C.F.R. § 63.2 sets forth definitions relevant to the instant matter, including:

a. An "affected source" is a stationary source, a group of stationary sources, or a portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to Section 112 of the Act.

b. An "area source" means any stationary source of hazardous air pollutants that is not a major source as defined in Part 63.

c. A "major source" is any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants.

d. An "owner or operator" is any person who owns, leases, operates, controls, or supervises a stationary source.

13. If a relevant standard has been established under 40 C.F.R. Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the Part 63 General Provisions, as provided in 40 C.F.R. §§ 63.1(a)(4) and 63.1(c)(1).

14. On September 30, 1999, pursuant to Sections 112 and 113 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (hereinafter "Subpart EEE" or "Hazardous Waste Combustor MACT"). 64 *Fed. Reg.* 53038 (Sep. 30, 1999).

15. 40 C.F.R. Part 63, Subpart EEE establishes emission standards for HAPs applicable to all hazardous waste combustors, including both area and major sources. 40. C.F.R. § 63.1200(a)(1).

16. Pursuant to 40 C.F.R. § 63.1206(b)(1), emissions standards and operating requirements promulgated in Subpart EEE apply at all times except during periods of startup, shutdown, malfunction, and when hazardous waste is not in the combustion chamber.

17. 40 C.F.R. § 63.1201 sets forth definitions applicable to Subpart EEE including, as relevant here:

a. *Continuous monitor* means a device which continuously samples the regulated parameter specified in § 63.1209, evaluates the detector response, and computes and records the average value at least every 60 seconds, except during allowable periods of calibration and except as defined otherwise by the CEMS Performance Specifications in appendix B, part 60.

b. *Hazardous waste combustor* means a hazardous waste incinerator, hazardous waste burning cement kiln, hazardous waste burning lightweight aggregate kiln, hazardous waste liquid fuel boiler, hazardous waste solid fuel boiler, or hazardous waste hydrochloric acid production furnace.

c. *Hazardous waste lightweight aggregate kiln* means a rotary kiln that produces clinker by heating materials such as slate, shale and clay for subsequent production of lightweight aggregate used in commerce, and that burns hazardous waste at any time.

d. *Operating requirements* means operating terms or conditions, limits, or operating parameter limits developed under this subpart that ensure compliance with the emission standards.

18. Pursuant to 40 C.F.R. § 63.1207(b)(1), sources must conduct comprehensive performance tests (CPTs) on each hazardous waste combustor to demonstrate compliance with the emission standards established by the Hazardous Waste Combustor MACT, establish limits for the operating parameters provided by 40 C.F.R. § 1209, and demonstrate compliance with the performance specifications for continuous monitoring systems.

19. Pursuant to 40 C.F.R. § 1207(j)(1)(i), within 90 days of completion of a CPT, sources must postmark a Notification of Compliance (NOC) documenting compliance with the emission standards and continuous monitoring system requirements and identifying operating parameter limits (OPLs) under 40 C.F.R. § 63.1209.

20. Pursuant to 40 C.F.R. § 1207(j)(1)(ii), sources must comply with all operating requirements specified in the NOC beginning on the date the NOC is postmarked.

21. 40 C.F.R. § 63.1209 sets forth requirements for both Continuous Emissions Monitoring Systems (CEMS) and other Continuous Monitoring Systems (CMS). Both monitoring systems are used to document compliance with applicable OPLs.

22. 40 C.F.R. § 63.1209 also sets forth requirements for calculating rolling averages for both CEMS and CMS.

23. Pursuant to 40 C.F.R. § 63.1209(k)(1)(ii), sources must comply with the dioxin and furans emission standard by complying with OPLs established during the CPT, unless the limits are based on manufacturer specifications. For lightweight aggregate kilns burning hazardous waste, sources must establish an OPL for the maximum temperature of the gas at the exit of the (last) combustion chamber (or exit of any waste heat recovery system) on an hourly rolling average, as the average of the test run averages.

24. Pursuant to 40 C.F.R. § 63.1209(m)(1)(i)(A), sources must comply with the particulate matter emission standard by complying with OPLs established during the CPT, unless the limits are based on manufacturer specifications. For venturi scrubbers, sources must establish an OPL for minimum pressure drop across the wet scrubber on an hourly rolling average, as the average of the test run averages.

25. Pursuant to 40 C.F.R. § 63.1209(n)(3), sources must comply with the semi-volatile metals and low-volatility metals emission standards by complying with OPLs established for the particulate matter control device during the CPT, unless the limits are based on manufacturer specifications. For venturi scrubbers, sources must establish an OPL for minimum pressure drop across the wet scrubber on an hourly rolling average, as the average of the test run averages.

26. Pursuant to 40 C.F.R. § 63.1209(o)(3)(i), sources must comply with the hydrogen chloride and chlorine gas emission standard by establishing and complying with OPLs established for venturi scrubbers during the CPT, unless the limits are based on manufacturer specifications. For venturi scrubbers, sources must establish an OPL for minimum pressure drop across the wet scrubber on an hourly rolling average, as the average of the test run averages.

27. Pursuant to 40 C.F.R. § 63.1209(m)(1)(i)(B)(1)(ii), sources must comply with the particulate matter emission standard by establishing and complying with OPLs established during the CPT, unless the limits are based on manufacturer specifications. For venturi scrubbers, sources must establish a minimum blowdown rate using a CMS and either a minimum scrubber tank volume or liquid level, as the average of the test run averages.

28. Pursuant to 40 C.F.R. § 63.1209(n)(3), sources must comply with the semi-volatile metals and low-volatility metals emission standards by complying with OPLs established for the particulate matter control device during the CPT, unless the limits are based on manufacturer

specifications. For venturi scrubbers, sources must establish a minimum blowdown rate using a CMS and either a minimum scrubber tank volume or liquid level, as the average of the test run averages.

29. Pursuant to 40 C.F.R. § 63.1209(l)(2), sources must comply with the mercury emission standard by establishing and complying with OPLs established for venturi scrubbers during the CPT, unless the limits are based on manufacturer specifications. For venturi scrubbers, sources must establish an OPL on either the minimum liquid to gas ratio or the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average, as the average of the test run averages.

30. Pursuant to 40 C.F.R. § 63.1209(m)(1)(i)(C), sources must comply with the particulate matter emission standard by establishing and complying with OPLs established during the CPT, unless the limits are based on manufacturer's specifications. For venturi scrubbers, sources must establish an OPL on either the minimum liquid to gas ratio or the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average, as the average of the test run averages.

31. Pursuant to 40 C.F.R. § 63.1209(n)(3), sources must comply with the semi-volatile metals and low-volatility metals emission standards by complying with OPLs established for the particulate matter control device during the CPT, unless the limits are based on manufacturer's specifications. For venturi scrubbers, sources must establish an OPL on either the minimum liquid to gas ratio or the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average, as the average of the test run averages.

32. Pursuant to 40 C.F.R. § 63.1209(o)(3)(v), sources must comply with the hydrogen chloride and chlorine gas emission standard by establishing and complying with OPLs

established for venturi scrubbers during the CPT, unless the limits are based on manufacturer specifications. For venturi scrubbers, sources must establish an OPL on either the minimum liquid to gas ratio or the minimum scrubber water flowrate and maximum flue gas flowrate on an hourly rolling average, as the average of the test run averages.

33. Pursuant to 40 C.F.R. § 1221(a)(4), operators of hazardous waste burning lightweight aggregate kilns must not discharge or cause combustion gases to be emitted into the atmosphere that contain in excess of 9.5×10^{-5} lbs combined emissions of arsenic, beryllium, and chromium attributable to the hazardous waste per million Btu heat input from the hazardous waste.

FINDINGS OF FACT

34. Respondent is a foreign limited liability corporation incorporated in the State of Delaware, and most recently registered with the New York State Department of State on January 3, 2013.

35. Respondent owns and operates a Facility located at 628 South Saratoga Street in Cohoes, New York.

36. Respondent owns and operates two Hazardous Waste Combustors (HWCs) to produce shale aggregate in two rotary kilns that burn liquid hazardous waste as fuel ("Kiln 1" and "Kiln 2") at its Facility.

37. Respondent's Facility operates under an approved Title V permit issued by New York State Department of Environmental Conservation (NYSDEC): Permit No. 4-0103-00016/00048 with an expiration date of 12/31/2020.

38. Starting in March 2015, the EPA's National Enforcement Investigations Center (NEIC) and the EPA's Region 2 office conducted a multimedia compliance investigation to determine the facility's compliance with the CAA and Resource Conservation and Recovery Act.

39. As a result of the NEIC's CAA compliance evaluations, several non-compliance issues in regard to the Hazardous Waste Combustor MACT were discovered, as described further below.

40. In April 2011, Respondent submitted the "MACT Comprehensive Performance Test Report and Notification of Compliance for Lightweight Aggregate Kilns 1 & 2 (Final Report)" (NOC) to the NYSDEC.

41. The April 2011 NOC contains the results of the CPT conducted on Kiln 1 during the periods of October 18-22, 2010 and January 10-14, 2011. This NOC was intended to establish OPLs for both Kiln 1 and Kiln 2.

42. During a compliance evaluation inspection on March 17-19, 2015, Respondent provided the EPA with production and operational data for Kiln 1 and Kiln 2.

43. Based on NEIC's evaluation of the production and operational data provided by Respondent for calendar years 2012-2014, the EPA determined that Kiln 1 and Kiln 2 were each operated while burning hazardous waste for a combined total of approximately 38,834 hourly average periods (rolled each minute) with the heat exchanger exit temperature above the maximum OPL of 436 degrees Fahrenheit established by the April 2011 NOC.

44. Based on NEIC's evaluation of the production and operational data provided by Respondent for calendar years 2012-2014, the EPA determined that Kiln 1 and Kiln 2 were each operated while burning hazardous waste for a combined total of approximately 1,589,299 hourly average periods (rolled each minute) with the venturi scrubber pressure drop below the minimum OPL of 6.1 inches of water column established by the April 2011 NOC.

45. Based on NEIC's evaluation of the production and operational data provided by Respondent for calendar years 2012-2014, the EPA determined that Kiln 1 and Kiln 2 were each operated while burning hazardous waste for a combined total of approximately 1,828,032 hourly

average periods (rolled each minute) with the venturi scrubber tank level below the minimum 58% of tank height established by the April 2011 NOC.

46. Based on NEIC's evaluation of the production and operational data provided by Respondent for calendar years 2012-2014, the EPA determined that Kiln 1 and Kiln 2 were each operated while burning hazardous waste for a combined total of approximately 12,903 hourly average periods (rolled each minute) with the venturi scrubber liquid to gas ratio below the minimum OPL of 4.9 gallons of scrubber liquid per 1,000 cubic feet of gas flow established by the April 2011 NOC.

47. Upon information and belief, Respondent's failure to operate in compliance with its 2011 OPLs continued through at least December 31, 2015.

48. On March 7, 2018, Respondent submitted the most recent "MACT Comprehensive Performance Test Report and Notification of Compliance for Lightweight Aggregate Kiln 1" to the EPA. Based on the results presented in this performance test report, the EPA determined that, on December 7, 2017, Respondent had exceeded the HWC MACT for chromium, arsenic, and beryllium, for approximately 7.5 hours.

CONCLUSIONS OF LAW

Based on the Findings set forth above, EPA reaches the following Conclusions of Law:

49. Respondent is a corporation, and is, therefore, a "person" within the meaning of Section 302(e) of the Act.

50. Respondent is an affected source, subject to the Hazardous Waste Combustor MACT, 40 C.F.R. Part 63 Subpart EEE, because it burns liquid hazardous waste as fuel to produce shale aggregate.

51. Respondent's Kiln 1 and Kiln 2 are each considered a Hazardous Waste Combustor and subject to 40 C.F.R. Part 63 Subpart EEE.

52. Respondent violated 40 C.F.R. § 63.1209(k)(1)(ii) by failing to operate both the Kiln 1 and Kiln 2 heat exchangers to maintain the exit temperature below the OPL established by the April 2011 NOC while burning hazardous waste.

53. Pursuant to 40 C.F.R. § 63.1206(c)(1)(iii), Respondent's failure to operate both the Kiln 1 and Kiln 2 heat exchangers to maintain the exit temperature below the OPL established by the April 2011 NOC is also a failure to ensure compliance with the corresponding dioxins and furans emission standard at 40 C.F.R. § 63.1221(a)(1).

54. Respondent violated 40 C.F.R. §§ 63.1209(m)(1)(i)(A), (n)(3), and (o)(3)(i) by failing to operate both the Kiln 1 and Kiln 2 venturi scrubbers to maintain the minimum pressure drop across the wet scrubber above the OPL established by the April 2011 NOC while burning hazardous waste.

55. Pursuant to 40 C.F.R. § 63.1206(c)(1)(iii), Respondent's failure to operate both the Kiln 1 and Kiln 2 venturi scrubbers to maintain the minimum pressure drop across the wet scrubber above the OPL established by the April 2011 NOC is also a failure to ensure compliance with the corresponding semi-volatile metals, low-volatility metals, hydrogen chloride and chlorine gas, and particulate matter emission standards at 40 C.F.R. §§ 63.1221(a)(3), (a)(4), (a)(6), and (a)(7).

56. Respondent violated 40 C.F.R. §§ 63.1209(m)(1)(i)(B)(1)(ii) and (n)(3) by failing to operate both the Kiln 1 and Kiln 2 venturi scrubbers with the minimum scrubber tank liquid level above the OPL established by the April 2011 NOC while burning hazardous waste.

57. Pursuant to 40 C.F.R. § 63.1206(c)(1)(iii), Respondent's failure to operate both the Kiln 1 and Kiln 2 venturi scrubbers with the minimum scrubber tank liquid level above the OPL

established by the April 2011 NOC is also a failure to ensure compliance with the corresponding semi-volatile metals, low-volatility metals, and particulate matter emission standards at 40 C.F.R. §§ 63.1221(a)(3),(a)(4), and (a)(7).

58. Respondent violated 40 C.F.R. §§ 63.1209(l)(2), (m)(1)(i)(C), (n)(3), and (o)(3)(v) by failing to operate both the Kiln 1 and Kiln 2 venturi scrubbers with the minimum liquid to gas ratio above the OPL established by the April 2011 NOC while burning hazardous waste.

59. Pursuant to 40 C.F.R. § 63.1206(c)(1)(iii), Respondent's failure to operate both the Kiln 1 and Kiln 2 venturi scrubbers with the minimum liquid to gas ratio above the OPL established by the April 2011 NOC is also a failure to ensure compliance with the corresponding mercury, semi-volatile metals, low-volatility metals, hydrogen chloride and chlorine gas, and particulate matter emission standards at 40 C.F.R. §§ 63.1221(a)(2), (a)(3), (a)(4), (a)(6), and (a)(7).

60. Each of Respondent's violations of its 2011 OPLs is a separate violation of 40 C.F.R. § 63.1207(j)(1)(ii).

61. Respondent violated 40 C.F.R. § 63.1221(a)(4) on December 7, 2017 by exceeding the HWC MACT for chromium, arsenic, and beryllium while burning hazardous waste during the CPT for Kiln 1.

PROPOSED CIVIL PENALTY

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to $25,000 per day for each violation of the Act. This amount has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L.114-74, Section 701). For

violations after Jan. 12, 2009 and until Nov. 2, 2015, this daily penalty maximum is adjusted to $37,500. *See* 40 C.F.R. Part 19, Table 1. For violations that occurred after November 2, 2015 and for which civil penalties are assessed on or after February 6, 2019, this daily penalty maximum is adjusted to $48,192 for administrative action. *See* 40 C.F.R. Part 19, Table 2. The maximum total civil penalty for this proceeding is $356,312.[1]

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require. EPA considered these factors and proposes a total administrative penalty for the violations alleged in this Complaint, of $326,278.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. § 552 *et seq*. The procedures for this matter are found in 40 C.F.R. Part 22, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (CROP), a copy of which is enclosed with the transmittal of this Complaint. References to specific procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the CROP.

[1] *See* 81 F.R. 43091, 43093

You have a right to request a hearing: 1) to contest any material facts set forth in the Complaint; 2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or 3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing, you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway- 16th Floor
New York, New York 10007-1866

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on the EPA to the attention of EPA counsel at the following address:

Christopher Saporita
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency- Region 2
290 Broadway- 16th Floor
New York, New York 10007-1866

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: 1) the circumstances or arguments which you allege constitute the grounds of a defense; 2) whether a hearing is requested; and 3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conferences

The EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with the EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Regardless of whether you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Christopher Saporita, at (212) 637-3203 or at the address listed above, to discuss settlement. If you are represented by legal counsel in this matter, your counsel should contact the EPA.

Payment of Penalty in lieu of Answer, Hearing, and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent which appear on the first page of this Complaint. The check must be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this manner does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

JAN 3 0 2020
Dated

Dore F. LaPosta, Director
Enforcement and Compliance
Assurance Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In re: Norlite, LLC, **Respondent** In a proceeding under Section 113(d) of the Clean Air Act	**COMPLAINT** **and** **NOTICE OF OPPORTUNITY** **TO REQUEST A HEARING** CAA-02-2020-1004

CERTIFICATE OF SERVICE

I certify that on Jan. 31, 2020 I caused the Complaint and Notice of Opportunity to Request a Hearing in the above matter, one copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 C.F.R. Part 22), and one copy of the Clean Air Act Stationary Source Civil Penalty Policy, to be served on the following people in the manner listed below:

One Original and One Copy by hand delivery to:
Karen Maples
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Dated: 1/31/2020

Yolanda Majette
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2