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

EMAIL **ChristianRosselli@brooklynresource.com**
and CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Christian Rosselli
Senior Vice President
Brooklyn Resource Recovery, Inc
5811 Preston Court
Brooklyn, NY 11234

Re: Notice of Violation, Brooklyn Resource Recovery, EPA Docket No. CAA-02-2021-1308

Dear Mr. Rosselli:

The United States Environmental Protection Agency ("EPA") Region 2 issues this Notice of Violation ("NOV") pursuant to the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, and its implementing regulations to Brooklyn Resource Recovery, Inc. ("BRR") in connection with its operation of its scrap metal recycling facility, located at 5811 Preston Court in Brooklyn, New York. This NOV identifies, among other things, violations of Section 212-3 of the New York Code of Rules and Regulations, Title 6, which is part of the federally enforceable CAA State Implementation Plan ("SIP") for the State of New York ("NYSIP").

If BRR would like to schedule a conference to discuss this NOV, please have your legal counsel contact Amanda Prentice, Assistant Regional Counsel, at **Prentice.Amanda@epa.gov**, within ten (10) days of your receipt of this letter and the enclosed NOV. Should you have technical questions please contact Chao Leung, Environmental Engineer, at **leung.chao@epa.gov** **or** Joseph Cardile, Environmental Engineer, at **cardile.joseph@epa.gov**.

Sincerely,

Anderson, Kate Digitally signed by Anderson,Kate Date: 2021.08.11 16:26:24 -04'00' *for*
Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosure: Notice of Violation

Sam Lieblich, Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation
1 Hunter's Point Plaza
47-40 21st Street
Long Island City, NY 11101-5401

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

NOTICE OF VIOLATION

CAA-02-2021-1308

In the Matter of:

Brooklyn Resource Recovery, Inc.
Brooklyn, New York,

Respondent

In a proceeding under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)

Summary

The Director of the Enforcement and Compliance Assurance Division ("Director") for the United States Environmental Protection Agency ("EPA") Region 2 issues this Notice of Violation ("NOV") to Brooklyn Resource Recovery, Inc. ("BRR" or "Respondent"), pursuant to Section 113(a)(1) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(a)(1). This NOV identifies violations of Section 212-3 of the New York Code of Rules and Regulations, Title 6, which is part of the federally enforceable CAA state implementation plan ("SIP") for the State of New York ("NYSIP"). This NOV also identifies, as a courtesy, violations of Title V of the CAA and its implementing regulations at 40 C.F.R. Part 70, although the EPA is not required by law to issue an NOV for such violations. The violations herein described pertain to BRR's metal shredding operation located at 5811 Preston Court, Brooklyn, New York 11234 ("Facility") and involve the following: the failure to install reasonably available control technology ("RACT") for the metal shredder and the failure to obtain and maintain a Title V operating permit for the Facility.

Statutory and Regulatory Background

1. Section 302(e) of the Act, 42 U.S.C. § 7602(e), provides that whenever "person" is used in the Act, the term includes an 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.

2. Section 109 of the CAA directs the EPA Administrator to promulgate regulations establishing national ambient air quality standards ("NAAQS") for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act. *See* 42 U.S.C. § 7409.

3. Section 110(a)(1) of the CAA requires each state to adopt and submit to EPA for approval a plan that provides for the implementation, maintenance, and enforcement of each of the NAAQS. Such plans, once approved by EPA, are known as State Implementation Plans, or SIPs. *See* 42 U.S.C. § 7410(a)(1).

4. SIPs are federally enforceable pursuant to Sections 113(a) and (b) of the Act. *See* 42 U.S.C. §§ 7413(a) and (b).

EPA's Authority to Issue NOVs and Enforce SIPs

5. Section 113(a)(1) of the CAA provides, in pertinent part, that whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated or is in violation of any requirement or prohibition of a SIP, the Administrator shall notify the person and the state in which the SIP applies of such finding. Section 113(a)(1) further provides that thirty (30) days after providing such notice, the EPA Administrator may take various actions to address the violation(s). *See* 42 U.S.C. § 7413(a)(1).

6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the authority to make findings of violation and to issue notices of violation under

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Section 113 of the CAA has been delegated to the Director by the EPA Administrator through the EPA Region 2, Regional Administrator.

State of New York SIP Requirements (VOC RACT)

7. 40 C.F.R. § 51.100(s), which applies to SIPs, defines "volatile organic compounds" ("VOC") as, in relevant part, "any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions."

8. At all times relevant to this NOV, the federally approved SIP for the State of New York has included 6 N.Y.C.R.R. Part 200 ("General Provisions"). *See* 6 N.Y.C.R.R. § 200.1 and 6 N.Y.C.R.R. § 200.7.

9. At all times relevant to this NOV, the General Provisions have included the following definitions:

- "Air contaminant or air pollutant" means: "A chemical, dust, compound, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof." *Id.* § 200.1(d).
- "Air contamination source or emissions source" means: "Any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system or air cleaning device. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source." *Id.* § 200.1(f).
- "Person" means: "Any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever." *Id.* § 200.1(bi).

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- "Potential to emit" means in pertinent part: "the maximum capacity of an air contamination source to emit any regulated air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the emission source to emit a regulated air pollutant, including air pollution control equipment and/or restrictions on the hours of operation, or on the type or amount of material combusted, stored, or processed, shall be treated as a part of the design if the limitation is enforceable by the department and the administrator. Fugitive emissions, to the extent that they are quantifiable, are included in determining the potential to emit where required by an applicable requirement." *Id.* § 200.1(bl).
- "Reasonably available control technology ("RACT")" means: "Lowest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility." *Id.* § 200.1(bq).

10. At all times relevant to this NOV, the federally approved SIP for the State of New York has included 6 N.Y.C.R.R. Part 212-3 ("Reasonably Available Control Technology for Major Facilities").

11. Pursuant to 6 N.Y.C.R.R. § 212-3.1(a)(1), facilities located in the New York City metropolitan area with an annual potential to emit 25 tons or more of VOC must demonstrate and implement RACT.

12. Pursuant to 6 N.Y.C.R.R. § 212-3.1(b), facilities subject to § 212-3.1(a) must have submitted a compliance plan to the New York State Department of Environmental Conservation ("NYSDEC") by October 20, 1994. The compliance plan must either have included the RACT analysis

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required by 6 N.Y.C.R.R. § 212-3.1(c) or a plan to limit the annual potential to emit below the applicability levels pursuant to 6 N.Y.C.R.R. § 212-3.1(d).

13. Pursuant to 6 N.Y.C.R.R. § 212-3.1(c), facilities subject to § 212-3.1(a) must identify RACT for each emission point that emits VOC for major VOC facilities. The compliance plan must identify the emission points that do not employ RACT, and a schedule for implementation of RACT must be included in the plan. A RACT analysis is not required for emission points with VOC emission rate potentials less than 3.0 pounds per hour and actual emissions in the absence of control equipment less than 15.0 pounds per day at facilities located in the New York City metropolitan area.

14. At all times relevant to this NOV, the federally approved SIP for the State of New York has included 6 N.Y.C.R.R. Part 201 ("Permits and Certificates").

15. Pursuant to 6 N.Y.C.R.R. § 201-7.1 ("Federally Enforceable Emissions Cap"), the owner or operator of a facility subject to 6 N.Y.C.R.R. Part 201 may elect to accept federally enforceable permit conditions which restrict or cap emissions from the facility or an emission source below one or more applicable requirements.

16. Pursuant to 6 N.Y.C.R.R. § 212-3.1(d), any facility with federally and state-enforceable conditions in a permit to operate that limits its annual potential to emit VOC below the applicability levels of 6 N.Y.C.R.R. § 212-3.1(a) by May 31, 1995 is exempt from the RACT analysis and implementation requirements of that section.

17. Pursuant to 6 N.Y.C.R.R. § 212-3.1(e), any facility that is subject to the RACT requirements after May 31, 1995 remains subject to them, even if its annual potential to emit VOC later falls below the applicability threshold.

18. Pursuant to 6 N.Y.C.R.R. §§ 212-3.1(c) and (f), facilities subject to § 212-3.1(a) that commence construction after August 15, 1994 of an emission point with emission rate potentials of at

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least 3.0 pounds of VOC per hour and actual emissions in the absence of control equipment of at least 15 pounds of VOC per day must submit a RACT demonstration for VOC emissions with each application for a permit to operate, and must implement RACT on any such emission points when operation commences.

19. At all times relevant to this NOV, the federally approved SIP for the State of New York has included 6 N.Y.C.R.R. Part 202 ("Emissions Verification").

20. Pursuant to 6 N.Y.C.R.R. § 202-2.1(a)(1), the requirements of 6 N.Y.C.R.R. Subpart 202-2 apply to "…any owner or operator of a facility located in New York State which is determined to be a major source as defined in Subpart 201-2 of this Title for all or any part of such calendar year."

21. Pursuant to 6 N.Y.C.R.R. §§ 202-2.3(a)(3)(xii) and (xiii), (c)(2), 202-2.4(a), and 202-2.5(a), major sources must annually report process and fugitive emissions of all regulated air contaminants and maintain those reports for five years.

Clean Air Act Title V Operating Permit

22. Title V of the Act ("Title V") consists of CAA Sections 501 to 507, 42 U.S.C. §§ 7661-7661f.

23. In general, Title V requires each "major source" to obtain an operating permit setting forth all the air pollution requirements that apply to that source; Title V also provides for the creation of state and federal programs to issue such permits.

24. Section 501 of the CAA, 42 U.S.C. § 7661(2), defines a "major source," as used in Title V, as any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act, Section 302 of the Act, or Part D of Subchapter I of the Act.

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25. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), makes unlawful the operation of any source subject to Title V, except operation in compliance with a permit issued by a permitting authority pursuant to Title V.

26. Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), requires EPA to promulgate regulations establishing the minimum elements of a Title V operating permit program; it also sets forth the procedures by which EPA would approve, oversee, and withdraw approval of state operating permit programs.

27. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), requires each state to develop and submit to EPA a permit program meeting the requirements of Title V.

28. Section 502(e) of the CAA, 42 U.S.C. § 7661a(e), authorizes EPA to retain the authority to enforce Title V operating permits issued by a state.

29. On July 21, 1992, pursuant to CAA Section 502(b), EPA promulgated 40 C.F.R. Part 70 ("Part 70"), which governs state operating permit programs. *See* 57 Fed. Reg. 32295 (July. 21, 1992).

30. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), and 40 C.F.R. § 70.4 require each state to submit a permitting program, developed in accordance with Part 70, to EPA for approval. States are authorized to administer their own EPA-approved Title V operating permit programs.

31. Effective December 9, 1996, EPA granted interim approval (61 Fed. Reg. 57589, Nov. 7, 1996), and on January 31, 2002, EPA granted full approval of the New York State Title V Operating Permit Program (67 Fed. Reg. 5216, Feb. 5, 2002).

32. The New York State Title V Facility Permit Regulations ("Title V Regulations"), located at 6 N.Y.C.R.R. Part 201-6, implement numerous requirements of the CAA, and apply to, among other things, any "major facility." 6 N.Y.C.R.R. § 201-6.1(a)(1).

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33. New York's Title V Regulations define a "major stationary source or major source or major facility" as, among other things, any "source … that is located … in the New York City metropolitan area … with the potential to emit … 25 tpy [tons per year] or more of … VOC." 6 N.Y.C.R.R. § 201-2.1(b)(21)(iv)(b).

34. 6 N.Y.C.R.R. § 201-6.1(a) requires an owner or operator of a major source to obtain an operating permit ("Title V Permit") before operating the source.

Findings of Fact

35. The following findings of fact are based in part on an investigation conducted by EPA Region 2 pursuant to Section 114 of the Act, 42 U.S.C. § 7414 ("EPA Investigation"). The EPA Investigation included, among other actions: (a) an information request made to BRR about the Facility and its operations; (b) a review of Respondent's records as provided to EPA subsequent to the information request; (c) a review of emission data and emission test results of metal shredders comparable to the metal shredder in operation at the Facility; (d) discussions with NYSDEC regarding the Facility; and (e) conversations with BRR, and materials it provided, including on April 22, 2021.

36. BRR owns and operates the scrap metal processing Facility located at 5811 Preston Court, Brooklyn, New York 11234. The Facility operates a metal shredder to process scrap automobiles and other scrap metal materials.

37. The Facility was issued a minor source registration certificate (Registration ID: 2-6105-00253/02000) by NYSDEC pursuant to 6 N.Y.C.R.R. § 201-4. The Facility's registration certificate is issued for three emission points: one diesel 500 kw Caterpillar generator, and two EMD diesel direct drive motors for the shredder, each rated at 4000 horsepower ("HP").

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38. Based on emission test results from comparable facilities in the United States, the process of shredding scrap metal at the Facility has the potential to emit in excess of 25 tpy of VOC and other air pollutants.

39. EPA sent an information request letter dated June 9, 2020 ("IRL") to BRR pursuant to Section 114 of the Act. The IRL included, among other items, a request for information from BRR regarding: (1) the installation date, startup date, and manufacturer's rated capacity of the metal shredder; and (2) the total monthly quantity of scrap metal processed by the metal shredder and all available emission calculations (for VOC and other pollutants) for the metal shredder for calendar years 2018 and 2019.

40. On July 8, 2020, BRR provided responses to the IRL ("BRR Response").

41.

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Ex. 4 CBI

42. BRR does not employ a regenerative thermal oxidizer ("RTO") or other control device that meets minimum RACT requirements to limit its VOC emissions.

43. Upon information and belief, BRR has not conducted any testing of VOC emissions to the atmosphere from the Facility's metal shredder, nor has BRR submitted any test notices and/or protocols to NYSDEC for VOC emissions testing of the Facility's metal shredder.

44. EPA evaluated available VOC emission test results from scrap metal shredders across the United States. Based on VOC testing conducted at other comparable metal shredders within the last three years that included regulatory oversight, demonstrated adequate VOC capture, applied consistent test methods, and covered a wide range of scrap metal composition, EPA determined that reasonable

VOC emission calculations could be made to determine VOC emissions from the Facility's metal shredder.

45. EPA performed VOC emission calculations based on the total capacity of the Facility's metal shredder to process scrap metal, considering all enforceable physical and operational limitations on production and hours of operation, and a range of VOC emission test results from other comparable metal shredding facilities, to estimate the Facility's metal shredder's potential to emit VOC, both on a pounds-of-VOC-per-hour basis and a tons-of-VOC-per-year basis.

46. Based on EPA's calculations, the Facility's metal shredder's VOC emissions rate exceeds 3.0 pounds per hour, its actual emissions in the absence of control equipment are in excess of 15 pounds of VOC per day, and it has the potential to emit in excess of 25 tons per year of VOC.

47. The EPA Investigation reveals that Respondent has not submitted a proposed alternative or facility-specific VOC compliance plan pursuant to 6 N.Y.C.R.R. § 212-3.

48. The EPA investigation reveals that the Respondent does not maintain federally enforceable permit conditions which restrict or cap VOC emissions to below 25 tons per year.

49. The EPA Investigation also reveals that Respondent does not maintain, nor has it applied for, a Title V operating permit pursuant to 6 N.Y.C.R.R. § 201-6.

50. EPA's Investigation indicates the violations described in this NOV are ongoing.

Conclusions of Law

Based on the Findings of Fact set forth above, the EPA reaches the following conclusions of law:

51. Respondent is a "person" within the meaning of Section 302(e) of the Act and 6 N.Y.C.R.R. § 200.1(bi).

52. The Facility has emissions that exceed 3.0 pounds of VOC per hour and actual emissions in the absence of control equipment that exceed 15 pounds of VOCs per day, and the potential to emit in

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excess of 25 tons per year of VOC, and is therefore a "major source" subject to 6 N.Y.C.R.R. §§ 201-6.1(a)(1), 202-2 and § 212-3.1.

53. Respondent's failure to operate the Facility's metal shredder with VOC controls that meet the requirements of RACT is a violation of 6 N.Y.C.R.R. § 212-3.1.

54. Respondent has operated and continues to operate the Facility with a potential to emit in excess of 25 tons per year of VOC without obtaining and maintaining the required permits or federally enforceable permit conditions limiting emissions of VOCs in violation of 6 N.Y.C.R.R. §§ 201-6, 201-7, and Section 502 of the Act.

Enforcement

Section 113(a)(1) of the CAA authorizes EPA to take any of the following actions in response to a respondent's violation(s) of a SIP, after the expiration of thirty (30) days following the issuance of a notice of violation:

1. Issue an order requiring compliance with the requirements or prohibitions of the SIP;
2. Issue an administrative penalty order in accordance with CAA Section 113(d); or
3. Bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered for violations of the CAA and its implementing regulations such as those discussed above is set by statute at not more than $25,000 per day per violation, but has been adjusted pursuant to the Debt Collection Improvement Act, 31 U.S.C. § 3701 *et seq.*, to: up to $102,638 per day for each violation that occurs after November 2, 2015 and where penalties are assessed on or after December 23, 2020. *See* 40 C.F.R. § 19.4.

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Furthermore, for any person who knowingly violates any requirement or prohibition of an applicable SIP for more than thirty days after the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

Penalty Assessment Criteria

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration 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 (including evidence other than the applicable test method), 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.

Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

Opportunity for a Conference

Respondent may request a conference with EPA concerning the violations alleged in this NOV.

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This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violation, and any efforts it may have taken, or it proposes to take to achieve compliance. Respondent's request for a conference must be confirmed in writing within ten days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made by email to **Prentice.Amanda@epa.gov** or in writing to:

Amanda Prentice
U.S. Environmental Protection Agency – Region 2
Office of Regional Counsel – Air Branch
290 Broadway – 16th Floor
New York, NY 10007-1866

Notwithstanding this NOV and the opportunity for a conference, Respondent must comply with all applicable requirements of the CAA.

Issued: August 11, 2021

Anderson,Kate Digitally signed by Anderson,Kate Date: 2021.08.11 16:27:36 -04'00' *for*

Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

To: Brooklyn Resource Recovery, Inc.
Attn: Christian Rosselli
5811 Preston Court
Brooklyn, New York 11234

cc: Sam Lieblich, Regional Air Pollution Control Engineer
New York State Department of Environmental Conservation, Region 2

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