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

VIA EMAIL – AM@parksteinnj.com
and CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andrew Maybaum
Vice President and Chief Operating Officer
Parkway Iron & Metal, Inc.
613-639 Route 46 East
Clifton, New Jersey 07013

Re: Notice of Violation, Parkway Iron & Metal, Inc., EPA Docket No. CAA-02-2021-1309

Dear Mr. Maybaum:

The United States Environmental Protection Agency ("EPA") Region 2 issues this Notice of Violation ("NOV") pursuant to Section 113(a)(1) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(a) and its implementing regulations to Parkway Iron & Metal, Inc. ("Parkway") in connection with its operation of its scrap metal recycling facility, located at 613-639 Route 46 East in Clifton, New Jersey. This NOV identifies, among other things, violations of Subchapter 16 of the New Jersey Administrative Code, Title 7, Chapter 27, which is part of the federally enforceable CAA state implementation plan ("SIP") for the State of New Jersey ("NJSIP").

If Parkway 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: 2021.08.16 15:00:35 -04'00' *for*
Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosure: Notice of Violation

cc: Richelle Wormley, Director
Division of Air Enforcement
New Jersey Department of Environmental Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of: Parkway Iron & Metal, Inc. Clifton, New Jersey, Respondent, In a proceeding under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)	**NOTICE OF VIOLATION** CAA-02-2021-1309

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 Parkway Iron & Metal, Inc. ("Parkway" 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 Subchapter 16 of the New Jersey Administrative Code, Title 7, Chapter 27, which is part of the federally enforceable CAA state implementation plan ("SIP") for the State of New Jersey ("NJSIP"). This NOV also identifies, as a courtesy, violations of Title V of the CAA ("Title V") 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 Parkway's metal shredding operation located at 613-639 Route 46 East, Clifton, New Jersey ("Facility") and involve the following: the failure to install reasonably achievable control technology ("RACT") for the Facility's 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 the term "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. 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. 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, or his or her representative, finds, on the basis of any available information, 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 30 days after providing such notice, the EPA Administrator may take various actions to address the violation(s). 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 Jersey SIP Requirements

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 Jersey has included the "Control and Prohibition of Air Pollution by Volatile Organic Compounds," Title 7, Chapter 27, Subchapter 16 of the New Jersey Administrative Code ("N.J.A.C.") ("NJ VOC Control Regulation" or "Subchapter 16"). The NJ VOC Control Regulation became effective in New Jersey on April 20, 2009 and became effective as a federally enforceable rule in the SIP on September 2, 2010. *See* 75 Fed. Reg. 45483 (Aug. 3, 2010).

9. At all times relevant to this NOV, the NJ VOC Control Regulation has included the following definitions:

a. "Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases. N.J.A.C. § 7:27-16.1 (2010);

b. "Exclusion rate" means the rate at or below which the emission of an air contaminant into the outdoor atmosphere is not required to be controlled. N.J.A.C. § 7:27-16.1 (2010);

c. "Person" means any individual or entity and includes, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock

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companies, all political subdivisions of any state or any agencies or instrumentalities thereof. N.J.A.C. § 7:27-16.1 (2010);

d. "Process emission rate" means the mass rate of air contaminants emitted from the final source operation of a process, exclusive of any type of control apparatus or product recovery device. N.J.A.C. § 7:27-16.1 (2010);

e. "Source gas" means air or gases passed through, or generated by, a source operation and discharged from the source operation. N.J.A.C. § 7:27-16.1 (2010);

f. "Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A source operation may include one or more pieces of equipment or control apparatus. N.J.A.C. § 7:27-16.1 (2010);

g. "Vapor pressure" means the pressure of the vapor phase of a substance, or the sum of the partial pressures of the vapor phases of individual substances in a mixture of substances, when in equilibrium with the non-vapor phase of the substance or substances. N.J.A.C. § 7:27-16.1 (2010); and

h. "Volatile organic compound" or "VOC" means a volatile organic compound as that term is defined by the EPA at 40 C.F.R. § 51.100(s), as supplemented or amended, which is incorporated by reference in the NJ VOC Control Regulation. N.J.A.C. § 7:27-16.1 (2010).

10. The NJ VOC Control Regulation at N.J.A.C. § 7:27-16.16 ("Section 16.16") establishes requirements for "other source operations." Section 16.16 exempts from the NJ VOC Control Regulation source operations in 19 categories, some of which are regulated under other provisions of Subchapter 16. One of the source operation categories exempted under Section 16.16 includes

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operations that have obtained an approved alternative or facility-specific VOC control requirement under N.J.A.C. § 7:27-16.17. *See* N.J.A.C. §§ 7:27-16.16(a)(18); 7:27-16.17.

11. Section 16.16 also does not establish "other source operations" requirements for "any insignificant source operation as defined in N.J.A.C. 7:27-8.2 or 22.1."[1] N.J.A.C. § 7:27-16.16(b).

12. For source operations subject to Section 16.16, no person shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from any source operation subject to the provisions of Section 16.16, in excess of the maximum allowable emission rate, as determined in accordance with the procedure in N.J.A.C. § 7:27-16.16(d). N.J.A.C. § 7:27-16.16(c).

13. The NJ VOC Control Regulation at N.J.A.C. § 7:27-16.16(d) provides procedures and standards for the establishment of the maximum allowable emission rate for "other source operations." Source operations are sorted into different source gas "range" classifications ("Range"), and VOC control requirements are established for each Range.

14. The Range with the least stringent VOC control requirements prohibits source operations from emitting more than three and one-half (3.5) pounds of VOC per hour, or more than 15% of process emissions by weight. *See* N.J.A.C. § 7:27-16.16(d)(5) and Table 16A in Section 16.16.

Clean Air Act Title V Operating Permits

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

16. 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.

17. Section 501 of the CAA, 42 U.S.C. § 7661, 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

[1] Note that the provisions of N.J.A.C. §§ 7:27-8.2 and 22.1 are not themselves approved into New Jersey's SIP.

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common control that is a major source as defined in either Section 112 of the Act or Section 302 of the Act or part D of subchapter I of the Act.

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

19. 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; Section 502(b) of the Act also sets forth the procedures by which EPA would approve, oversee, and withdraw approval of state operating permit programs.

20. 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.

21. 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.

22. On July 21, 1992, pursuant to CAA Section 502(b), 42 U.S.C. § 7661a(b), EPA promulgated 40 C.F.R. Part 70 ("Part 70"), which governs state Title V operating permit programs. *See* 57 Fed. Reg. 32295 (Jul. 21, 1992).

23. 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 Title V 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.

24. Effective June 17, 1996, EPA granted final interim approval (61 Fed. Reg. 24715 (May 16, 1996)), and effective November 30, 2001, EPA granted final full approval of the New Jersey State Title V Operating Permit Program. *See* 66 Fed. Reg. 63168 (Dec. 5, 2001).

25. The New Jersey Title V Operating Permit Program is codified at N.J.A.C. § 7:27-22 ("NJ Operating Permit Regulation").

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26. Pursuant to N.J.A.C. § 7:27-22.3(a) ("General Provisions"), the owner or operator of a facility subject to the NJ Operating Permit Regulation shall obtain and maintain an operating permit for the facility pursuant to the NJ Operating Permit Regulation.

27. The NJ Operating Permit Regulation defines "operating permit" as the consolidated preconstruction and operating permit issued pursuant to Title V of the CAA, 42 U.S.C. §§ 7661 *et seq.*, the NJ Operating Permit Regulation, Title I of the CAA, 42 U.S.C. §§ 7401 *et seq.*, and N.J.A.C. 7:27-8 ("Permits and Certificates for Minor Facilities (And Major Facilities Without an Operating Permit)"). N.J.A.C. § 7:27-22.1.

28. The NJ Operating Permit Regulation defines "potential to emit" in relevant part as the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design, if the limitation is Federally enforceable. N.J.A.C. § 7:27-22.1.

29. The NJ Operating Permit Regulation applies to a facility with the potential to emit at least 25 tons per year of VOC. *See* N.J.A.C. § 7:27-22.2(a)(2).

30. In the State of New Jersey, the Title V operating permit program is administered by the New Jersey Department of Environmental Protection ("NJDEP").

Findings of Fact

31. The following findings of fact are based 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 Parkway about the Facility and its operations; (b) a review of Respondent's records as provided to EPA subsequent to the information

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request; (c) a review of emission data and emission test results from other metal shredders in the United States comparable to the metal shredder in operation at the Facility; and (d) discussions with NJDEP regarding the Facility.

32. Parkway owns and operates the scrap metal processing Facility located at 613-639 Route 46 East in Clifton, New Jersey. The Facility operates a metal shredder to process scrap automobiles and other scrap metal materials.

33. The Facility was issued a minor source preconstruction permit (permit number PCP970001) by NJDEP pursuant to N.J.A.C. § 7:27- 8.13(a) ("Conditions of Approval" for "Permits and Certificates of Minor Facilities (And Major Facilities Without an Operating Permit)").

34. 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 tons per year of VOC and other air contaminants.

35. EPA sent an information request letter dated June 9, 2020 ("IRL") to Parkway pursuant to Section 114 of the Act. The IRL included, among other items, information 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.

36. On August 28, 2020, Parkway provided its response to the IRL ("Parkway Response").

37. The Parkway Response stated that the hammermill shredder used at Parkway is a Newell 80 x 104 TBD Shedder rated at 50 to 90 tons per hour and was installed between January 1993 and its January 1995 startup. The shredder uses 12 manganese hammers on an 80-inch swing spider rotor and has a shredder box that is 104 inches wide.

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

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

40. 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 emissions from the Facility's metal shredder.

41. 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 metal shredder's potential to emit VOC emissions, both on a pounds-of-VOC-per-hour basis and a tons-of-VOC-per-year basis.

42. Based on EPA's calculations, the Facility's metal shredder's VOC emissions rate exceeds 3.5 pounds per hour; its maximum VOC emissions exceed 15% of the process emissions by weight; and it has the potential to emit in excess of 25 tons per year of VOC.

43. The EPA investigation reveals that Respondent has not submitted a proposed alternative or facility-specific VOC control plan pursuant to N.J.A.C. § 7:27-16.17 ("Alternative and facility-specific VOC control requirements").

44. 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.

45. The EPA investigation also reveals that Respondent does not maintain, nor has it applied for, a Title V operating permit pursuant to N.J.A.C. § 7:27-22 ("Operating Permits").

46. EPA's investigation indicates that the violations described in this NOV are ongoing.

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Conclusions of Law

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

47. Respondent is a "person" within the meaning of Section 302(e) of the Act, and N.J.A.C. §§ 7:27-16.1 and 7:27-22.1.

48. The Facility's metal shredding operation is an "other source operation" that does not meet the exemption criteria in N.J.A.C. §§ 7:27-16.16(a) or (b) and therefore is subject to the VOC control requirements for "other source operations" in Section 16.16.

49. The Facility's emissions from the metal shredding operation exceed three and one-half (3.5) pounds of VOC per hour and 15% of its process emissions by weight without controls, which is a violation of N.J.A.C. § 7:27-16.16.

50. Respondent has operated and continues to operate the Facility's metal shredder without VOC controls that meet the requirements of RACT, which is a violation of N.J.A.C. § 7:27-16.16.

51. Respondent has operated and continues to operate the Facility with a potential to emit VOC in excess of 25 tons per year without obtaining and maintaining the required permits or federally enforceable permit conditions limiting emissions of VOC, which is a violation of N.J.A.C. § 7:27-22 and of Section 502 of the Act, 42 U.S.C. § 7661a.

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 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

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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. Part 19.

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, 42 U.S.C. § 7606, 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

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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. 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 conference, Respondent must comply with all applicable requirements of the CAA.

Issued: _____, 2021

Anderson, Kate Digitally signed by Anderson,Kate Date: 2021.08.16 15:00:58 -04'00' *for*

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

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To: Parkway Iron & Metal, Inc.
Attn: Andrew Maybaum, Vice President and Chief Operating Officer
613-639 Rt. 46 East
Clifton, New Jersey 07013

cc: Richelle Wormley, Director
Division of Air Enforcement
New Jersey Department of Environmental Protection

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