Scott Miller, Assistant Secretary
SMM New England Corporation
234 Universal Drive
North Haven, CT 06473

Re: Clean Air Act Notice of Violation – Johnston, RI

Dear Mr. Miller:

The United States Environmental Protection Agency, Region I ("EPA") is issuing the enclosed Notice of Violation to SMM New England Corporation ("SMMNEC") for violations of the Clean Air Act ("CAA") under Section 113(a) of the CAA, 42 U.S.C. § 7413(a). The violations concern operations at SMMNEC’s facility located at 15-17 Green Earth Avenue in Johnston, Rhode Island.

This action is based on EPA’s investigation of SMMNEC’s scrap metal operations in Johnston, including but not limited to inspections by EPA at the facility and the results of performance testing at the facility in September 2017 pursuant to an EPA testing order.

The Notice of Violation describes EPA’s findings that SMMNEC has violated, and continues to violate, certain CAA requirements including but not limited to federally-enforceable provisions of the Rhode Island state implementation plan and Title V of the CAA.
If you have any questions regarding this Notice of Violation, or would like to schedule a meeting to discuss it, please contact Christine Sansevero, Senior Enforcement Coordinator, at (617) 918-1699 or have your attorney call Tom Olivier, Senior Enforcement Counsel, at (617) 918-1737.

Sincerely,

Karen McGuire, Acting Director
Office of Environmental Stewardship

By electronic cc: Earl Phillips, Esq., Robinson and Cole
Chris John, RIDEM
David Chopy, RIDEM

Enclosure
IN THE MATTER OF

SMM New England Corporation
234 Universal Drive
North Haven, CT 06473

PROCEEDING UNDER SECTION 113
OF THE CLEAN AIR ACT

NOTICE OF VIOLATION

STATUTORY AUTHORITY

1. The United States Environmental Protection Agency, Region I ("EPA") issues this Notice of Violation ("NOV") under the authority of Section 113(a) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(a), to SMM New England Corporation ("SMMNEC"). The violations concern SMMNEC’s facility located at 15-17 Green Earth Avenue in Johnston, Rhode Island. This NOV identifies violations of the Rhode Island State Implementation Plan ("SIP").

2. Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to prepare a SIP incorporating regulations designed to attain and maintain healthy air quality. A state must submit its SIP and any SIP revisions to EPA for approval. Once EPA has approved a SIP, the federal government may enforce the SIP’s requirements and prohibitions pursuant to Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a) and (b).

3. EPA has approved the Rhode Island SIP under Section 110 of the CAA, 42 U.S.C. § 7410. The SIP contains various federally-approved portions of the Rhode Island Air Pollution Control Regulations ("RI APC Regulations"), including but not limited to RI APC Regulation 9. These SIP approved regulations can be accessed at
Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), requires that whenever EPA finds that any person has violated or is in violation of any requirement or prohibition of an applicable SIP, EPA shall notify the person of such finding.

**FACTUAL BACKGROUND**

SMMNEC began construction of a scrap metal processing facility in Johnston, RI in 2012. This facility operates a metal shredder to process white goods, scrap automobiles and other scrap metal materials. SMME began operating the Johnston facility in October 2013.

At the Johnston facility, scrap materials are sorted and then loaded onto a conveyor that feeds materials into an electrically operated shredder¹.

The process of shredding metal at the Johnston facility emits VOCs and other air pollutants.

EPA conducted on-site inspections of the Johnston facility on September 5, 2014 and again on October 14, 2016.

On April 7, 2015, EPA issued to Sims Metal Management Limited a Clear Air Act Reporting Requirement under Section 114 of the Act. Based on information from SMMNEC, EPA reissued the Reporting Requirement to SMMNEC on June 19, 2015.

On April 7, 2015, EPA issued to Sims Metal Management Limited a Clean Air Act Testing Order under Section 114 of the Act, requiring emissions testing at the Johnston facility and at another facility in North Haven, Connecticut. Following discussions with

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¹ SMME informed EPA on April 20, 2017, that a prior 9,000 HP shredder engine had failed in April 2017 and was being replaced by the current 7,000 HP shredder in May 2017.
SMMNEC, EPA issued a revised Clean Air Act Testing Order for the Johnston facility to SMMNEC on October 11, 2016.

11. SMMNEC conducted VOC and other air pollutant emissions testing of its shredding operations in Johnston in September, 2017, and submitted a test report to EPA on November 6, 2017.

**LEGAL BACKGROUND**

12. The Rhode Island SIP, at RI APC Regulation 9.4.2(a)(2) requires new major stationary sources of VOCs to obtain a Major Source permit and to meet an emission limitation determined to be the lowest achievable emission rate (“LAER”).

13. The SIP, at RI APC Regulation 9.4.1(b) defines a “major stationary source” to include any stationary source of air pollutants which emits or has the potential to emit 50 tons per year or more of volatile organic compounds.

14. Section 503(c) of the CAA and EPA regulations at 40 CFR § 70.5(a) require a major source to apply for a Title V operating permit within 12 months of becoming subject to a state’s operating permit program.

15. The Title V operating permit program became effective in Rhode Island on July 5, 1996.

16. Under Section 502(a) of the CAA and EPA regulations at 40 CFR § 70.7(b), no person shall operate a major source after the date it was required to submit an application for a Title V operating permit, except in compliance with a permit issued under the state’s operating permit program.
NOTICE OF VIOLATION

17. Based on the results of the September emissions testing, and on test results from comparable facilities, the Johnston facility has the potential to emit in excess of 50 tons per year of VOC.

18. To date, SMMNEC has not applied for or obtained a permit under RI APC Regulation 9 for metal shredding operations in Johnston, and has not installed and implemented LAER to control VOC emissions. Accordingly, SMMNEC has violated and continues to violate the SIP, at RI APC Regulation 9.

19. SMMNEC did not apply for a Title V operating permit within 12 months of becoming subject to the Rhode Island operating permit program.

20. SMMNEC has violated and continues to violate the provisions of Sections 502(a) and 503(c) of the CAA, and of 40 CFR §§ 70.5(a) and 70.7(b).

ENFORCEMENT

21. EPA may take any or all of the following actions: (1) issue an order requiring compliance with the Act; (2) issue an administrative penalty order; or (3) bring a civil action in federal district court for an injunction and/or monetary penalties of up to $97,229 per day for each violation. See Sections 113(a), (b) and (d) of the Act, 42 U.S.C. §§ 7413(a), (b) and (d), and 40 C.F.R. Part 19, as amended by 83 Fed. Reg. 1190 (January 10, 2018) (adjusting Clean Air Act judicial penalties for inflation from $25,000 to $97,229 per day, effective January 15, 2018). Be advised that Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), contains provisions that affect the burden of proof with respect to violations which continue or recur on or after the date of issuance of this NOV.
22. If SMMNEC has knowingly violated the requirements of the Act, SMMNEC and its responsible corporate officers may be subject to criminal penalties under Title 18 of the United States Code, imprisonment for not more than five years, or both. See Section 113(c) of the Act, 42 U.S.C. § 7413(c).

23. The issuance of this NOV does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law that are available to address these violations.

**OPPORTUNITY TO CONFER**

24. If SMMNEC has any questions regarding this NOV, please contact Senior Enforcement Coordinator Christine Sansevero, at (617) 918-1699 or Sansevero.Christine@epa.gov or have your legal counsel contact Tom Olivier, Senior Enforcement Counsel, at (617) 918-1737 or Olivier.Tom@epa.gov. SMMNEC may request an opportunity to confer with EPA by contacting Ms. Sansevero or Mr. Olivier.

**EFFECTIVE DATE AND APPLICABILITY**

25. This NOV is effective as of the date signed below and applies to SMMNEC and its officers, agents, servants, employees, successors, and assigns, and to all persons, firms, and corporations acting under, through, or for SMMNEC. This NOV is not subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Karen McGuire, Acting Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region I – New England

2-15-18  
Date