



**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

September 1, 2015

Eric Slifka, President and Chief Executive Officer  
Global Companies, LLC  
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800 South Street  
Waltham, MA 02454-9161

Darrell Boehlke, Albany Terminal Manager  
Global Companies, LLC  
50 Church Street  
Albany, NY 12202

Registered Agent for Global Companies, LLC  
Corporation Service Company  
80 State Street  
Albany, NY 12207-2543

**RE: Notice of Intent to Sue Pursuant to the Clean Air Act, 42 U.S.C. § 7604:  
Global Companies, LLC, Albany Terminal, Albany, New York**

Dear Messrs. Slifka and Boehlke:

This letter constitutes notice pursuant to section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), that the Ezra Prentice Homes Tenants Association; the County of Albany; Sierra Club Atlantic Chapter; Center for Biological Diversity; Riverkeeper, Inc.; Scenic Hudson; and Catskill Mountainkeeper (“Notifying Entities”) intend to file suit against Global Companies, LLC (“Global”) for violations of emissions standards and limitations under the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (“CAA”), and New York State implementing regulations, 6 NYCRR § 200.1 *et seq.*, at Global’s petroleum product transloading facility located at 50 Church Street, Albany, New York (“Albany Terminal” or “Terminal”).

This letter constitutes notice that unless the violations described in detail below cease within sixty (60) days of your receipt of this letter, the Notifying Entities intend to file a civil action in the United States District Court for the Northern District of New York seeking (i) declaratory judgment that Global violated the CAA when it failed to apply for and obtain a Nonattainment New Source Review permit in connection with the November 2012 modification of its CAA Title V permit allowing petroleum product throughput at the Albany Terminal to increase from 450 million gallons per year to 2.25 billion gallons per year; (ii) judgment vacating the November 2012 modifications to Global’s Title V permit allowing the throughput increase;

(iii) declaratory judgment that Global has violated its Title V permit by receiving, storing, and transloading Bakken crude oil at the Albany Terminal because Bakken crude has significantly different physical and chemical characteristics from the petroleum products Global is authorized to handle under its Title V permit; (iv) injunctive relief enjoining the receipt, storage and transloading of Bakken crude oil at the Albany Terminal; (v) civil penalties of \$37,500 for each day Global has operated the Albany Terminal in violation of the CAA; and (vi) judgment awarding the Notifying Entities the costs of litigation, including reasonable attorneys' and expert witness fees. *Id.* §§ 7413, 7604(a); 40 C.F.R. §§ 19.2, 19.4.

## **I. ENVIRONMENTAL SETTING OF GLOBAL'S ALBANY TERMINAL AND THE AFFECTED COMMUNITIES AND MEMBERS OF THE PUBLIC**

Global's Albany Terminal is located on the Hudson River in the South End of the City of Albany. The Albany Terminal is a bulk petroleum storage and transfer terminal, consisting of storage tanks and rail and marine loading facilities. Petroleum products arrive at the Terminal by rail, are offloaded at loading racks and pumped into storage tanks, and then transferred from storage tanks into barges for transport down the Hudson River.

The Albany Terminal is located adjacent to the Ezra Prentice Homes, a public housing development owned and operated by the Albany Housing Authority. Approximately one-half (85) of the Ezra Prentice apartments are located within 20–100 feet of the railroad yard serving the Albany Terminal, and all 176 Ezra Prentice housing units are in close proximity to the Terminal. The Ezra Prentice Homes include a playground where children from the housing development play on a regular basis. The playground is located within 20 feet of the Albany Terminal rail yard. Approximately 430 people reside at Ezra Prentice, including approximately 280 children.

In addition to the Ezra Prentice Homes, numerous other residences, businesses, health care facilities, parks, and institutions in Albany's South End are in close proximity to the Albany Terminal, including the Picotte Center for Disability Services; the Mount Hope residential community and playground; the Albany Community Charter School; Krank Park; the Steamboat Square Apartments and Townhouses (361 residential units); the Giffen Memorial Elementary School; the Albany County Health Department; Centro Civico Hispano Americano; the "2 Together" Children's Tutoring Center; St. Peter's Family Health Center; Island Creek Park; and the College of St. Rose Sports Complex at Hoffman Park. There also are a number of churches, agency offices, and community gathering places in close proximity to the Albany Terminal including the Department of Motor Vehicles, St. Francis Catholic Church, the Evangelical Protestant Church, Mt. Zion Baptist Church, Reigning Life Family Church, the Salvation Army Center for Adult Rehabilitation and Disaster Relief, and the Capital City Rescue Mission.

Many individuals recreate on the Hudson River and in parklands and public spaces in the vicinity and downwind of the Albany Terminal. In addition, thousands of people live, work, and recreate in the airshed affected by emissions of pollutants from the Albany Terminal.

## II. EXISTING AIR QUALITY IN THE VICINITY OF THE ALBANY TERMINAL

The Albany Terminal is located in the Albany-Schenectady-Troy Air Quality Control Area, a geographic region designated by the New York State Department of Environmental Conservation (“NYSDEC” or “DEC”) for purposes of determining whether air quality in the Area attains the National Ambient Air Quality Standards (“NAAQS”) established under the CAA. The Albany-Schenectady-Troy Area includes Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie counties. NYSDEC has classified the Albany-Schenectady-Troy Area as a marginal nonattainment area for the 1997 8-hour ozone NAAQS. *See* 40 C.F.R. § 81.333.

The Albany Terminal is classified under the CAA as a major stationary source for Volatile Organic Compounds (“VOCs”), which contribute to the formation of ozone. *See* 42 U.S.C. § 7511c(a); 40 C.F.R. § 51.165(a)(1)(iv)(A)(1)(ii); 6 NYCRR § 201-2.1(b)(21).

### A. Human Health Effects of Ozone and VOCs

Ozone is formed when VOCs react with sunlight. Breathing ozone can trigger a variety of adverse health effects, including chest pain, coughing, throat irritation, and congestion. Exposure to ozone can worsen bronchitis, emphysema, and asthma. Ground level ozone also can reduce lung function and inflame the linings of the lungs. Repeated exposure may permanently scar lung tissue. *See* National Ambient Air Quality Standards for Ozone, 79 Fed. Reg. 75,234, 75,246–70 (proposed Dec. 17, 2014).

VOCs also have a variety of adverse impacts on human health. VOCs released from crude oil operations at the Albany Terminal include benzene, methane, toluene, and xylene. Breathing these VOCs can cause headaches, dizziness, eye, nose, and throat irritation, visual disorders, memory problems, fatigue, and nosebleeds. *See* David O. Carpenter, Report on Potential Health Impacts of Proposed Expansion of Crude Oil Operations at the Global Albany Terminal 6–8 (June 5, 2014) (annexed hereto as Attachment 1).

While all VOCs exhibit some toxicity, benzene is of particular concern. *Id.* Benzene is a known human carcinogen. Chronic exposure to benzene increases the risk of leukemia, even at low levels of exposure. Benzene exposure increases the risk of birth defects. Respiratory effects of benzene exposure include pulmonary edema, acute granular tracheitis, laryngitis, and bronchitis. Benzene can remain in the air for several days once it is released. It has been shown that children are especially susceptible to the adverse health effects from exposure to benzene.

In 2014, NYSDEC conducted air quality monitoring for VOCs at various locations in Albany’s South End and Mount Hope neighborhoods, including the Ezra Prentice Homes playground. Div. of Air Res., NYSDEC, Albany South End Community Air Quality Screening (Aug. 14, 2014) (annexed hereto as Attachment 2). NYSDEC collected one-hour samples simultaneously at three locations on five days. Samples also were collected on six days by a community volunteer.

The values of benzene from the one-hour samples ranged from 0.037 parts per billion (“ppb”) to 0.21 ppb, with a mean value of 0.111 ppb. *Id.* at 22. NYSDEC’s annual guideline

concentration (“AGC”) for benzene is 0.040 ppb. *Id.* The air quality monitoring results show that benzene levels in 20 out of 21 samples collected in the South End and Mount Hope neighborhoods exceeded the AGC for benzene, and the mean value for all samples is nearly three times the AGC.

NYSDEC’s AGC for benzene is a health-based standard. For residential communities like Albany’s South End neighborhood, comparison of measured benzene levels with the AGC is most appropriate. This is because most individuals spend the greatest portion of time at their residences. Thus, the fact that 20 out of 21 individual sample results for benzene exceed NYSDEC’s AGC for benzene, and that the mean value for all samples exceeds the AGC by nearly three times, strongly suggests that ambient levels of benzene pose a public health risk to residents of those neighborhoods.

### **III. GLOBAL’S FAILURE TO PROVIDE NOTICE TO AFFECTED ENVIRONMENTAL JUSTICE COMMUNITIES OF ITS 2011–12 APPLICATION TO MODIFY ITS TITLE V PERMIT**

#### **A. NYSDEC’s Environmental Justice Policy**

In 2012, NYSDEC determined that Albany’s South End, Mount Hope, and Krank Park-Cherry Hill neighborhoods are Environmental Justice Communities within the meaning of NYSDEC’s Environmental Justice Policy. Commissioner Policy 29, Environmental Justice and Permitting (March 19, 2003) (“CP-29”). NYSDEC’s Environmental Justice Policy “provides guidance for incorporating environmental justice concerns into the [DEC] environmental permit review process and the DEC application of the State Environmental Quality Review Act.” CP-29 at 1. The policy was issued to address “the lack of meaningful public participation by minority or low-income communities in the permit process; the unavailability or inaccessibility of certain information to the public early in the permit process; and the failure of the permit process to address disproportionate adverse environmental impacts on minority and low-income communities.” *Id.*

In order to address these concerns, CP-29 establishes “the general policy of DEC to promote environmental justice and incorporate measures for achieving environmental justice into its programs, policies, regulations, legislative proposals and activities.” *Id.* at 2. Furthermore, CP-29 provides that “[t]his policy is specifically intended to ensure that DEC’s environmental permit process promotes environmental justice.” *Id.* (emphasis added).

CP-29 defines “environmental justice” as:

the fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

*Id.* at 3.

CP-29 directs that, upon receipt of a permit application subject to the policy, NYSDEC must conduct a preliminary screen to identify whether the proposed action is in or near a potential environmental justice area and then determine whether potential adverse environmental impacts related to the proposed action are likely to affect a potential environmental justice area. *Id.* at 7. Where a potential environmental justice area is identified by the preliminary screen, NYSDEC must provide the applicant with relevant information on environmental justice. *Id.* at 8.

The centerpiece of CP-29 is its requirement for enhanced public participation for actions potentially affecting an environmental justice community. The policy provides that, “[w]here a potential environmental justice area is identified by the preliminary screen, *the applicant shall submit a written public participation plan as part of its complete application.*” *Id.* at 8 (emphasis added). The policy requires that, at a minimum, the Public Participation Plan identify stakeholders, including nearby residents, local elected officials, community-based organizations, and community residents; provide for distribution and posting of written information on the proposed action and permit review process; provide for public information meetings to keep the public informed about the proposed action and permit review process; and establish easily accessible document repositories in or near the potential environmental justice area to make available pertinent information. *Id.* The applicant is also required to submit a report summarizing progress on implementing the plan, all substantive concerns raised, all resolved and outstanding issues, the components of the plan yet to be implemented, and an expected timeline for completing the plan. Upon completion of the plan, the applicant must submit a written certification that it has complied with the plan, including an updated status report. *Id.*

## **B. Global’s Failure to Comply With CP-29**

On or about November 14, 2011, Global submitted an application to NYSDEC for a Title V Permit modification to allow it to increase petroleum product throughput at the Albany Terminal from 450 million gallons annually to 2.25 billion gallons annually. By letter dated December 14, 2011, NYSDEC requested additional information regarding the proposed modification and notified Global that the requested permit modification “is considered to be a major modification with respect to your Air permit *and your facility is located within an area that has been identified as a potential Environmental Justice area . . . . Therefore, as part of the review process for this proposed modification, you will need to address CP-29 as it relates to your proposal.*” Letter from Angelo Marcuccio, NYSDEC Environmental Analyst to Thomas Keefe, Global, at 2 (Dec. 14, 2011) (“Marcuccio Letter”) (emphasis added) (annexed hereto as Attachment 3).

Global responded to the Marcuccio Letter by letter dated March 2, 2012 from its consultant, Ingalls & Associates, LLP, stating:

While we recognize that the requested permit modification is considered to be a major modification with respect to the Air Permit, and that the Albany Terminal is located within a potential Environmental Justice Area, no potential adverse environmental impacts related to the proposed action are likely to affect the area.

In fact, the project will likely result in environmental benefits for residents of the area of concern. As a result, no further EJ review is required of the proposed project based on the preliminary screening criteria detailed in CP-29.

Letter from Amelia Leonard, Ingalls & Associates, LP to Angelo Marcuccio, NYSDEC Environmental Analyst, at 4 (Mar. 2, 2012) (annexed hereto as Attachment 4).

This statement is incorrect. CP-29 requires an enhanced public participation plan to be prepared, submitted, and implemented if a potential environmental justice area is identified by the preliminary screen, regardless of an applicant's claim that the area will not be adversely affected by the project. *See* CP-29 at 8 ("Where a potential environmental justice area is identified by the preliminary screen, *the applicant shall submit a written public participation plan as part of its complete application*") (emphasis added).

As a result of Global's misrepresentation of the environmental impacts of its proposed modification and its misreading of NYSDEC's Environmental Justice Policy, no Public Participation Plan was prepared by Global, and the enhanced public participation requirements of CP-29 were ignored. Consequently, the affected environmental justice communities were never provided notice of, nor provided an opportunity to comment on, Global's proposed expansion of crude oil operations at the Albany Terminal as required by CP-29.

#### **IV. GLOBAL'S VIOLATIONS OF THE CLEAN AIR ACT**

As set forth in detail below, Global has violated and continues to violate the CAA by (i) failing to apply for and obtain a pre-construction Nonattainment New Source Review ("NNSR") permit for its increase of petroleum product throughput at the Albany Terminal from 450 million gallons annually to 2.25 billion gallons annually; (ii) operating the Albany Terminal without implementing the Lowest Achievable Emission Rate ("LAER") for all VOC emission sources at the Terminal and without obtaining VOC emission offsets as required by the NNSR provisions of the CAA; and (iii) receiving, handling, storing, and transferring Bakken crude oil at the Albany Terminal in violation of the facility's Title V permit.

##### **A. Failure to Obtain a Pre-Construction NNSR Permit**

An "emission standard or limitation" under § 7604(a)(1) of the Clean Air Act includes "any requirement to obtain a permit as a condition of operations." 42 U.S.C. § 7604(f)(4). One such requirement is the obligation to obtain a pre-construction NNSR permit for the construction and operation of a modified major stationary source in a nonattainment area. *Id.* § 7502(c)(5). Global violated the CAA by failing to obtain a pre-construction NNSR permit when on or after November 7, 2012 it made major modifications to the Albany Terminal that resulted in an increase in the Terminal's potential to emit VOCs in excess of 40 tons per year ("tpy").

As noted above, the Albany-Schenectady-Troy Area is designated as a marginal nonattainment area for the 1997 NAAQS for ozone, and the Albany Terminal is a major stationary source for VOCs, a precursor to ozone. *See* 42 U.S.C. § 7511c(a); 40 C.F.R. §§ 51.165(a)(1)(iv)(A)(1)(ii), 81.333; 6 NYCRR § 201-2.1(b)(21). Consequently, any major modification to the Albany Terminal that increases the Terminal's potential to emit VOCs by 40

tpy or more is a major modification that triggers Global's obligation to apply for, obtain, and operate under an NNSR permit. 40 C.F.R. §§ 51.165(a)(1)(v)(A), (a)(1)(x)(A); 6 NYCRR § 231-6.

A facility's potential to emit VOCs is calculated using an emission factor that expresses the amount of VOC emissions that will be released from various types of activities occurring at the facility. For example, VOC emissions from the marine loading of crude oil are calculated using an emission factor that expresses the pounds of VOCs emitted per 1,000 gallons of crude oil loaded. These emission factors are calculated using equations approved by the U.S. Environmental Protection Agency ("EPA") and contained in EPA's AP-42, *Compilation of Air Pollutant Emission Factors* ("AP-42"). A key component of the AP-42 equations is the volatility, or vapor pressure, of the type of crude oil being loaded.<sup>1</sup> All other factors remaining equal, crude oil with a higher vapor pressure will, based on the AP-42 equations, have a higher emission factor and higher VOC emissions.

On or after November 7, 2012, Global made major modifications at the Albany Terminal that increased the Terminal's potential to emit VOCs by 40 tpy or more. Specifically, Global constructed major modifications at the Albany Terminal to allow a fivefold increase in the petroleum product throughput, from 450 million gallons per year to 2.25 billion gallons per year. According to documents provided to certain Notifying Entities by NYSDEC in response to requests pursuant to the New York Freedom of Information Law, the major modifications to the Albany Terminal included, among other things, leasing and reconfiguring railroad tracks at the Kenwood Railroad Yard to facilitate off-loading of product; constructing secondary containment, pumps, and piping; installing a vapor recovery unit at the marine loading dock; and completing other operational modifications to allow for the throughput increase (the "Major Modifications").

The Major Modifications to the Albany Terminal resulted in an increase in the facility's potential to emit VOCs by more than 40 tpy, and Global therefore was obligated to apply for and obtain a pre-construction NNSR permit prior to undertaking those modifications. However, in its application for the modification to its Title V permit, Global claimed that the modifications would not result in an increase of VOC emissions in excess of 40 tpy but would instead result in an increase in the Albany Terminal's potential to emit VOCs of 39.19 tpy. *See* Letter from Gianna Aiezza, Principal Eng'r, Envirospec Eng'g PLLC to Donald Welsted, DEC Region 4, at 3 (June 5, 2012) (annexed hereto as Attachment 5).

Global's 39.19 tpy calculation assumed that the crude oil handled at the Terminal would have an emission factor of 1.3590 pounds of VOCs per 1,000 gallons of crude oil transloaded. *Id.* at 19. Global's initial application failed to explain how this emission factor was calculated, or the volatility (vapor pressure) that was assumed for the crude oil to be handled. Documents submitted to NYSDEC by Global with regard to a subsequent Title V permit modification application<sup>2</sup> indicate that Global based its 1.3590 emission factor on the assumption that the crude oil to be handled at the Albany Terminal would have a Reid Vapor Pressure ("RVP") of

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<sup>1</sup> *See* EPA, AP-42, at 5.2-9 (5th ed.), available at <http://www.epa.gov/ttn/chief/ap42/ch05/final/c05s02.pdf>.

<sup>2</sup> The subsequent Title V permit modification application remains pending and is not the subject of this Notice of Intent to Sue.

approximately 11 pounds per square inch (“psi”).<sup>3</sup> Global, Product Terminal Emission Report, Albany, 2013 PTE at 15 (July 31, 2014) (annexed hereto as Attachment 6).

Global’s claim that the crude oil to be handled at the Albany Terminal after the modification would have an RVP no greater than 11 psi is incorrect. The vast majority (up to 1.8 billion gallons annually) of the post-modification throughput increase at the Albany Terminal has been and continues to be Bakken crude oil. *See* Global, Sec. & Exch. Comm’n Form 10-K for Fiscal Year Ended Dec. 31, 2014, at 5, 62, 63 (Mar. 13, 2015) (annexed hereto as Attachment 7) (noting that new crude-oil rail terminal in Bakken region of North Dakota has single-haul rail access to the Albany Terminal); Letter from Thomas E. Keefe, Global Vice President, Envtl., Health & Safety Operations, to William Clarke, Reg’l Permit Adm’r, NYSDEC 4-5, 8 & Ex. 1 (Oct. 16, 2014) (annexed hereto as Attachment 8) (noting that the Albany Terminal receives Bakken oil from North Dakota and attaching representative bills of lading to that effect); Global, Sec. & Exch. Comm’n Form 10-K for Fiscal Year Ended Dec. 31, 2013, at 61 (Apr. 1, 2014) (annexed hereto as Attachment 9) (noting that Global’s rail expansion has created a “virtual pipeline” to transport Bakken crude from North Dakota to the Albany Terminal and that “[i]n the fourth quarter of 2011, we began buying mid-continent crude oil and transporting it by rail to our Albany, New York terminal for storage and subsequent sale in barge load quantities.”); Global, Sec. & Exch. Comm’n Form 10-K for Fiscal Year Ended Dec. 31, 2012, at 7, 8, F-9 (annexed hereto as Attachment 10) (Mar. 15, 2013) (noting Global’s plans to transload Bakken crude through the Albany Terminal to New Jersey refineries); Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Admin., U.S. Dep’t of Transp., Incident Report No. I-2011110043 (Oct. 25, 2011) (annexed hereto as Attachment 11) (noting that an October 25, 2011 spill occurred during shipment of crude oil from Columbus, North Dakota to Albany on the Canadian Pacific rail line, the line that serves Global’s Albany Terminal).

Recent analyses by the Transportation Safety Board of Canada show that the volatility of Bakken crude is much higher than previously assumed and that Bakken crude’s volatility is comparable to that of a condensate or gasoline product. *See* Phyllis Fox, Report on Air Quality and Rail Safety Impacts of Proposed Expansion of Crude Oil Operations at the Global Albany Terminal 9 (June 5, 2014) (annexed hereto as Attachment 12). This finding suggests that Global should use an emission factor of up to 3.3 pounds of VOCs per 1,000 gallons of crude oil transloaded—nearly two and a half times larger than the emission factor assumed in Global’s application. *Id.* EPA requires that petroleum facilities handling Bakken crude must assume that the oil is highly volatile—in other words, has a RVP well over 11 psi—unless the facility routinely tests or monitors the volatility of the Bakken crude entering the facility. *See In the Matter of Bakersfield Crude Terminal LLC*, Finding and Notice of Violation 6 ¶ 42, Docket No. R9-15-08, at 6–7 ¶¶ 44, 45 (Apr. 30, 2015) (annexed hereto as Attachment 13). There is no evidence in Global’s application that it routinely tests or monitors the volatility of the Bakken crude entering the Albany Terminal. Consequently, Global should have used a much higher volatility and emission factor in calculating VOC emissions for the Major Modifications at the Albany Terminal.

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<sup>3</sup> Global’s submission notes that Global used a true vapor pressure of 7.0858 psia to calculate the emission factor. A true vapor pressure of 7.0858 psia converts to a Reid vapor pressure of approximately 11 psi at Albany’s temperature of 47.37 °F. *See* AP-42 at 7.1-54 Figure 7.1-13a.



All other factors remaining equal, a more accurate emission factor of approximately 3.3 pounds of VOCs per 1,000 gallons transloaded would result in up to 110 tpy of VOC emissions at the Albany Terminal from marine loading of crude oil alone, nearly three times the NNSR threshold of 40 tpy. Att. 12, at 9. Marine loading is only one of several sources of VOC emissions from Global's operations, which also emit VOCs from storage tanks, tank cleaning, roof landing losses, transit losses, releases from railcar domes, disconnect losses, and startup/shutdown or malfunction losses—none of which were included in Global's emissions analysis. *See id.* at 9–10. On information and belief, Global's omission of these sources resulted in a significant underestimation of the potential VOC emissions from its facility. Other errors in Global's calculations include but are not limited to the failure to use the correct baseline in calculating the increase in emissions of VOCs from the Major Modification. Thus, contrary to Global's claim, the increase in VOC emissions from the Major Modifications triggered the requirement that Global apply for and obtain a pre-construction NNSR permit.

Global's failure to apply for and obtain a pre-construction NNSR permit prior to undertaking the Major Modifications at the Albany Terminal violated the CAA. Upon information and belief, that violation commenced on or about November 7, 2012 and has continued each and every day that the Albany Terminal has been in operation since that date.

#### **B. Violation of CAA and New York State Implementation Plan for Failure to Implement LAER and Obtain Offsets**

Section 7604 of the CAA defines an "emission standard or limitation" to include a "standard of performance or emission standard" or "any other standard, limitation, or schedule established . . . under any applicable State implementation plan approved by the [EPA] Administrator." 42 U.S.C. § 7604(f). The CAA requires that all major modifications subject to NNSR must comply with LAER for any pollutant for which the area is designated as nonattainment. *Id.* § 7503(a)(2). In addition, prior to undertaking a major modification subject to NNSR, the facility owner must obtain emission offsets of that pollutant to ensure that the modification does not contribute to air quality degradation. *Id.* § 7503(a)(1), (c).

EPA has approved the ozone NNSR provisions of New York's State Implementation Plan ("SIP"). 40 C.F.R. § 52.1670(c). Under the New York SIP's NNSR provisions, facilities must offset the increased potential to emit resulting from NNSR major modifications, and LAER is required for each emission source which emits the applicable nonattainment pollutant. 6 NYCRR §§ 231-6.5(a), 231-6.6(a).

The emission sources at the Albany Terminal that emit VOCs as fugitive or other emissions include the truck loading rack, the railcar loading rack, two emission points at the marine loading dock, the rail spur for distillate loading, and eleven storage tanks. Global has failed to implement LAER at all of the emission sources at the Albany Terminal, and has failed to obtain emission offsets for the VOC emissions at the Albany Terminal resulting from the November 2012 Major Modifications, in continuing violation of the CAA and the New York SIP. Upon information and belief, this violation commenced on or about November 7, 2012, and has continued each and every day that the Albany Terminal has been in operation since that date.

**C. Violation of CAA by Handling Crude Oil with Higher VOC Emissions than Allowed by the Title V Permit**

Section 7604 of the CAA includes within the definition of “emission standard or limitation” an “emission limitation” and “any other standard, limitation, or schedule established under any permit issued pursuant to [Title] V . . . [or] any permit term or condition.” 42 U.S.C. § 7604(f). The Act additionally provides that it is unlawful for any person to violate any requirement of a Title V permit or to operate a source required to have a construction permit except in compliance with a Title V permit. 42 U.S.C. § 7661a(a).

From November 7, 2012, and continuing to the present, Global’s operation of the Albany Terminal has been and continues to be subject to the terms and conditions of its Title V permit. Condition 24 of the Title V permit mandates that “[t]he sum of emissions from the emission units specified in this permit shall not equal or exceed the . . . Potential to Emit (PTE) rate” of 294,540 pounds (147.27 tons) per year of VOCs. Title V Permit at 21 (annexed hereto as Attachment 14). The Title V permit imposes throughput caps on the petroleum products handled at the Terminal to keep VOC emissions “below the applicability thresholds of 6 NYCRR 231-6,” *i.e.*, below a 40-tpy increase in the potential to emit. *See, e.g., id.* at 41; *see also* 6 NYCRR § 231-13.3.

The Title V permit specifies that the throughput caps in Conditions 1-3, 1-4, 1-7, 3-1, 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, and 4-7 of the permit were calculated using “the most current AP-42 emission factors, ‘TANKS’ program,<sup>4</sup> or other current emission factors.” Title V Permit at 22. Those calculations were provided to NYSDEC by Global and, as discussed above, were based on Global’s representation that the crude oil to be handled at the Albany Terminal would have a RVP of 11 psi, and an emission factor of 1.3590 pounds of VOCs per 1,000 gallons.

However, as noted above, Global has handled and continues to handle Bakken crude oil at the Albany Terminal, which has a much higher volatility and VOC emission factor than the assumed values that form the basis of the Title V permit. Because the Title V permit’s throughput caps only authorize the handling of crude oil with an RVP of 11 psi and an emission factor of 1.3590 pounds of VOCs per 1,000 gallons, Global’s handling of Bakken crude oil violates Conditions 1-3, 1-4, 1-7, 3-1, 4-1, 4-2, 4-3, 4-4, 4-5, 4-6, and 4-7 the Title V permit for the Albany Terminal.

Global’s violation of the Title V permit for the Albany Terminal by handling Bakken crude has been ongoing and continuous since at least the fourth quarter of 2012, when Global completed its build-out of the Albany Terminal to allow the Terminal to offload two 120-car unit trains per 24-hour period—or 160,000 barrels per day—of Bakken crude oil from North Dakota.

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<sup>4</sup> TANKS is an emission estimation software provided by EPA so that users may more easily calculate VOC and Hazardous Air Pollutant emissions from fixed- and floating-roof storage tanks, rather than using the more complicated equations contained in AP-42. *See* EPA, TANKS Emission Estimation Software, Version 4.09D, <http://www.epa.gov/ttnchie1/software/tanks/>.

Att. 10, at 8. The exact dates on which Global handled Bakken crude oil at the Albany Terminal from November 7, 2012 to the present are not publicly available.

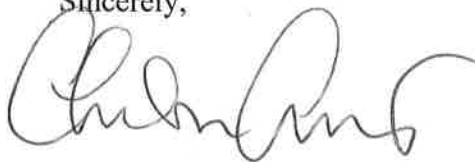
Global's handling of Bakken crude oil at the Albany Terminal in violation of the Title V permit is likely to continue. In June 2014, Global entered into an agreement with Meadowlark Midstream Company, LLC to build crude oil transportation systems in North Dakota with single-haul rail access to the Albany Terminal. Att. 7, at 5. This project is expected to be operational in the fourth quarter of 2015 and is likely to facilitate the continued transport of Bakken crude oil to the Albany Terminal. *Id.*

## V. CONCLUSION

The violations identified in this letter are based on the most recent information available to the Notifying Entities and are continuing. The Notifying Entities intend to file suit regarding the violations described above and to seek (i) declaratory judgment that Global violated the CAA when it failed to apply for and obtain an NNSR permit in connection with the November 2012 modification of its CAA Title V permit allowing petroleum product throughput at the Albany Terminal to increase from 450 million gallons per year to 2.25 billion gallons per year; (ii) judgment vacating the November 2012 modifications to Global's Title V permit allowing the throughput increase; (iii) declaratory judgment that Global has violated its Title V permit by receiving, storing, and transloading Bakken crude oil at the Albany Terminal because Bakken crude has significantly different physical and chemical characteristics from the petroleum products Global is authorized to handle under its Title V permit; (iv) injunctive relief enjoining the receipt, storage, and transloading of Bakken crude oil at the Albany Terminal; (v) civil penalties of \$37,500 for each day Global has operated the Albany Terminal in violation of the CAA; and (vi) judgment awarding the Notifying Entities the costs of litigation, including reasonable attorneys' and expert witness fees. In addition, the Notifying Entities intend to request that civil penalties be applied to beneficial mitigation projects to protect public health or the environment consistent with 42 U.S.C. § 7604(g)(2).

Please direct all communications regarding this matter to my attention at the address below. If you would like to discuss the violations identified in this letter or offer a proposal for resolving them, please contact the undersigned at (212) 845-7390.

Sincerely,



Christopher Amato, Esq.  
Jonathan Smith, Esq.  
Moneen Nasmith, Esq.  
Earthjustice  
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