Conservation
Law Foundation

October 10, 2024

Stephen Mikkelsen, Group Chief Executive Officer and Managing Director
Sims Group USA Corporation
200 West Madison St., Suite 3600
Chicago, IL 60606

John Glyde, President
Sims Group USA Holdings Corporation
Michael Henderson, Jr., President and Director
SMM New England Corporation
One Linden Avenue East
Jersey City, NJ 07305

Cynthia Tait, Assistant Treasurer
Simsmetal East LLC; Sims ARG, Inc.
200 West Madison St., Suite 3950
Chicago, IL 60606

Corporation Service Company
Agent for Sims Group USA Corporation
251 Little Falls Drive
Wilmington, DE 19808

Corporation Service Company
Agent for SMM New England Corporation in Rhode Island
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

Corporation Service Company
Agent for SMM New England Corporation in Connecticut
Goodwin Square, 225 Asylum Street, 20th Floor
Hartford, CT 06103

Corporation Service Company
Agent for Sims Group USA Holdings Corporation and Simsmetal East LLC in New York
80 State Street
Albany, NY 12207

CSC-Lawyers Incorporating Service Company
Agent for Sims ARG, Inc. in Maryland
7 St. Paul Street, Suite 820

Baltimore, MD 21202

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation ("CLF")[1] hereby gives notice to SMM New England Corporation, Sims ARG, Inc., Simsmetal East LLC, Sims Group USA Corporation, Sims Group USA Holdings Corporation, their agents, and directors (collectively, "Sims") of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA," or "Act"), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the "Notice") to the addressed persons of CLF's intention to file suit in the United States District Courts for the Districts of Rhode Island, Connecticut, New York, and Maryland seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The first subject of this action is Sims's failure to comply with applicable National Pollution Discharge Elimination System ("NPDES") general permits for industrial stormwater discharges (collectively the "Permits" or the "MSGPs"). Sims has discharged, and continues to discharge, stormwater from seven facilities in Rhode Island, Connecticut, New York, and Maryland while violating the terms of the Permits in four ways. First, Sims has failed to take the corrective actions required by the Permits.[2] Second, Sims has failed to follow required procedures for controlling and/or minimizing discharges of pollutants.[3] Third, Sims has contributed to the impairment of the receiving waters to which it discharges and has violated provisions relating to water quality standards.[4] Finally, Sims has failed to comply with benchmark and impairment monitoring and reporting requirements.[5]

The second subject of this action is Sims's discharge of industrial stormwater from its New Haven Facility into the West River without authorization from any NPDES permit.

LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this Notice Letter have occurred and continue to occur at the following Sims facilities (collectively, the "Facilities"):

[1] CLF is a not-for-profit 501(C)(3) organization dedicated to environmental conservation and protection. Its mission includes the conservation and protection of New England's waters for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. The interests of CLF's members in Rhode Island, Connecticut, New York, and Maryland are adversely affected by Sims's discharges of stormwater pollution to the receiving waters in violation of the Clean Water Act.
[2] *Infra* at 8-9.
[3] *Infra* at 10-11.
[4] *Infra* at 11-12.
[5] *Infra* at 5-6, 12-13.

1. SMM New England, located at 242 Allens Avenue in Providence, Rhode Island 02905 (the "Providence-242 Allens Facility");
2. Sims Metal Management, located at 278 Allens Avenue in Providence, Rhode Island 02905 (the "Providence-278 Allens Facility");
3. Sims Metal Management (also known as SMM New England Corporation), located at 15-17 Green Earth Avenue in Johnston, Rhode Island 02919 (the "Johnston Facility");
4. Sims Metal Management, located at 234 Universal Drive in North Haven, Connecticut 06473 (the "North Haven Facility");
5. Sims Metal – New Haven, Connecticut, located at 808 Washington Avenue in New Haven, Connecticut 06519 (the "New Haven Facility");
6. Simsmetal East LLC – Queens Plant, located at 30-27 Greenpoint Avenue in Long Island City, New York 11101 (the "Long Island City Facility");
7. United Iron & Metal East, LLC, located at 4300 Pulaski Highway in Baltimore, Maryland 21224 (the "Baltimore Facility"); and
8. Sims ARG, Inc, located at 15000 Southlawn Lane in Rockville, Maryland 20850 (the "Rockville Facility").

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Sims Group USA Corporation, Sims Group USA Holdings Corporation, SMM New England Corporation, Simsmetal East LLC, and Sims ARG, Inc. (collectively "Sims" or "the Defendants") are persons as defined by 33 U.S.C. § 1362(5).

Sims Group USA Corporation, Sims Group USA Holdings Corporation, and SMM New England Corporation operate the Providence-242 Allens Facility, the Providence-278 Allens Facility, the Johnston Facility, the North Haven Facility, and the New Haven Facility and have operated them since at least 2019.

Sims Group USA Corporation, Sims Group USA Holdings Corporation and Simsmetal East LLC operate the Long Island City Facility and have operated it since at least 2019.

Sims Group USA Corporation, Sims Group USA Holdings Corporation, and Sims ARG, Inc. operate the Baltimore Facility and the Rockville Facility and have operated them since at least 2019.

BACKGROUND

A. The Facilities' Operations Require Them to Obtain Permits.

Sims buys, processes, and sells ferrous and non-ferrous scrap metal, appliances, junk cars, trailers, and electronics, which it stores outdoors in uncovered piles or bales at the Facilities. Processing activities at the Facilities include baling, car crushing, wet car processing, shredding, shearing, and/or torch cutting.

Each day of precipitation or snowmelt, the Defendants discharge stormwater from the Facilities. Discharge from the Facilities carries pollutants, including but not limited to, aluminum, copper,

iron, lead, zinc, cadmium, chromium, oil and grease, nitrogen, and/or total suspended solids ("TSS"), into waters of the United States.

To discharge lawfully under the Clean Water Act, Sims must apply for, obtain authorization to discharge under, and comply with the conditions of the applicable Permits, namely:

1. The Rhode Island Multi-Sector General Permits for Storm Water Discharge Associated with Industrial Activity effective September 1, 2024 (the "2024 RI MSGP")[6] and effective from May 3, 2019 to August 31, 2024 (the "2019 RI MSGP,")[7] (collectively, the "RI MSGPs") issued by the Rhode Island Department of Environmental Management ("RIDEM");
2. The Connecticut General Permits for the Discharge of Stormwater Associated with Industrial Activity effective October 1, 2019 and reissued without modification effective October 1, 2021 (the "CT ISGPs")[8] by the Connecticut Department of Energy and Environmental Protection ("CT DEEP");
3. The New York Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity effective March 8, 2023 (the "2023 NY MSGP")[9] and effective from March 1, 2018 to February 28, 2023 (the "2018 NY MSGP,")[10] (collectively, the "NY MSGPs") issued by the New York State Department of Environmental Conservation ("NYSDEC"); and
4. The Maryland General Permits for Discharges from Stormwater Associated with Industrial Activities effective February 1, 2023 (the "2023 MD MSGP")[11] and effective from January 1, 2014 to February 1, 2023 (the "2014 MD MSGP,") [12] (collectively, the "MD MSGPs") issued by the Maryland Department of the Environment ("MDE").

---

[6] RIDEM, *Multi-Sector General Permit Rhode Island Pollutant Discharge Elimination System Storm Water Discharge Associated with Industrial Activity* (effective September 1, 2024), https://dem.ri.gov/environmental-protection-bureau/water-resources/permitting/stormwater-permitting/industrial-ripdes [hereinafter "2024 RI MSGP"].

[7] RIDEM, *Multi-Sector General Permit Rhode Island Pollutant Discharge Elimination System Stormwater Discharge Associated with Industrial Activity* (effective May 3, 2019), https://dem.ri.gov/programs/benviron/water/pn/ripdes/msgp.pdf [hereinafter "2019 RI MSGP"].

[8] CT DEEP, *General Permit for Discharge of Stormwater Associated with Industrial Activity* (effective Oct. 1, 2021), https://portal.ct.gov/-/media/deep/water_regulating_and_discharges/stormwater/industrial/20210316-industrial-general-permit-as-is-renewal---cleansigned.pdf [hereinafter "CT ISGPs"].

[9] NY DEC, *SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity* (effective Mar. 8, 2023), https://extapps.dec.ny.gov/docs/water_pdf/gp023001final03082023.pdf [hereinafter "2023 NY MSGP"].

[10] NY DEC, *SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities* (effective Mar. 1, 2018), https://assets.vbt.io/public/files/6975/NY_Resources_Multi-Sector/NY_-_DEC_-_SPDES_Multi_Sector_General_Permit_for_Stormwater_Discharges_Associated_with_Industrial_Activity_GP-0-17-004.pdf [hereinafter "2018 NY MSGP"].

[11] MDE, *General Permit for Discharges from Stormwater Associated with Industrial Activities* (effective Feb. 1, 2023) https://mde.maryland.gov/programs/permits/WaterManagementPermits/Documents/GDP%20Stormwater/20SW/20SW-Final-Permit.pdf.

[12] MDE, *General Permit for Discharges from Stormwater Associated with Industrial Activities*, (effective Jan. 1, 2014). The 2018 MD MSGP was never issued, so the 2014 MD MSGP remained in effect until the 2023 MD MSGP took effect. *Id*. at 4.

B. Benchmarks in the Permits.

The Permits include the following pollutant Benchmark Values for Sector N (Scrap Recycling and Waste Recycling Facilities) in Rhode Island, New York, and Maryland, and Sector E (Scrap Recycling Facilities) in Connecticut.

Pollutant	RI MSGPs[13]	CT ISGPs[14]	NY MSGPs[15]	MD MSGPs[16]
Aluminum	0.75 mg/L	N/A	750 µg/L (recoverable)	1.1 mg/L (recoverable)(2023 MD MSGP); 0.75 mg/L (2014 MD MSGP)
Cadmium	N/A	N/A	1.8 ug/L	N/A
Chemical oxygen demand ("COD")	120 mg/L	75 mg/L	120 mg/L	120 mg/L
Chromium	N/A	N/A	1.8 mg/L	N/A
Copper	Hardness Dependent[17]	0.059 mg/L	12 µg/L (recoverable)	Hardness Dependent[18] (recoverable)
Iron	1.0 mg/L (2019 RI MSGP)	N/A	1.0 mg/L (recoverable)	3.0 mg/L (recoverable) (2023 MD MSGP); 1.0 mg/L (2014 MD MSGP)
Lead	Hardness Dependent[19]	0.076 mg/L	69 µg/L (recoverable)	Hardness Dependent[20]

[13] 2019 RI MSGP at 91; 2024 RI MSGP at 89-90.
[14] CT ISGPs at 32, 50.
[15] 2023 NY MSGP at 115; 2018 NY MSGP at 124.
[16] 2014 MD MSGP App. D at 21; 2023 MD MSGP App. D at 29.
[17] The Sector N benchmarks in the RI MSGP for copper differ depending on the salinity and the hardness of the receiving water. 2019 RI MSGP at 91; 2024 RI MSGP 89-90. The two Providence facilities (the Providence-242 Allens Facility and the Providence-278 Allens Facility) discharge into salt water, which has a corresponding copper benchmark of 0.0048 mg/L. The Johnston Facility discharges into fresh water with a hardness (as calcium carbonate) of 241 mg/L, which corresponds to a copper benchmark of 0.0316 mg/L.
[18] The Sector N benchmarks in the MD MSGP for copper differ depending on the salinity and the hardness of the receiving water. 2014 MD MSGP App. C; 2023 MD MSGP App. C. The Baltimore facility discharges into water that has a hardness of 335 mg/L (as calcium carbonate), which corresponds to a copper benchmark of 0.0332 mg/L. The copper benchmark applicable to the Rockville facility is 0.014 mg/L.
[19] The Sector N benchmarks in the RI MSGP for lead differ depending on the salinity and the hardness of the receiving water. 2019 RI MSGP at 91; 2024 RI MSGP 89-90. The two Providence facilities (the Providence-242 Allens Facility and the Providence-278 Allens Facility) discharge into salt water, which has a corresponding lead benchmark of 0.21 mg/L. The Johnston Facility discharges into fresh water with a hardness (as calcium carbonate) of 241 mg/L, which corresponds to a lead benchmark of 0.246 mg/L.
[20] The Sector N benchmarks in the MD MSGP for lead differ depending on the salinity and the hardness of the receiving water. 2014 MD MSGP App. C; 2023 MD MSGP App. C. The Baltimore facility discharges into water that has a hardness of 335 mg/L (as calcium carbonate), which corresponds to a lead benchmark of 0.262 mg/L. The lead benchmark applicable to the Rockville facility 0.12 mg/L.

Mercury	N/A	0.0014 mg/L	N/A	N/A
Nitrogen	N/A	2.30 mg/L (total Kjeldahl); 1.10 mg/L (as nitrate)	N/A	N/A
Oil and grease	15 mg/L	5 mg/L	15 mg/L	N/A
Polychlorinated biphenyls ("PCBs")	PCB-1016: 0.000434 mg/L; PCB-1221: 0.10 mg/L; PCB-1232: 0.000387 mg/L; PCB-1242: 0.000289 mg/L; PCB-1248: 0.002544 mg/L; PCB-1254: 0.10 mg/L; PCB-1260: 0.000477 mg/L[21]	Monitor only	N/A	N/A
pH	N/A	5-9 S.U.	N/A	N/A
Phosphorus	N/A	0.40 mg/L	N/A	N/A
Total suspended solids ("TSS")	100 mg/L	90 mg/L	100 mg/L	100 mg/L
Zinc	Hardness Dependent[22]	0.160 mg/L	110 ug/L (recoverable)	Hardness Dependent[23]

C. The Facilities Discharge to Impaired Receiving Waters.

Providence River. The Providence-242 Allens Facility and the Providence-278 Allens Facility both discharge into the segment of the Providence River designated as State Waterbody ID RI0007020E-01B. This segment of the Providence River is impaired for dissolved oxygen, nitrogen, phosphorus, and fecal coliform.[24]

[21] Additional monitoring required for facilities where shredding activities and/or shredding materials are exposed to stormwater. 2019 RI MSGP at 91; 2024 RI MSGP 90.

[22] The Sector N benchmarks in the RI MSGP for zinc differ depending on the salinity and the hardness of the receiving water. 2019 RI MSGP at 91; 2024 RI MSGP 89-90. The two Providence facilities (the Providence-242 Allens Facility and the Providence-278 Allens Facility) discharge into salt water, which has a corresponding zinc benchmark of 0.09 mg/L. The Johnston Facility discharges into fresh water with a hardness (as calcium carbonate) of 241 mg/L, which corresponds to a zinc benchmark of 0.25 mg/L.

[23] The Sector N benchmarks in the MD MSGP for zinc differ depending on the salinity and the hardness of the receiving water. 2014 MD MSGP App. C; 2023 MD MSGP App. C. The Baltimore facility discharges into fresh water with a hardness of 335 mg/L (as calcium carbonate), which corresponds to a benchmark of 0.26 mg/L for zinc. The zinc benchmark applicable to the Rockville facility is 0.12 mg/L.

[24] U.S. EPA, *Waterbody Report Providence River* (2022), https://mywaterway.epa.gov/waterbody-report/RIDEM/RI0007020E-01B/2022.

Simmons Reservoir. The Johnston Facility discharges into the Simmons Reservoir, which is designated as State Waterbody ID RI0006018L-03. Simmons Reservoir is impaired for total phosphorus and turbidity.[25]

Little River and Quinnipiac River. The North Haven Facility discharges into the Little River, designated as Outlet Quinnipiac River (U.S. Geological Survey hydrologic unit code 011000040105). The segment of the Quinnipiac River that joins Outlet Quinnipiac River (State Waterbody ID CT-C1_014-SB) is impaired by enterococcus, dissolved oxygen, nutrients, oil and grease, and PCBs.[26] The probable sources contributing to the impairment of the Quinnipiac River include industrial point source discharge, non-point sources, urban stormwater, and wet weather discharges.[27]

West River. The New Haven Facility discharges into the West River at the segment designated as State Waterbody CT-C1_015-SB.[28] This segment of the West River is impaired for dissolved oxygen, nutrients, oil and grease, PCBs, and enterococcus.[29] The probable sources contributing to the impairment of the West River include industrial point source discharge, non-point sources, urban stormwater, and wet weather discharges.[30]

Newtown Creek. The Long Island City Facility discharges into Newtown Creek and/or Dutch Kills at the segment designated as Newtown Creek and tidal tributaries (State Waterbody ID NY1702-0002). Newtown Creek is a tributary of the East River.[31] Newtown Creek and its tidal tributaries are impaired for dissolved oxygen, fecal coliform, floating debris, and trash.[32]

Redhouse Creek and Back River. The Baltimore Facility discharges into Redhouse Creek (U.S. Geological Survey hydrologic unit code 020600030702), a tributary of Back River (State Waterbody ID MD-02130901).[33] This segment of Redhouse Creek and Back River is impaired for chloride, sulfate, total suspended solids, habitat alterations, and a lack of a riparian buffer.[34]

Rock Creek. The Rockville Facility discharges into Rock Creek (Assessment Unit ID MD-02140206).[35] Rock Creek is impaired for phosphorus, total suspended solids, and enterococcus.

---

[25] U.S. EPA, *Waterbody Report Simmons Reservoir* (2022), https://mywaterway.epa.gov/waterbody-report/RIDEM/RI0006018L-03/2022.
[26] *Id.*; U.S. EPA, *Appendix B-. List of Impaired Waters for Connecticut (EPA Category 5) for Connecticut 2020 Integrated Water Quality Report*. at 39, 2020 CT IWQR Appendix B-1 List of Impaired Waters for Connecticut (EPA Category 5).
[27] *Id.*
[28] U.S. EPA, *Waterbody Report LIS CB Inner - West River (Lower), West Haven* (2022), https://mywaterway.epa.gov/waterbody-report/CT_DEP01/CT-C1_015-SB/2022.
[29] *Id.*
[30] *Id.*
[31] U.S. EPA, *Waterbody Report Newtown Creek and tidal tribs [sic]* (2022), https://mywaterway.epa.gov/waterbody-report/21NYDECA/NY1702-0002.
[32] *Id.*
[33] U.S. EPA, *Waterbody Report Back River* (2024), https://mywaterway.epa.gov/waterbody-report/MDE_EASP/MD-02130901/2024.
[34] *Id.*
[35] U.S. EPA, *Waterbody Report Rock Creek* (2024), https://mywaterway.epa.gov/waterbody-report/MDE_EASP/MD-02140206/2024.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

A. Sims Must Take Corrective Action Following Triggering Events.

The Permits require Sims to take corrective action in response to the following triggering events:[36]

1. The RI MSGPs require corrective action: (1) when the average of the required four benchmark monitoring results for a monitoring year exceeds the applicable benchmark value and the exceedances are not attributable to natural background pollutant levels,[37] (2) whenever the quarterly visual assessment shows evidence of stormwater pollution (such as color, odor, turbidity, floating solids, settled solids, suspended solids, foam, or oil sheen),[38] or (3) if the permittee finds that the control measures are not achieving their intended effect of minimizing pollutant discharges to meet applicable water quality standards or any of the other non-numeric effluent limits in the RI MSGP;[39]
2. The CT ISGPs require that Sims follow a corrective-action-like process called "Keeping Plan Current" whenever (1) the average of four semiannual monitoring values exceeds the benchmark or an exceedance is mathematically certain, (2) it is necessary to address significant sources or potential sources of pollution identified as a result of any inspection or visual monitoring, or (3) the actions required by the Stormwater Pollution Prevention Plan ("SWPPP") fail to ensure or adequately protect against pollution of surface waters;[40]
3. The NY MSGPs require corrective action following any benchmark exceedance or when visual examination indicates the presence of pollution;[41] and
4. The MD MSGPs require corrective action whenever (1) an unauthorized discharge occurs, (2) a discharge violates a numeric effluent limit, (3) control measures are not stringent enough to meet applicable water quality standards or non-numeric effluent limits, (4) a required control measure was never installed, installed incorrectly, improperly operated, or improperly maintained, or (5) a visual assessment shows evidence of stormwater pollution, such as color, odor, solids, or foam.[42] The MD MSGPs additionally require facilities to take action whenever the annual average for a parameter exceeds the benchmark threshold.[43]

Corrective action under the Permits must take the following forms:

1. The RI MSGPs designate three corrective action levels: Level One (following the first monitoring year), Level Two (following the second monitoring year), or Level Three (following subsequent years).[44] The Corrective Actions require inspections, review and

[36] 2019 RI MSGP at 23-28; 2024 RI MSGP at 20-24; 2021 CT ISGP at 29; 2023 NY MSGP at 14; 2018 NY MSGP at 14; 2023 MD MSGP at 28-37; 2014 MD MSGP at 22-25.
[37] 2019 RI MSGP at 23-28; *see also* 2019 RI MSGP at 42 (if the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, and the permittee meets the associated supporting rationale, documentation, and reporting requirements, the permittee is not required to perform corrective action); 2024 RI MSGP at 21.
[38] 2019 RI MSGP at 30; 2024 RI MSGP at 27.
[39] 2019 RI MSGP at 17; 2024 RI MSGP at 12.
[40] CT ISGPs at 29, 31, 33.
[41] 2023 NY MSGP at 40; 2018 NY MSGP at 41.
[42] 2023 MD MSGP at 28; 2014 MD MSGP at 22; 2014 MD MSGP at Appx B at 3.
[43] 2023 MD MSGP at 29-37; 2014 MD MSGP at 26.
[44] 2019 RI MSGP at 24-26; 2024 RI MSGP at 20-22.

revision of the Storm Water Management Plan ("SWMP"), implementation of additional Operational Source Control BMPs (at Level One), implementation of additional Structural Source Control BMPs (at Level Two), implementation of the revised SWMP (at Levels Two and Three), submitting an Industrial Activity Demonstration or a Non-Industrial Pollutant Source Demonstration (at Level Three), and reporting actions taken in the annual report.[45]

2. The CT ISGPs' "Keeping Plan Current" corrective action process requires that Sims review the selection, design, installation, and implementation of the control measure and make necessary modifications (1) until Sims has completed four consecutive semiannual monitoring events for which the average does not exceed the benchmark, (2) to ensure that the condition is eliminated and will not be repeated in the future, and/or (3) within 120 days of the date it becomes aware or should have become aware that a triggering condition has occurred.[46]
3. The NY MSGPs require the following corrective actions: facility inspection, implementation of BMPs to address any identified sources of contamination within set timeframes, and SWPPP revision.[47] If the BMP implementation will take longer than 12 weeks, the permittee must submit the proposed schedule to NYDEC and obtain written approval.[48]
4. The 2023 MD MSGP requires the following corrective actions: immediately take all reasonable steps to minimize or prevent the discharge of pollutants until a permanent solution can be implemented, and then complete any additional actions before the next storm event or within 14 calendar days from the time of discovery.[49] The MD MSGPs designate three escalating levels of Additional Implementation Measures to be implemented following benchmark exceedances: AIM Benchmark Action Level 1 (following the first monitoring year), Level 2 (following the second monitoring year), or Level 3 (following subsequent years).[50] The AIM Benchmark Action Level responses include reviewing stormwater control measures, implementing additional measures (at Level 1), installing permanent controls, seeking alternative options (at Level 2), and consulting a professional engineer to prepare an action plan (at Level 3).[51] The 2014 MD MSGP requires facilities to make the necessary modifications and continue monitoring until the annual average does not exceed the benchmark.[52]

[45] *Id.*
[46] CT ISGPs at 29, 31, 33.
[47] 2023 NY MSGP at 40-41; 2018 NY MSGP at 41-42.
[48] 2023 NY MSGP at 40; 2018 NY MSGP at 41.
[49] 2023 MD MSGP at 28.
[50] *Id.* at 29-34.
[51] *Id.*
[52] 2014 MD MSGP at 26-27.

B. Sims Must Use Control Measures and Comply with Non-Numeric and Sector-Specific Effluent Limits.

The Permits require Sims to comply with non-numeric technology-based effluent limits, including control measures, Best Management Practices ("BMPs"), and sector-specific non-numeric effluent limits, in order to minimize the discharge of pollutants from the Facilities.[53]

The control measures required by the MSGPs include: minimizing exposure of sources of pollution to stormwater;[54] practicing good housekeeping, including preventing discharge of waste, garbage, and floatable debris;[55] maintaining equipment and control measures;[56] minimizing spills and practicing spill prevention procedures;[57] erosion and sediment control;[58] managing runoff;[59] training employees in stormwater control measures;[60] and minimizing or eliminating dust generation.[61]

Sims is required to implement Best Management Practices ("BMPs") to reduce or eliminate the pollutants in stormwater discharges and to ensure compliance with the Permits.[62]

In addition to general non-numeric effluent limits, Sims must also comply with sector-specific technology-based effluent limits, including but not limited to those relating to minimizing

[53] 2019 RI MSGP at 17 (Sims must "select, design, install, and implement control measures (including best management practices) to minimize pollutant discharges"). The control measures must address the RI MSGP's selection and design considerations. *Id*. 2024 RI MSGP at 12 ("The permittee must select, design, install, and implement control measures (including best management practices) to minimize pollutant discharges that address the selection and design considerations in Part II.A.1, meet the non-numeric effluent limits in Part II.A.2, and meet limits contained in applicable effluent limitations guidelines in Part II.A.3."); CT ISGPs at 18 ("Control Measures are required Best Management Practices (BMP) that the permittee must implement to minimize the discharge of pollutants from the permitted facility."); 2023 NY MSGP at 7 ("Effluent Limitations are required to *minimize* the *discharge* of *pollutants*. *Control measures* are selected to meet the effluent limitations (non-numeric, numeric and water quality based)"); 2018 NY MSGP at 8; 2023 MD MSGP at 15 (Sims must "select, design, install, and implement control measures (including best management practices) to meet the non-numeric effluent limits. . . If . . . control measures are not achieving their intended effect of minimizing pollutant discharges, you must modify these control measures as expeditiously as practicable"); 2014 MD MSGP at 12-13.

[54] 2024 RI MSGP at 12; 2019 RI MSGP at 17-18; CT ISGPs at 18-19; 2023 NY MSGP at 7-8; 2018 NY MSGP at 8-9; 2023 MD MSGP at 5; 2014 MD MSGP at 13.

[55] 2024 RI MSGP at 13; 2019 RI MSGP at 18; CT ISGPs at 18; 2023 NY MSGP at 8; 2018 NY MSGP at 9; 2023 MD MSGP at 17; 2014 MD MSGP at 14.

[56] 2024 RI MSGP at 12; 2019 RI MSGP at 18-19; CT ISGPs at 19-20; 2023 NY MSGP at 8-9; 2018 NY MSGP at 9-10; 2023 MD MSGP at 17; 2014 MD MSGP at 14.

[57] 2024 RI MSGP at 13-15; 2019 RI MSGP at 18-20; CT ISGPs at 20-22; 2023 NY MSGP at 9-10; 2018 NY MSGP at 10-11; 2023 MD MSGP at 18; 2014 MD MSGP at 14.

[58] 2024 RI MSGP at 15; 2019 RI MSGP at 19-20; CT ISGPs at 19; 2023 NY MSGP at 10; 2018 NY MSGP at 11; 2023 MD MSGP at 18-19; 2014 MD MSGP at 15.

[59] 2024 RI MSGP at 15; 2019 RI MSGP at 20; CT ISGPs at 19; 2023 NY MSGP at 10; 2018 NY MSGP at 11; 2023 MD MSGP at 19; 2014 MD MSGP at 15.

[60] 2024 RI MSGP at 15-16; 2019 RI MSGP at 20-21; CT ISGPs at 22; 2023 NY MSGP at 11-12; 2018 NY MSGP at 12-13; 2023 MD MSGP at 19; 2014 MD MSGP at 15-16.

[61] 2024 RI MSGP at 16; 2019 RI MSGP at 21; 2023 NY MSGP at 12; 2018 NY MSGP at 13; 2023 MD MSGP at 20; 2014 MD MSGP at 16.

[62] 2024 RI MSGP at 18-19; 2019 RI MSGP at 22, 32; CT ISGPs at 18; 2023 NY MSGP at 14-15; 2018 NY MSGP at 15-16; 2023 MD MSGP at 15; 2014 MD MSGP at 13A-13.

exposure, good housekeeping, maintenance, erosion and sediment controls, and management of runoff.[63]

C. Sims Must Control Discharges so as to Not Violate State Water Quality Standards.

The Permits require Sims to control its stormwater discharge to meet applicable water quality standards.[64]

Rhode Island's state water quality standards require all waters to be free from concentrations or combinations of pollutants that harm fish and wildlife, the integrity of the aquatic habitat, or human health.[65] The standards provide that waters shall be free from concentrations or combinations of pollutants that create a nuisance or interfere with designated uses by: forming deposits or floating as debris, oil, grease, or scum; producing odor or taste; or causing color change.[66] Rhode Island provides further protections relating to sludge deposits, solids, oil, grease, scum, color, turbidity, taste, odor, and chemical constituents for Class B waters.[67]

Connecticut's applicable state water quality standards for Class B waters include prohibitions on conditions that would impair any use of the water, be aesthetically objectionable, and/or harm aquatic life, such as floating, suspended, and settleable solids; color and turbidity; oil, grease, and petrochemicals that produce a visible film; and taste and odor.[68] Connecticut also has state water quality standards for all surface waters relating to aesthetics, including prohibiting debris, objectionable odor, color, taste, or turbidity;[69] pollutants that adversely affect the bottom of the waterbody;[70] and toxic concentrations or combinations of pollutants that would impair designated uses.[71] For all waterbodies, existing uses and "the water quality necessary for their protection are to be maintained and protected."[72]

New York's water quality standards for Class SD waters prohibit substances that adversely affect taste, color, or odor; toxic substances that impair best usages; any increase in turbidity that

---

[63] 2024 RI MSGP at 12-15; 2019 RI MSGP at 17-21, 87-90; CT ISGPs at 47-49; 2023 NY MSGP at 108-112; 2018 NY MSGP at 116-119; 2023 MD MSGP, App. D at 26-29; 2014 MD MSGP, App. D at 18-21.
[64] 2024 RI MSGP at 18 ("Discharges must be controlled as necessary to meet applicable water quality standards."); 2019 RI MSGP at 22 ("Discharges must be controlled as necessary to meet applicable water quality standards."); CT ISGPs at 18 ("The stormwater discharge shall not cause or contribute to an exceedance of the applicable Water Quality Standards in the receiving water."); 2023 NY MSGP at 13-14 ("If . . . the *stormwater discharges* authorized by this permit are causing, have the reasonable potential to cause, or are contributing to a violation of the *water quality standards*; the *owner or operator* must take appropriate corrective action"; 2018 NY MSGP at 14-15 ("any *discharge* which . . . may cause or contribute to a violation of water quality is prohibited"); 2023 MD MSGP at 20 ("Your discharge must be controlled as necessary to meet applicable water quality standards."); 2014 MD MSGP at 16 ("Your discharge must be controlled as necessary to meet applicable water quality standards.").
[65] 250-RICR-150-05-10.B.1.
[66] 250-RICR-150-05-10.B.2.
[67] 250-RICR-150-05-10.D.1.
[68] CT DEEP, *Connecticut Water Quality Standards*, Sec. 22a-426-9 (a)(1) Table 1, https://portal.ct.gov/-/media/deep/water/water_quality_standards/wqs-final-adopted-february-25-2011.pdf.
[69] *Id*.
[70] *Id*.
[71] *Id*.
[72] *Id.* at Sec. 22a-426-8 (a)(1).

visibly contrasts with natural conditions; suspended, colloidal, and settleable solids that cause deposition or impair best usages; oil and floating substances that result in residue, a visible oil film, or globules of grease; and no garbage, oils, sludge, or other refuse.[73]

Maryland's water quality standards require all water to be free from: sewage, industrial waste, or other waste that will create unsightly, putrescent, or odorous sludge; any material, including floating debris, oil, grease, scum, sludge, or other materials in sufficient quantities to be unsightly, produce taste or odor, produce an aesthetically objectionable color, or create a nuisance; and high temperatures, corrosive substances, or toxic substances that would interfere with designated uses or harm humans, animals, plants, or aquatic life.[74]

D. Sims Must Comply with Monitoring, Reporting, and Inspection Requirements.

The Permits include monitoring and reporting requirements, including benchmark monitoring, impaired waters and TMDL monitoring, annual reports, and reporting of noncompliance. Sims is required to collect and analyze stormwater samples and document monitoring activities in accordance with the procedures and frequencies laid out in the Permits.[75]

Sims is required to conduct benchmark monitoring for pollutants including aluminum, cadmium, COD, chromium, copper, iron, lead, nitrogen, oil and grease, PCBs, acidic wastewater, phosphorus, TSS, and/or zinc.[76] Sims must conduct quarterly benchmark monitoring at the Connecticut facilities (for iron, mercury, and aluminum) and the Maryland facilities (for at least one year), and semi-annual benchmark monitoring at the Rhode Island, Connecticut (all other parameters) and New York facilities.[77]

Sims is required to conduct impaired waters monitoring – it must monitor its discharges for pollutants for which the receiving waters are impaired.[78] Impaired waters monitoring must be conducted twice per six-month period in Rhode Island, annually in Connecticut and Maryland, and quarterly in New York.[79] After one year of monitoring, impaired waters monitoring may cease in Rhode Island and Connecticut if the pollutants for which the receiving waters are impaired are not detected above background levels and notification requirements are met.[80]

---

[73] 6 NYCRR Part 703.2.
[74] Md. Code Regs. 26.08.02.03.
[75] 2024 RI MSGP at 37-43; 2019 RI MSGP at 39-45; CT ISGPs at 30-39; 2023 NY MSGP at 33-36; 2018 NY MSGP at 34-37; 2023 MD MSGP at 40-47; 2014 MD MSGP at 25-30.
[76] 2024 RI MSGP at 38, 89-90; 2019 RI MSGP at 41, 91; CT ISGPs at 32, 49; 2023 NY MSGP at 33, 35, 115; 2018 NY MSGP at 34, 36, 124; 2023 MD MSGP, App. D at 29; 2014 MD MSGP, App. D at 21.
[77] 2024 RI MSGP at 39; 2019 RI MSGP at 41 (the RI MSGP requires semi-annual reporting of two benchmark monitoring values: the maximum and minimum values); CT ISGPs at 32, 49; 2023 NY MSGP at 35; 2018 NY MSGP at 36; 2023 MD MSGP at 40-41; 2014 MD MSGP at 26.
[78] 2024 RI MSGP at 41; 2019 RI MSGP at 44-45; CT ISGPs at 35-36; 2023 NY MSGP at 33, 35; 2018 NY MSGP at 34-36; 2023 MD MSGP at 41-43; 2014 MD MSGP at 16 ("If you discharge to an impaired water, the Department will inform you if any additional monitoring, limits or controls are necessary").
[79] 2024 RI MSGP at 41-42; 2019 RI MSGP at 44-45; CT ISGPs at 35-36; 2023 NY MSGP at 33, 35 ("if a facility discharges to impaired waterbody and the cause of impairment is a pollutant of concern included in the benchmarks"); 2018 NY MSGP at 34-35; 2023 MD MSGP at 41; 2014 MD MSGP at 16 ("If you discharge to an impaired water, the Department will inform you if any additional monitoring, limits or controls are necessary").
[80] 2024 RI MSGP at 42; 2019 RI MSGP at 44-45; CT ISGPs at 35-36.

Sims must submit its benchmark and impaired waters monitoring results to RIDEM, CT DEEP, NYDEC, or MDE via Discharge Monitoring Reports ("DMRs") or Stormwater Monitoring Reports ("SMRs" in Connecticut) pursuant to the due dates in the MSGPs.[81]

In Rhode Island, New York, and Maryland, Sims is required to prepare and/or submit Annual Reports or Annual Certification Reports ("ACRs") summarizing the previous year's inspections, benchmark monitoring, and corrective action taken.[82] The MSGPs also contain additional reporting requirements, including requirements to report noncompliance, benchmark exceedances, planned changes, and/or anticipated noncompliance.[83]

Sims is required to conduct comprehensive site inspections and routine facility inspections at set intervals.[84] Sims is required to conduct visual assessments of stormwater samples at least quarterly.[85] Facility inspections and visual assessments must be conducted pursuant to the procedures specified in the Permits and maintained on-site.[86]

E. Sims Is Required to Develop, Implement, and Update a Storm Water Management Plan or a Stormwater Pollution Prevention Plan.

The Permits require Sims to develop and maintain a Storm Water Management Plan ("SWMP") for its Rhode Island facilities and a Stormwater Pollution Prevention Plan ("SWPPP") for its New York, Connecticut, and Maryland facilities pursuant to the requirements in the Permits.[87] Sims must amend the SWMP or SWPPP following the requirements in the Permits, including whenever there is a change that has a significant effect on the potential for the discharge of pollutants, if the SWMP or SWPPP proves to be ineffective in controlling pollutants, and as required by the corrective action procedures.[88]

F. Sims Is Required to Obtain a NPDES Permit for Facilities that Discharge Industrial Stormwater Directly to a Surface Waterbody from a Point Source.

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.[89] Facilities (1) that add stormwater discharge

[81] 2024 RI MSGP at 44-45; 2019 RI MSGP at 46; CT ISGPs at 37, 68; 2023 NY MSGP at 36; 2018 NY MSGP at 37; 2023 MD MSGP at 43; 2014 MD MSGP at 27.
[82] 2024 RI MSGP at 44; 2019 RI MSGP at 46; 2023 NY MSGP at 42; 2018 NY MSGP at 43; 2023 MD MSGP at 38-39; 2014 MD MSGP at 23.
[83] 2024 RI MSGP at 45-46; 2019 RI MSGP at 46-47; 2023 NY MSGP at 43; 2018 NY MSGP at 44; 2023 MD MSGP at 44; 2014 MD MSGP at 28-30.
[84] 2024 RI MSGP at 25-26; 2019 RI MSGP at 28-31; CT ISGPs at 30; 2023 NY MSGP at 28-30; 2018 NY MSGP at 29-31; 2023 MD MSGP at 38-40; 2014 MD MSGP at 23-25.
[85] 2024 RI MSGP at 26-27; 2019 RI MSGP at 28-31; CT ISGPs at 31; 2023 NY MSGP at 32-33; 2018 NY MSGP at 33-34; 2023 MD MSGP at 39; 2014 MD MSGP at 24-25.
[86] 2024 RI MSGP at 27; 2019 RI MSGP at 28-32; CT ISGPs at 30-31; 2023 NY MSGP at 28-30, 32-33; 2018 NY MSGP at 29-31, 33-34; 2023 MD MSGP at 38; 2014 MD MSGP at 23-24.
[87] 2024 RI MSGP at 29-36; 2019 RI MSGP at 32-39; CT ISGPs at 23-30; 2023 NY MSGP at 16-27; 2018 MSGP at 17-28; 2023 MD MSGP at 21-27; 2014 MD MSGP at 17-21.
[88] 2024 RI MSGP at 29; 2019 RI MSGP at 32, 38; CT ISGPs at 29; 2023 NY MSGP at 26-27; 2018 NY MSGP at 27-28; 2023 MD MSGP at 26; 2014 MD MSGP at 20.
[89] 33 U.S.C. § 1311(a); 33 U.S.C. § 1362(12).

associated with industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), (2) from a point source,[90] (3) directly to a surface waterbody are required to apply for an industrial stormwater general permit (such as the CT ISGP) or other legal authorization (such as an individual NPDES permit).[91] Unpermitted discharges of process wastewater, such as those taking place at the New Haven Facility, constitute violations of the Clean Water Act at 33 U.S.C. § 1311(a).

To receive authorization to discharge industrial stormwater under the CT ISGP, prospective permittees must file a completed registration with CT DEEP.[92] Facilities engaging in industrial activity that certify that there are no materials exposed to stormwater (a "No Exposure Certification form") may be exempted from the CT ISGP's registration, control measure, SWPPP, inspection, monitoring, and recordkeeping requirements.[93]

ACTIVITIES ALLEGED TO BE VIOLATIONS

Sims collects and/or processes raw scrap metal, including salvaged vehicles, home appliances, industrial machinery, manufacturing scrap, and construction and demolition scrap. Sims receives unprocessed scrap metal at the Facilities, which it stores in uncovered piles on-site. Sims's processing activities include crushing, shredding, wet car processing, baling, mobile baling, car crushing, shearing, and/or torch cutting.

Processed and unprocessed scrap metal, machinery, equipment, and vehicles are exposed to precipitation and snowmelt at the Facilities. Precipitation falls on and flows over the scrap metal piles, machinery, equipment, and vehicles, picking up heavy metals, dust and solids, organic contaminants including fuel and oil, trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States.

The Facilities are generating and conveying pollutants from and through at least the following point sources: unprocessed scrap metal, including vehicles, appliances, machinery, and other scrap; bales of processed scrap metal; machines and equipment left outdoors; vehicles driving on and off the Facilities; and channels, ditches, discrete fissures, containers, and other conveyances to waters of the United States.[94]

Under the Clean Water Act, Sims is prohibited from discharging pollutants to the waters of the United States except in accordance with the MSGPs.[95] Sims's industrial activity at the Facilities has caused and continues to cause a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), on at least each and every day that there has been a measurable

[90] "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); *see also* Title 250 RICR-150-10-1(A)(78).
[91] *Supra* note 89.
[92] CT ISGPs at 11.
[93] *Id*.
[94] These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. "'Discharge of a pollutant" includes "surface runoff which is collected or channeled by man." *Id.*
[95] *See* 33 U.S.C. § 1311(a).

precipitation event of above 0.1 inches.[96] There have been hundreds of such precipitation events since 2019. The Facilities' violations of the MSGPs, as described below, are violations of Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. §1311(a).

The allegations in this Notice Letter are based on documents obtained by CLF through public records requests and publicly available information. If CLF obtains evidence of additional CWA violations at the Facilities, including violations which occur after the date of this Notice Letter, CLF will incorporate those violations into its Complaint. CLF hereby provides notice to Sims of all violations of the CWA and of its Permits.

A. Sims Has Repeatedly Failed to Take Corrective Actions as Required by the Permits Following Nearly 200 Triggering Events at the Facilities.

The Facilities have failed to comply with the Permits' corrective action requirements. Sims has triggered corrective action and/or AIM requirements since the fourth quarter of 2019 by repeatedly exceeding the four-quarter average pollutant benchmark values for Sector N facilities as follows.

1. At the Providence-242 Allens Facility, Sims has triggered its corrective action requirement through qualifying benchmark exceedances at least 42 times.[97]
2. At the Providence-278 Allens Facility, Sims has triggered its corrective action requirement through qualifying benchmark exceedances at least 8 times.[98]
3. At the Johnston Facility, Sims has triggered its corrective action requirement through qualifying benchmark exceedances at least 11 times.[99]
4. At the North Haven Facility, Sims has triggered its corrective action requirement through qualifying benchmark exceedances at least 38 times.[100]
5. At the Long Island City Facility, Sims has triggered its corrective action requirement through qualifying benchmark exceedances at least 50 times.[101]
6. At the Baltimore Facility, Sims has triggered its corrective action requirement through qualifying benchmark exceedances at least 16 times.[102]

---

[96] EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. *See, e.g.*, 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).
[97] U.S. EPA, *Detailed Facility Report for Sims Metal Management - SMM New England* (110004896113), ECHO Enforcement and Compliance History Online ("ECHO"), https://echo.epa.gov/detailed-facility-report?fid=110004896113.
[98] U.S. EPA, *Detailed Facility Report for Sims Metal Management* (110070826405), ECHO Enforcement and Compliance History Online ("ECHO"), https://echo.epa.gov/detailed-facility-report?fid=110070826405
[99] U.S. EPA, *Detailed Facility Report for Sims Metal Management* (110058900738), ECHO Enforcement and Compliance History Online ("ECHO"), https://echo.epa.gov/detailed-facility-report?fid=110004896113 (ECHO page for the Providence-242 Allens Facility; also listing Johnston Facility's CWA compliance information).
[100] Discharge Monitoring Reports submitted by Sims and obtained by CLF via public records requests to CT DEEP.
[101] U.S. EPA, *Detailed Facility Report for Sims Metal Management - SimsMetal East LLC - Queens Plant* (110001587774), ECHO Enforcement and Compliance History Online ("ECHO"), https://echo.epa.gov/detailed-facility-report?fid=110001587774.
[102] U.S. EPA, *Detailed Facility Report for Sims ARG, Inc.* (110063873018), ECHO Enforcement and Compliance History Online ("ECHO").

7. At the Rockville Facility, Sims has triggered its corrective action requirement through qualifying benchmark exceedances at least 11 times.[103]

Upon information and belief, Sims has also triggered corrective action as a result of visual assessments showing evidence of stormwater pollution, facility inspections showing evidence of uncontrolled stormwater discharge, failure to meet applicable water quality standards, failure to meet non-numeric effluent limits, and/or unauthorized discharge of trash and debris (including plastic waste).

Upon information and belief, and based on public records received from RIDEM, CT DEEP, NYDEC, and MDE, the actions taken by Sims in response to its benchmark exceedances and other applicable triggering events do not satisfy the corrective action requirements of the Permits.

B. Sims Has Failed to Control its Discharges to Minimize Pollutants and Failed to Implement Required Control Measures as Required by the Permits, as Evidenced by its Hundreds of Benchmark Exceedances.

Sims has failed and continues to fail to adequately control its discharge of pollutants and to implement required control measures as required by the Permits. This failure is evidenced by more than 400 exceedances of the Permits' benchmark limits for heavy metals, solids, petroleum byproducts, and other pollutants. Additionally, Sims has failed to prevent the discharge of waste, garbage, and floatable debris, and has failed to minimize the generation of dust. CLF expects to find further evidence of Sims's failure to adequately control stormwater discharges and to implement required control measures through its visual assessment and facility inspection reports, which are not publicly available.

Sims's benchmark exceedances since October 2019 include:

1. At the Providence-242 Allens Facility, Sims has exceeded benchmark values at least 166 times, including discharges of copper 28,125% and 13,958% of the benchmark value.[104]
2. At the Providence-278 Allens Facility, Sims has exceeded benchmark values at least 37 times, including discharges of copper 7,500% of the benchmark value and discharges of iron 2,900% of the benchmark value.[105]
3. At the Johnston Facility, Sims has exceeded benchmark values at least 53 times, including discharges of iron 920% of the benchmark value.[106]
4. At the North Haven Facility, Sims has exceeded benchmark values at least 45 times, including discharges of zinc more than 3,063% of the benchmark value and discharges of iron 2,800% of the benchmark value.[107]

[103] U.S. EPA, *Detailed Facility Report for Sims ARG, Inc.* (110001260714), ECHO Enforcement and Compliance History Online ("ECHO").
[104] *Supra* note 97.
[105] *Supra* note 98.
[106] *Supra* note 99.
[107] *Supra* note 100.

5. At the Long Island City Facility, Sims has exceeded benchmark values at least 50 times, including discharges of lead 120,000% and 14,000% of the benchmark value and discharges of zinc 6,636% of the benchmark value.[108]
6. At the Baltimore Facility, Sims has exceeded benchmark values at least 58 times, including discharges of copper 550% of the benchmark and discharges of TSS 636% of the benchmark.[109]
7. At the Rockville Facility, Sims has exceeded benchmark values at least 48 times, including discharges of copper 998% of the benchmark and discharges of zinc 378% of the benchmark.[110]

C. Sims Has Failed to Control Discharges so as to Not Violate State Water Quality Standards.

Sims has been discharging and continues to discharge effluent in violation of the state water quality standards of Rhode Island, Connecticut, New York, and Maryland. Sims's discharge of visible, malodorous, and/or toxic pollutants interferes with the ability of the receiving waters to meet water quality standards and fulfill their designated uses. In particular, Sims's discharges contain floating, suspended, and settleable solids; objectionable color, slicks, and turbidity; visible oil and grease; objectionable taste and odor; and/or high concentrations of toxic pollutants. These discharges impair the designated uses of their receiving waters and are harmful to aquatic life and ecosystems.

Sims discharges pollutants to waterbodies that are already overburdened by those same pollutants, thereby contributing to and exacerbating the impairments of their designated uses.[111]

D. Sims Has Failed to Comply with the Permits' Monitoring, Reporting, and Inspection Requirements.

Sims has failed to comply with the Permits' benchmark and impaired monitoring requirements. Sims has also failed to submit discharge monitoring reports to EPA as required.

1. At the Providence-242 Allens Facility, Sims has failed to monitor and report at least 20 required benchmark monitoring values and 3 required impairment monitoring values.[112]
2. At the Johnston Facility, Sims has failed to monitor and report at least 24 required impairment monitoring values.[113]
3. At the North Haven Facility, Sims has failed to monitor and report at least 41 required benchmark monitoring values.[114]
4. At the Baltimore Facility, Sims has failed to monitor and report at least 33 required benchmark monitoring values.[115]

---

[108] *Supra* note 101.
[109] *Supra* note 102.
[110] *Supra* note 103.
[111] *Supra* notes 24-35 and accompanying text.
[112] *Supra* note 97.
[113] *Supra* note 99.
[114] *Supra* note 100.
[115] *Supra* note 102.

5. At the Rockville Facility, Sims has failed to monitor and report at least 14 required benchmark monitoring values.[116]

Sims failed to use the appropriate detection limit for lead and PCBs for the June 27, 2020 and prior reporting periods at the Providence-242 Allens Facility. The detection limits were too high to enable the detection of benchmark exceedances.

The Providence-278 Allens Facility was inactive between 2019 and November 2021; it submitted its Notice of Intent for Stormwater Discharges Associated with Industrial Activity under the RIPDES MSGP to RIDEM in June 2020. According to the 2020 and 2021 Annual Reports for the Providence-278 Allens Facility, in both 2020 and 2021, Sims failed to conduct the annual inspections required for inactive and unstaffed sites pursuant to Section IV.A.2 of the RI MSGP.

Upon information and belief, Sims failed to conduct benchmark monitoring as required for the Baltimore Facility from Outfall 002 for aluminum, iron, lead, and TSS, and from Outfall 003 for all parameters since 2019; and for the Rockville Facility from Outfall 003 for all parameters since 2019.

Upon information and belief, Sims has failed to conduct inspections and/or visual assessments as required by the Permits.

E. The Notice Incorporates Any Failures by Sims to Comply with SWPPP or SWMP Requirements.

Upon information and belief, Sims has failed to develop, implement, and/or update its SWPPPs or SWMPs as required by the Permits. Sims has failed to amend its SWMPs and/or SWPPPs pursuant to the corrective action requirements.

F. Sims Is Discharging Industrial Stormwater from its New Haven Facility Without a Permit.

Upon information and belief, Sims discharges stormwater associated with its industrial activity from its New Haven Facility into waters of the United States (the West River). The operations at the New Haven Facility meet the definition of industrial activity pursuant to 40 C.F.R. § 122.26(b)(14)(vi), as the operations fall under Standard Industrial Classification 5093 (Scrap and Waste Materials). The West River is a "water[] of the United States," as defined in 40 C.F.R. § 120.2(a), and therefore is considered "navigable waters," as defined in 33 U.S.C. § 1362(7).

The New Haven Facility is located on the banks of the West River, less than 50 feet from the water's edge. Upon information and belief, industrial stormwater is conveyed from the New Haven Facility to the West River via discernible ditches or channels worn into the riverbank by years of stormwater discharge. The ditches or channels in the riverbank are "point sources," as defined by 33 U.S.C. § 1362(14). Upon information and belief, Sims has discharged industrial

[116] *Supra* note 103.

stormwater from the New Haven Facility to the West River each and every day that there has been a measurable precipitation event of above 0.1 inches.[117]

Sims does not have either a CT ISGP or an individual NPDES permit for the New Haven Facility, nor has it applied for such a permit. Sims has not submitted a No-Exposure Certification to CT DEEP for the New Haven Facility, and upon information and belief, the concrete blocking surrounding the New Haven Facility is not impervious and allows for discharge of stormwater. Therefore, Sims is illegally discharging stormwater without a permit from the New Haven Facility, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).[118] By failing to apply for and comply with the specific requirements of the CT ISGP, Sims is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

DATES OF THE VIOLATIONS

Each day that Sims either operates the Facilities while failing to comply with the terms of the MSGPs or discharges industrial stormwater without a permit constitutes a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Sims has not been in compliance with the MSGPs at any of the Facilities at least since October 2019. Sims has been discharging industrial stormwater from the New Haven Facility on every day since at least October 2019 on which there has been a measurable precipitation event.

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facilities and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

This Notice encompasses any and all violations of the MSGPs by Sims at the Facilities, including violations which occur after the date of this Notice Letter and those violations that CLF may learn about at a later date.

RELIEF REQUESTED

Sims is liable for the above-described violations. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to $66,712 per day per violation for all violations occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023 pursuant to sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 40 C.F.R. §§ 19.1–19.4. CLF will seek the full penalties allowed by law.

---

[117] *See* 40 C.F.R. § 122.26(c)(1)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

[118] *See* 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; *see also* CT ISGP, *supra* note 8, at app. A (defining the term "discharge of a pollutant" as, *inter alia*, "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'").

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Sims to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Chelsea Kendall by October 30, 2024 so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,

Chelsea E. Kendall, Esq.
Heather A. Govern, Esq.
Conservation Law Foundation
62 Summer Street
Boston, MA 02210
(617) 850-1792

cc:

Michael S. Regan, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

David Cash, EPA Region 1 Regional Administrator
Environmental Protection Agency
5 Post Office Square - Ste. 100
Boston, MA 02109

Lisa F. Garcia, EPA Region 2 Administrator
Environmental Protection Agency

290 Broadway
New York, New York 10007

Adam Ortiz, EPA Region 3 Administrator
Environmental Protection Agency
Four Penn Center
1600 JFK Blvd.
Philadelphia, PA 19103

Terrence Gray, Director
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908

Katie Dykes, Commissioner
Connecticut Department of Energy & Environmental Protection
79 Elm Street
Hartford, CT 06106

Sean Mahar, Interim Commissioner
New York Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Serena McIlwain, Secretary
Maryland Department of the Environment
1800 Washington Blvd
Baltimore, MD 21230

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530