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Louis-Pierre Clement, Operation Plant Manager and Responsible Official

louis-pierre.clement@alcoa.com

Kristen Guggenheim, Environmental Scientist

kristen.guggenheim@alcoa.com

Denise Shreve, Wastewater Operator

denise.shreve@alcoa.com

Brandi Rucker, Environmental Manager

brandi.rucker@alcoa.com

Warrick Newco Operations

4400 West State Road 66

Newburgh, IN 27629-0010

Heather Hudak

201 Isabella Street, Suite 500

Pittsburgh, PA, 15212

C T CORPORATION SYSTEM

334 North Senate Avenue

Indianapolis, IN, 46204

RE: Notice of Intent (NOI) to Sue for Violations of the Clean Water Act, Warrick Newco Permit No. IN0001155

Dear all:

On behalf of the Sierra Club, I am writing to provide you with notice that the Sierra Club intends to file a civil lawsuit against Warrick Newco, LLC. for significant and ongoing violations of the federal Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*, described herein at the Alcoa Warrick aluminum smelting complex, located at 4000 W. State Road 66 Newburgh, Indiana, 47629. Warrick Newco, LLC, a wholly owned subsidiary of Alcoa Corporation, holds the National Pollutant Discharge Elimination System (NPDES) permit for the Alcoa Warrick complex, IN0001155.

As explained more fully below, the Alcoa Warrick complex is routinely discharging pollutants in violation of the terms and conditions of the IN0001155 permit and the CWA. By failing to comply with its NPDES permit and the CWA, Warrick Newco has injured and will continue to injure or threaten to injure, the health, environmental, aesthetic, and economic interests of the Sierra Club and its members. These injuries or risks are traceable to violations of

the Warrick Newco IN0001155 Permit and redressing these ongoing violations will redress the Sierra Club members' injuries or risks.

Section 505(a) of the CWA permits citizen suits in federal court against persons "alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation." 33 U.S.C. § 1365(a)(1). An effluent standard or limitation is defined, as relevant here, as an effluent limitation or other limitation under 33 U.S.C. §§ 1311 or 1312; standard of performance under 33 U.S.C. § 1316; or a NPDES permit or condition of a NPDES permit. 33 U.S.C. § 1365(f). Exceedances of NPDES permit limits are violations of a NPDES permit and a violation of the CWA. 33 U.S.C. § 1311(a); 40 C.F.R. § 122.41(a).

Pursuant to 33 U.S.C. § 1365(b)(1)(A), this NOI serves to notify Warrick Newco that the Sierra Club intends to file suit for CWA violations, unless corrected, in the U.S. District Court for the Southern District of Indiana at any time beginning 60 days after the postmarked date of this NOI. 40 C.F.R. § 135.2(c). This NOI includes sufficient information to allow Warrick Newco to identify the specific activities alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice. 40 C.F.R. § 135.3(a). Additionally, the Sierra Club notifies Warrick Newco of their intention to sue for ongoing violations of the same type that occur after the violations outlined in this NOI.

I. IN0001155 Permit Requirements

The Alcoa Warrick complex is located on the banks of the Ohio River and includes an aluminum smelter, an aluminum rolling mill, and a coal-fired power plant. The aluminum smelter and coal plant's primary NPDES permit, the IN0001155 permit, is held by Warrick Newco, LLC., a wholly owned subsidiary of Alcoa Corporation. The permit was issued by the Indiana Department of Environmental Management (IDEM) in 2018, modified in 2021, and modified again in 2023.¹ The Warrick Newco Permit authorizes discharges into the Ohio River and an unnamed tributary of Cypress Creek. 2018 Warrick Newco Fact Sheet § 4 (Dec. 2018).²

A. Effluent Limitations and Monitoring Requirements

The IN0001155 Permit requires Warrick Newco to meet the following effluent mercury limits and monitoring requirements, among others, as of January 1, 2022:

Outfall No.	Kind of Limit	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.
1	Concentration	12	ng/L	MO AVG
1	Concentration	20	ng/L	DAILY MX
3	Quantity	0.00094	lb./d	MO AVG

¹ [2018 Warrick Newco Permit](#), [2021 Warrick Newco Permit Modification](#), [2023 Warrick Newco Permit Modification](#) (collectively, "Warrick Newco Permit" and "IN0001155 Permit"). The documents referenced in this NOI can be found in [this Google folder](#) and in an accompanying zipdrive.

² [2018 IN0001155 Fact Sheet](#) (Dec. 2018).

Outfall No.	Kind of Limit	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.
3	Concentration	12	ng/L	MO AVG
3	Concentration	20	ng/L	DAILY MX
4	Concentration	12	ng/L	MO AVG
4	Concentration	20	ng/L	DAILY MX
5	Concentration	20	ng/L	DAILY MX
5	Quantity	Monitoring	lb./d	MO AVG
5	Quantity	Monitoring	lb./d	DAILY MX
5	Concentration	12	ng/L	MO AVG
5	Concentration	20	ng/L	DAILY MX

2018 Warrick Newco Permit § I.A. The IN0001155 Permit requires Warrick Newco to meet, among others, the following effluent limits and monitoring requirements as of January 1, 2022:

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.
1	Copper, total recoverable	Concentration	0.062	mg/L	DAILY MX
1	Copper, total recoverable	Concentration	0.036	mg/L	MO AVG
1	pH	Must be above	6	SU	DAILY MN
1	Zinc, total recoverable	Concentration	1	mg/L	DAILY MX
1	Zinc, total recoverable	Concentration	0.61	mg/L	MO AVG
2	Chlorine, total residual	Concentration	0.2	mg/L	DAILY MX
3	Chlorine, total residual	Concentration	0.038	mg/L	DAILY MX
4	Copper, total recoverable	Concentration	0.062	mg/L	DAILY MX
4	Copper, total recoverable	Concentration	0.036	mg/L	MO AVG
4	Zinc, total recoverable	Concentration	1	mg/L	DAILY MX
4	Zinc, total recoverable	Concentration	0.61	mg/L	MO AVG
5	Copper, total recoverable	Concentration	0.036	mg/L	MO AVG
5	Copper, total recoverable	Concentration	0.062	mg/L	DAILY MX
5	Zinc, total recoverable	Concentration	0.61	mg/L	MO AVG
6	Chlorine, total residual	Concentration	0.06	mg/L	DAILY MX
6	Chlorine, total residual	Concentration	0.06	mg/L	MO AVG

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.
603	Aluminum, total recoverable	Quantity	25	lb./d	MO AVG
603	Aluminum, total recoverable	Quantity	53	lb./d	DAILY MX
603	Fluoride, total	Quantity	93	lb./d	MO AVG
603	Fluoride, total	Quantity	210	lb./d	DAILY MX
603	Nickel, total recoverable	Quantity	1.9	lb./d	DAILY MX
603	Zinc, total recoverable	Quantity	7.1	lb./d	DAILY MX
603	Aluminum	Quantity	53	lb./day	DAILY MX
603	Fluoride	Concentration	210	lb./d	DAILY MX
006S	Chlorine, total residual	Concentration	0.006 (quantifiable)	mg/L	DAILY MX

2018 Warrick Newco Permit § I.A; 2021 Warrick Newco Permit at 36.

B. Other Permit Requirements

The IN0001155 Permit also requires, among other recordkeeping and monitoring requirements, that Warrick Newco submit accurate monitoring reports to the IDEM containing the sampling results obtained during the previous month no later than the 28th day of the month following each completed monitoring period. 2018 Warrick Newco Permit §§ I.C.2, I.C.6, I.C.8.

II. Receiving Water

The Warrick Newco Permit authorizes discharges into the Ohio River and an unnamed tributary of Cypress Creek that discharges to the Ohio River. 2018 Warrick Newco Fact Sheet § 4 (Dec. 2018).

Indiana has designated the receiving sections of the Ohio River between the Alcoa Warrick complex and Evansville (INH6_10, INH7_01, INH8_01) for full body contact recreation, drinking water supplies, and warmwater aquatic habitat. These Ohio River segments are on the federal list of impaired and threatened waters (the CWA Section 303(d) list) due to levels of mercury, dioxin, *E. coli*, and/or PCBs.³

III. Specific Activities Alleged to Constitute a CWA Violation, Including the Dates of Such Violations

Over the last two years, Warrick Newco has repeatedly exceeded its permitted effluent limits for mercury, aluminum, chlorine, copper, fluoride, nickel, pH, and zinc. These exceedances are continuing.

³ https://www.in.gov/idem/nps/files/ir_2022_apndx_1_listing_tables.xlsx

These permit limit exceedances are violations of the Warrick Newco Permit and the CWA. The Warrick Newco permit exceedances are discharges of pollutants into waters of the United States from point sources. Industrial process wastewater and contaminated stormwater are “pollutants” as that term is defined in section 502(6) of the CWA. 33 U.S.C. § 1362(6). The term “discharge of a pollutant” includes “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). The pipes and storm drains that discharge pollutants at the Warrick Newco plant are point sources. 33 U.S.C. § 1362(14). Mercury, aluminum, chlorine, copper, fluoride, nickel, pH, and zinc are pollutants. Both receiving waters—the Ohio River and Cypress Creek—are federal waters. 40 C.F.R. § 120.2.

Warrick Newco has been issued a valid NPDES permit. Section 402 of the CWA, 33 U.S.C. § 1342, created the NPDES program, under which EPA may issue NPDES permits for point source discharges to waters of the United States. Section 402(b) of the Act, 33 U.S.C. § 1342(b), authorizes the EPA Administrator to delegate to the states the authority to issue NPDES permits. The state of Indiana, through IDEM, was delegated the authority to issue NPDES permits in 1986 and has been implementing the federal permitting program since. IDEM issued the Warrick Newco IN0001155 permit in 2018, then modified the permit in 2021 and 2023. Warrick Newco must comply with the Warrick Newco IN0001155 permit.

Section 301(a) of the CWA makes unlawful the discharge of any pollutant into waters of the United States by any person except in compliance with certain other enumerated sections of the CWA, including compliance with validly-issued NPDES permits. 33 U.S.C. § 1311(a); *see also* 33 U.S.C. § 1342 (permitting requirements). Moreover, under Section II.A of the 2018 Warrick Newco Permit, “[t]he permittee shall comply with all terms and conditions of this permit ... Any permit noncompliance constitutes a violation of the Clean Water Act.” *See also* 40 C.F.R. § 122.41(a) (“Any permit noncompliance constitutes a violation of the Clean Water Act”); 40 C.F.R. § 123.25 (applying the regulation to state programs).

These CWA violations are described in detail in the counts that follow:

- Count 1: Violations of Warrick Newco Permit’s Mercury Effluent Limits
- Count 2: Violations of Warrick Newco Permit’s Aluminum Limits
- Count 3: Violations of Warrick Newco Permit’s Chlorine Limits
- Count 4: Violations of Warrick Newco Permit’s Copper Limits
- Count 5: Violations of Warrick Newco Permit’s Fluoride Limits
- Count 6: Violations of Warrick Newco Permit’s Nickel Limits
- Count 7: Violations of Warrick Newco Permit’s pH Limits
- Count 8: Violations of Warrick Newco Permit’s Zinc Limits

Sierra Club can bring suit for these CWA violations. Section 505(a) of the CWA permits citizen suits in federal court against persons “alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.” 33 U.S.C. § 1365(a)(1). For purposes of citizen

suits, “effluent standard or limitation,” includes violations of numeric effluent limits in a permit. *See* 33 U.S.C. § 1365(f) (defining the term for purposes of Section 505).

For the violations below and for similar violations that occur after the date of this NOI, each day of each violation of the Warrick Newco Permit constitutes a violation for which a penalty of up to \$64,618 can be assessed under the CWA, and for which injunctive relief to abate the noncompliance is available. 88 Fed. Reg. 986 (Jan. 6, 2023). Each day of each daily maximum effluent limitation exceedance constitutes a separate violation of the Warrick Newco Permit and subjects Warrick Newco to a penalty of up to \$64,618 for each day. *Id.* Each day of the month in which the discharged wastewater exceeded the monthly average limit is a separate violation of the Warrick Newco Permit limit for which a penalty of up to \$64,618 can be assessed under the CWA. *Id.*

A. Count 1: Violations of Warrick Newco Permit’s Mercury Limits

Warrick Newco has consistently violated its permit’s effluent limitations for mercury since these limits became effective in 2022. Warrick Newco has also failed to submit required monitoring for mercury. The 2022 and 2023 mercury exceedances Warrick Newco reported on its Discharge Monitoring Reports (DMRs)⁴ and the DMR non-receipt violations listed on EPA’s ECHO database are below:

Outfall No.	Kind of Limit	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
1	Concentration ²	12	ng/L	MO AVG	6/30/2023	14	ng/L	17%
3	Quantity ¹	0.00094	lb./d	MO AVG	6/30/2023	0.00142	lb./d	51%
3	Concentration ²	12	ng/L	MO AVG	6/30/2023	20	ng/L	67%
4	Concentration ²	12	ng/L	MO AVG	6/30/2023	257	ng/L	2,042%
4	Concentration ³	20	ng/L	DAILY MX	6/30/2023	257	ng/L	1,185%
5	Concentration ³	20	ng/L	DAILY MX	6/30/2023	DMR Non-Receipt Reporting Violation		
5	Quantity ²		lb./d	DAILY MX	6/30/2023	DMR Non-Receipt Reporting Violation		
5	Quantity ¹		lb./d	MO AVG	6/30/2023	DMR Non-Receipt Reporting Violation		
5	Concentration ²	12	ng/L	MO AVG	6/30/2023	DMR Non-Receipt Reporting Violation		
1	Concentration ³	20	ng/L	DAILY MX	3/31/2023	80.9	ng/L	305%
5	Concentration ³	20	ng/L	DAILY MX	3/31/2023	59.4	ng/L	197%
5	Concentration ²	12	ng/L	MO AVG	3/31/2023	59.4	ng/L	395%
1	Concentration ²	12	ng/L	MO AVG	3/31/2023	37.63	ng/L	214%
4	Concentration ²	12	ng/L	MO AVG	12/31/2022	213	ng/L	1,675%
4	Concentration ³	20	ng/L	DAILY MX	12/31/2022	213	ng/L	965%
3	Concentration ³	20	ng/L	DAILY MX	12/31/2022	26.2	ng/L	31%

⁴ All DMRs can be found [here](#).

Outfall No.	Kind of Limit	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
1	Concentration3	20	ng/L	DAILY MX	12/31/2022	25.45	ng/L	27%
1	Concentration2	12	ng/L	MO AVG	12/31/2022	21.33	ng/L	78%
3	Concentration2	12	ng/L	MO AVG	12/31/2022	18.3	ng/L	53%
3	Quantity1	0.00094	lb./d	MO AVG	12/31/2022	0.00157	lb./d	67%
1	Concentration3	20	ng/L	DAILY MX	9/30/2022	207	ng/L	935%
1	Concentration2	12	ng/L	MO AVG	9/30/2022	88.6	ng/L	638%
5	Concentration2	12	ng/L	MO AVG	9/30/2022	46.1	ng/L	284%
5	Concentration3	20	ng/L	DAILY MX	9/30/2022	46.1	ng/L	131%
5	Concentration2	12	ng/L	MO AVG	6/30/2022	155	ng/L	1,192%
5	Concentration3	20	ng/L	DAILY MX	6/30/2022	155	ng/L	675%
1	Concentration3	20	ng/L	DAILY MX	6/30/2022	35.4	ng/L	77%
1	Concentration2	12	ng/L	MO AVG	6/30/2022	15.1	ng/L	26%
5	Concentration3	20	ng/L	DAILY MX	3/31/2022	174	ng/L	770%
5	Concentration2	12	ng/L	MO AVG	3/31/2022	104	ng/L	767%
3	Concentration2	12	ng/L	MO AVG	2/28/2022	15.9	ng/L	33%
3	Quantity1	0.00094	lb./d	MO AVG	2/28/2022	0.00107 2	lb./d	14%

Warrick Newco also separately provided IDEM additional notices of exceedances of the following mercury permit limits:

Outfall No.	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
1	20	ng/L	DAILY MX	1/02/2023 ⁵	80.9	ng/L
5	20	ng/L	DAILY MX	1/02/2023	59.4	ng/L
3	12	ng/L	MO AVG	2/02/2022	162,000	ng/L
3	12	ng/L	MO AVG	2/02/2022	155,000	ng/L
5	20	ng/L	DAILY MX	3/06/2022	174	ng/L
5	12	ng/L	MO AVG	3/06/2022	174	ng/L
1	20	ng/L	DAILY MX	4/13/2022	35.4	ng/L
3	.00094	lb./day	MO AVG	June 2022	.000674	lb./day
1	12	ng/L	MO AVG	Q2 2002	15.1	ng/L
1	12	ng/L	MO AVG	6/29/2023	14	ng/L
4	12	ng/L	MO AVG	6/29/2023	257	ng/L
4	20	ng/L	DAILY MX	6/29/2023	257	ng/L
5	20	ng/L	DAILY MX	6/29/2023	Missed Sample	
3	.00094	lb./day	MO AVG	6/06/2023	.00142	lb./day
3	12	ng/L	MO AVG	6/06/2023	20	ng/L

⁵ Warrick Newco's additional notices of exceedances can be found [here](#).

Outfall No.	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
5	20	ng/L	DAILY MX	7/08/2022	42.95	ng/L

In a September 2023 inspection, IDEM stated that “[t]he September 2022 DMR did not correctly fill out the exceedance column for Zinc, Copper, & Mercury for [Outfall] 005,” and “[t]he December 2022 DMR did not correctly fill out the exceedance column for Mercury for 001 AQ.”⁶ This NOI also provides notice for any exceedances of mercury limits that were not correctly documented by Warrick Newco in its DMRs.

B. Count 2: Violations of Warrick Newco Permit’s Aluminum Limits

Warrick Newco has also repeatedly exceeded the aluminum limits in the Warrick Newco NPDES permit. These exceedances were reported by Warrick Newco on its DMRs:

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
603	Aluminum, total recoverable	Quantity1	25	lb./d	MO AVG	6/30/2023	34	lb./d	36%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	6/30/2023	168.2	lb./d	217%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	5/31/2023	748.5	lb./d	1,312%
603	Aluminum, total recoverable	Quantity1	25	lb./d	MO AVG	5/31/2023	89.48	lb./d	258%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	9/30/2022	62.5	lb./d	18%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	8/31/2022	184	lb./d	247%
603	Aluminum, total recoverable	Quantity1	25	lb./d	MO AVG	8/31/2022	35.6	lb./d	42%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	7/31/2022	377.8	lb./d	613%
603	Aluminum, total recoverable	Quantity1	25	lb./d	MO AVG	7/31/2022	73.5	lb./d	194%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	6/30/2022	83.2	lb./d	57%

⁶ [9-13-2023 IDEM Inspection Summary/ Noncompliance Letter](#) at 6.

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
603	Aluminum, total recoverable	Quantity1	25	lb./d	MO AVG	6/30/2022	28.1	lb./d	12%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	4/30/2022	141	lb./d	166%
603	Aluminum, total recoverable	Quantity1	25	lb./d	MO AVG	4/30/2022	37	lb./d	48%
603	Aluminum, total recoverable	Quantity2	53	lb./d	DAILY MX	3/31/2022	86.3	lb./d	63%

Warrick Newco also separately provided IDEM additional notices of the following permit limit exceedances:

Outfall No.	Parameter	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
303/603	Aluminum	53	lb./d	DAILY MX	3/22/2022 ⁷	82.09	lb./d
403/603	Aluminum	53	lb./d	DAILY MX	3/22/2022	4.31	lb./d
603	Aluminum	53	lb./day	DAILY MX	7/20/2022	56.5	lb./day
603	Aluminum	53	lb./day	DAILY MX	7/25/2022	377.8	lb./day
603	Aluminum	53	lb./day	DAILY MX	8/30/2022	184	lb./day
603	Aluminum	53	lb./day	DAILY MX	6/14/2023	169.7	lb./day

C. Count 3: Violations of Warrick Newco Permit's Total Residual Chlorine Limits

Warrick Newco has also repeatedly exceeded the total residual chlorine limits in the Warrick Newco NPDES permit. These exceedances were reported by Warrick Newco on its DMRs:

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
10	Chlorine, total residual	Concentration 3	0.06	mg/L	DAILY MX	8/31/2023	0.06	mg/L	0%
3	Chlorine, total residual	Concentration 3	0.038	mg/L	DAILY MX	1/31/2023	0.04	mg/L	5%

⁷ Warrick Newco's additional notices of exceedances can be found [here](#).

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
8	Chlorine, total residual	Concentration 3	0.06	mg/L	DAILY MX	12/31/2022	0.16	mg/L	167%
6	Chlorine, total residual	Concentration 3	0.06	mg/L	DAILY MX	10/31/2022	0.14	mg/L	133%
6	Chlorine, total residual	Concentration 3	0.06	mg/L	DAILY MX	9/30/2022	0.4	mg/L	567%
6	Chlorine, total residual	Concentration 2	0.06	mg/L	MO AVG	9/30/2022	0.07	mg/L	17%
6	Chlorine, total residual	Concentration 3	0.06	mg/L	DAILY MX	8/31/2022	0.58	mg/L	867%
6	Chlorine, total residual	Concentration 2	0.06	mg/L	MO AVG	8/31/2022	0.18	mg/L	200%
2	Chlorine, total residual	Concentration 3	0.2	mg/L	DAILY MX	5/31/2022	0.47	mg/L	135%

Warrick Newco also separately provided IDEM additional notices of the following exceedances:

Outfall No.	Parameter	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
2	Total Residual Chlorine	0.2	mg/L	DAILY MX	05/22/2022 ⁸	0.47	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	8/15/2022	0.08	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	8/16/2022	0.17	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	8/16/2022	0.22	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	8/22/2022	0.21	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	8/22/2022	0.24	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	8/31/2022	0.54	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	9/9/2022	0.45	mg/L
006S	Total Residual Chlorine	0.006	mg/L	DAILY MX	10/10/2022	0.1	mg/L
008S	Total Residual Chlorine	0.006	mg/L	DAILY MX	12/28/2022	0.16	mg/L

⁸ Warrick Newco's additional notices of exceedances can be found [here](#).

Outfall No.	Parameter	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
008S	Total Residual Chlorine	0.006	mg/L	DAILY MX	12/28/2022	0.09	mg/L
3	Total Residual Chlorine	0.038	mg/L	DAILY MX	1/30/2023	0.04	mg/L

On September 13, 2023, IDEM sent Warrick Newco an “Inspection Summary/ Noncompliance Letter” stating that “there was one chlorine exceedance for 008 SM that was not reported,” and “[t]he July 2023 DMR did not have various exceedance columns filled out.”⁹ This NOI also provides notice for any exceedances of permit limits that were not correctly documented by Warrick Newco in its DMRs.

D. Count 4: Violations of Warrick Newco Permit’s Copper Limits

Warrick Newco has also repeatedly exceeded the copper limits in the Warrick Newco NPDES permit. These exceedances were reported by Warrick Newco on its DMRs.

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
1	Copper, total recoverable	Concentration3	0.062	mg/L	DAILY MX	6/30/2023	0.133	mg/L	115%
1	Copper, total recoverable	Concentration2	0.036	mg/L	MO AVG	6/30/2023	0.133	mg/L	269%
4	Copper, total recoverable	Concentration3	0.062	mg/L	DAILY MX	6/30/2023	0.075	mg/L	21%
4	Copper, total recoverable	Concentration2	0.036	mg/L	MO AVG	6/30/2023	0.075	mg/L	108%
5	Copper, total recoverable	Concentration2	0.036	mg/L	MO AVG	6/30/2023	0.044	mg/L	22%
5	Copper, total recoverable	Concentration2	0.036	mg/L	MO AVG	3/31/2023	0.068	mg/L	89%
5	Copper, total recoverable	Concentration3	0.062	mg/L	DAILY MX	3/31/2023	0.068	mg/L	10%
5	Copper, total recoverable	Concentration3	0.062	mg/L	DAILY MX	9/30/2022	0.145	mg/L	134%
5	Copper, total recoverable	Concentration2	0.036	mg/L	MO AVG	9/30/2022	0.145	mg/L	303%
5	Copper, total recoverable	Concentration2	0.036	mg/L	MO AVG	6/30/2022	0.148	mg/L	311%
5	Copper, total recoverable	Concentration3	0.062	mg/L	DAILY MX	6/30/2022	0.148	mg/L	139%
5	Copper, total recoverable	Concentration3	0.062	mg/L	DAILY MX	3/31/2022	0.12	mg/L	94%
5	Copper, total recoverable	Concentration2	0.036	mg/L	MO AVG	3/31/2022	0.088	mg/L	144%

⁹ [9-13-2023 IDEM Inspection Summary/ Noncompliance Letter](#) at 6.

Warrick Newco also separately provided IDEM additional notices of the following exceedances:

Outfall No.	Parameter	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
5	Copper	0.036	mg/L	MO AVG	Q2 2002 ¹⁰	0.148	mg/L
5	Copper	0.062	mg/L	MO AVG	6/01/2022	0.15	mg/L
5	Copper	0.062	mg/L	MO AVG	7/8/2022	0.145	mg/L
5	Copper	0.036	mg/L	MO AVG	6/29/2023	0.044	mg/L

On September 13, 2023, IDEM sent Warrick Newco an “Inspection Summary/ Noncompliance Letter” stating that “[t]he September 2022 DMR did not correctly fill out the exceedance column for Zinc, Copper, & Mercury for [Outfall] 005,” and “[t]he July 2023 DMR did not have various exceedance columns filled out.”¹¹ This NOI also provides notice for any exceedances of permit limits that were not correctly documented by Warrick Newco in its DMRs.

E. Count 5: Violations of Warrick Newco Permit’s Fluoride Limits

Warrick Newco has also repeatedly exceeded the fluoride limits in the Warrick Newco NPDES permit. These exceedances were reported by Warrick Newco on its DMRs:

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	5/31/2023	1,073	lb./d	411%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	9/30/2022	211.5	lb./d	1%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	8/31/2022	345	lb./d	64%
603	Fluoride, total	Quantity1	93	lb./d	MO AVG	8/31/2022	106	lb./d	14%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	7/31/2022	652.7	lb./d	211%
603	Fluoride, total	Quantity1	93	lb./d	MO AVG	7/31/2022	156.7	lb./d	68%

¹⁰ Warrick Newco’s additional notices of exceedances can be found [here](#).

¹¹ [9-13-2023 IDEM Inspection Summary/ Noncompliance Letter](#) at 6.

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	6/30/2022	241.1	lb./d	15%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	4/30/2022	396.6	lb./d	89%
603	Fluoride, total	Quantity1	93	lb./d	MO AVG	4/30/2022	117.7	lb./d	27%
603	Fluoride, total	Quantity1	93	lb./d	MO AVG	5/31/2023	160.7	lb./d	73%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	5/31/2023	1,073	lb./d	411%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	9/30/2022	211.5	lb./d	1%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	8/31/2022	345	lb./d	64%
603	Fluoride, total	Quantity1	93	lb./d	MO AVG	8/31/2022	106	lb./d	14%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	7/31/2022	652.7	lb./d	211%
603	Fluoride, total	Quantity1	93	lb./d	MO AVG	7/31/2022	156.7	lb./d	68%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	6/30/2022	241.1	lb./d	15%
603	Fluoride, total	Quantity2	210	lb./d	DAILY MX	4/30/2022	396.6	lb./d	89%
603	Fluoride, total	Quantity1	93	lb./d	MO AVG	4/30/2022	117.7	lb./d	27%

Warrick Newco also separately provided IDEM additional notices of the following exceedances:

Outfall No.	Parameter	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
303/603	Fluoride	210	lb./d	DAILY MX	4/16/2022 ¹²	377.1	lb./d
403/603	Fluoride	210	lb./d	DAILY MX	4/16/2022	155,000	lb./d
603	Fluoride	93	lb./d	MO AVG	4/18/2022	174	lb./d
603	Fluoride	210	lb./d	DAILY MX	4/18/2022	231.5	lb./d
603	Fluoride	210	lb./d	DAILY MX	6/08/2022	241	lb./day
603	Fluoride	210	lb./day	DAILY MX	7/25/2022	652.67	lb./day

¹² Warrick Newco's additional notices of exceedances can be found [here](#).

Outfall No.	Parameter	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
603	Fluoride	210	lb./day	DAILY MX	7/31/2022	232.97	lb./day
603	Fluoride	210	lb./day	DAILY MX	8/30/2022	345	lb./day
603	Fluoride	210	lb./day	DAILY MX	9/12/2022	211.5	lb./day

F. Count 6: Violations of Warrick Newco Permit's Nickel Limits

Warrick Newco has also repeatedly exceeded the nickel limits in the Warrick Newco NPDES permit. These exceedances were reported by Warrick Newco on its DMRs:

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
603	Nickel, total recoverable	Quantity 2	1.9	lb./d	DAILY MX	5/31/2023	5.79	lb./d	205%
603	Nickel, total recoverable	Quantity 2	1.9	lb./d	DAILY MX	7/31/2022	2.25	lb./d	18%
603	Nickel, total recoverable	Quantity 2	1.9	lb./d	DAILY MX	5/31/2023	5.79	lb./d	205%
603	Nickel, total recoverable	Quantity 2	1.9	lb./d	DAILY MX	7/31/2022	2.25	lb./d	18%

G. Count 7: Violations of Warrick Newco Permit's pH Limits

Warrick Newco has also repeatedly exceeded the pH limits in the Warrick Newco NPDES permit. These exceedances were reported by Warrick Newco on its DMRs:

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Minimum/ Maximum	End of Monitoring Period	DMR Value	Unit
1	pH	Must be above	6	SU	DAILY MN	9/30/2022 ¹³	5	SU
1	pH	Must be above	6	SU	DAILY MN	6/30/2022	3.6	SU
1	pH	Must be above	6	SU	DAILY MN	9/30/2022	5	SU
1	pH	Must be above	6	SU	DAILY MN	6/30/2022	3.6	SU

H. Count 8: Violations of Warrick Newco Permit's Zinc Limits

Warrick Newco has also repeatedly exceeded the zinc limits in the Warrick Newco NPDES permit. These exceedances were reported by Warrick Newco on its DMRs:

¹³ Warrick Newco's additional notices of exceedances can be found [here](#).

Outfall No.	Pollutant	Kind of Limit	Limit	Unit	Daily Max. or Monthly Av.	End of Monitoring Period	DMR Value	Unit	% of Limit Exceeded By
1	Zinc, total recoverable	Concentration 3	1	mg/L	DAILY MX	6/30/2023	1.06	mg/L	6%
1	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	6/30/2023	1.06	mg/L	74%
4	Zinc, total recoverable	Concentration 3	1	mg/L	DAILY MX	6/30/2023	12.554	mg/L	1,155%
4	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	6/30/2023	12.554	mg/L	1,958%
603	Zinc, total recoverable	Quantity2	7.1	lb./d	DAILY MX	5/31/2023	9.72	lb./d	37%
5	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	9/30/2022	0.857	mg/L	40%
5	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	6/30/2022	0.752	mg/L	23%
1	Zinc, total recoverable	Concentration 3	1	mg/L	DAILY MX	6/30/2023	1.06	mg/L	6%
1	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	6/30/2023	1.06	mg/L	74%
4	Zinc, total recoverable	Concentration 3	1	mg/L	DAILY MX	6/30/2023	12.554	mg/L	1,155%
4	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	6/30/2023	12.554	mg/L	1,958%
603	Zinc, total recoverable	Quantity2	7.1	lb./d	DAILY MX	5/31/2023	9.72	lb./d	37%
5	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	9/30/2022	0.857	mg/L	40%
5	Zinc, total recoverable	Concentration 2	0.61	mg/L	MO AVG	6/30/2022	0.752	mg/L	23%

On September 13, 2023, IDEM sent Warrick Newco an “Inspection Summary/ Noncompliance Letter” stating that “[t]he September 2022 DMR did not correctly fill out the exceedance column for Zinc, Copper, & Mercury for [Outfall] 005,” and “[t]he July 2023 DMR did not have various exceedance columns filled out.”¹⁴ This NOI also provides notice for any exceedances of permit limits that were not correctly documented by Warrick Newco in its DMRs.

Warrick Newco also separately provided IDEM additional notices of the following exceedances:

¹⁴ [9-13-2023 IDEM Inspection Summary/ Noncompliance Letter](#) at 6.

Outfall No.	Parameter	Permit Effluent Limit	Unit	Daily Max. or Monthly Av.	Date of Exceedance	Sample Value	Unit
5	Zinc	0.61	mg/L	MO AVG	Q2 2002 ¹⁵	0.752	mg/L
5	Zinc	0.61	mg/L	MO AVG	7/8/2022	0.857	mg/L
1	Zinc	1	mg/L	DAILY MX	6/29/2023	1.051	mg/L
1	Zinc	0.61	mg/L	MO AVG	6/29/2023	1.051	mg/L
4	Zinc	1	mg/L	DAILY MX	6/29/2023	12.55	mg/L

In sum, this NOI provides notice of Warrick Newco’s violation of its permit’s limits for mercury, aluminum, chlorine, copper, fluoride, nickel, pH, and zinc since January 2022; for violations of these parameters that occur after the date of this NOI; and for any other exceedances of these parameters that Warrick Newco improperly reported on its DMRs. Each day of each of these violations of the Warrick Newco Permit constitutes a violation of the CWA for which penalties can be assessed under the CWA.

IV. The Person or Persons Responsible for the Alleged Violations

The person or persons responsible for the alleged violations is Warrick Newco LLC. Under the CWA, the term ‘person’ “means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5). As a corporation, Warrick Newco LLC is a person for purposes of the CWA. Warrick Newco is the holder of the IN0001155 NPDES permit. As the permit holder, Warrick Newco is responsible for the permit violations and, consequently, the CWA violations. Warrick Newco is also the owner and operator of the Alcoa Warrick primary aluminum smelting facility located at 4400 West State Road 66, Newburgh, IN 27629-0010.

V. The Location of the Alleged Violations

The location of the alleged violations is:

Alcoa Warrick Operations
4400 West State Road 66
Newburgh, IN 47629-0010

VI. The Full Name and Address and Phone Number of the Person Giving the Notice

The Sierra Club is the person giving Warrick Newco LLC notice regarding the violations of effluent standards or limitations and provides its organizational information pursuant to 40 C.F.R. § 135.3. The Sierra Club is located at 2101 Webster Street, Suite 1300, Oakland, California, 94612 and its phone number is (415) 977-5589.

¹⁵ Warrick Newco’s additional notices of exceedances can be found [here](#).

The Sierra Club is a nationwide non-profit environmental membership organization, which has its purpose to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Members of the Sierra Club Hoosier (Indiana) chapter are avid bird-watchers along the Ohio and in the area around Newburgh, regularly walk along the Ohio River, drink treated Ohio River water and otherwise use the Ohio River downstream of the Alcoa Warrick complex and discharges. These members have been injured and continue to be injured by the Warrick Newco pollution exceeding the Warrick Newco Permit limits, as described herein, as these violations threaten members' use and enjoyment of the Ohio River and their enjoyment of the birds that use the Ohio River.

VII. Conclusion

Warrick Newco has repeatedly exceeded the effluent limits in the Warrick Newco IN0001155 permit, and thus the CWA. Due to the high number and repetitive nature of the violations, the Sierra Club believes that Warrick Newco will continue to violate the Warrick Newco NPDES Permit and the CWA. Accordingly, EIP intends to file suit on behalf of the Sierra Club in the U.S. District Court for the Southern District of Indiana pursuant to 33 U.S.C. § 1365(a)(1) and 33 U.S.C. § 1365(b)(1)(A) any time after 60 days from the postmarked date of this NOI. This lawsuit will seek to enjoin and abate the violations described above, ensure future compliance with federal and state law, obtain civil penalties, recover attorneys' fees and costs of litigation, and obtain any other appropriate relief.

If you believe any of the facts described above are in error or have any information indicating that you are not violating and have not violated the CWA, or if you are interested in an early and prompt resolution of this matter, I urge you to contact me immediately.

Respectfully submitted,

s:/ Meg Parish

Meg Parish, Senior Attorney

Environmental Integrity Project

1000 Vermont Ave NW, Suite 1100

Washington, DC 20005

(720) 741-0652

mparish@environmentalintegrity.org

Counsel for Sierra Club

CC:

Martha Clark Mettler, Assistant Commissioner, Office of Water Quality
mmettler@idem.in.gov

Amari Farren, Chief of Enforcement Section, Office of Water Quality
afarren@idem.in.gov

Indiana Department of Environmental Management (IDEM)
100 North Senate Avenue
Indianapolis, IN 46204-2251

Debra Shore, EPA Region 5 Administrator
Nefertiti DiCosmo, Surface Water Enforcement, EPA Region 5
dicosmo.nefertiti@epa.gov
77 W. Jackson Blvd
Chicago, IL 60604

Tony Mendoza
Sierra Club
(415) 977-5589
2101 Webster Street, Suite 1300,
Oakland, CA 94612
tony.mendoza@sierraclub.org