



October 21, 2026

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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**RE: Notice of Intent to Sue for Violations of the Clean Air Act at the DataOne Facility
Located at 3963 South Lincoln Ave, Vineland, NJ for Illegally Operating Gas-
Powered Engines and Other Unpermitted Equipment**

To All Recipients:

This letter provides notice that Sustain SJ intends to file suit against DataOne USA LLC, DataOne Vineland LLC, Nebius Inc., and Northeast Precast for their past and ongoing violations of the federal Clean Air Act occurring at 3963 South Lincoln Ave Vineland, NJ 08361.¹

¹ Hereinafter, references to the "DataOne" facility indicate both the DataOne data center facility at 3963 South Lincoln Ave and the adjacent or continuous Northeast Precast site at 4081 South Lincoln Ave that is under common control.

Upon information and belief, according to DataOne, the facility began receiving and installing unpermitted gas-fired Caterpillar reciprocating engines at its site as early as July 15, 2025.² DataOne began operating the first set of these sixteen, “Phase I” engines by October 13, 2025.³ Its “Phase II” engines were delivered starting on November 13, 2025, and began operating by February 4, 2026, bringing the total number of engines on site at the time to thirty-two.⁴ Another thirty engines arrived onsite starting on April 7, 2026, and DataOne began operating these “Phase III” engines shortly thereafter by June 23, 2026.⁵ There are now a total of sixty-two known engines at the facility operating in violation of the Clean Air Act, and it is possible that DataOne may add additional units in the future. These engines have the potential to emit significant amounts of ozone-worsening nitrogen oxides (“NOx”) and volatile organic chemicals (“VOCs”), along with several other health-harming pollutants, in exceedance of Clean Air Act thresholds.

Sustain SJ is a community-based organization that advocates for environmental stewardship and responsible development that is not at the expense of the community it serves. Sustain SJ is therefore deeply committed to protecting the Vineland community from harmful pollution from the gas-fired engines and other sources of pollution at DataOne. Unless the violations detailed below are fully addressed, Sustain SJ intends to file suit under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, in the United States District Court for the District of New Jersey after the applicable notice period has expired. Sustain SJ will seek injunctive relief, civil penalties, mitigation, fees and costs of litigation, and such other relief as the Court deems appropriate to address the violations.

If you would like to discuss any factual or legal issues set forth in this letter, or a possible resolution of this matter during the notice period, please contact the undersigned attorneys.

I. FACTUAL BACKGROUND

DataOne is a 3.1 million square foot data center project being developed in Cumberland County, New Jersey at 3963 South Lincoln Avenue, Vineland NJ 08361. This data center was commissioned by Amsterdam-based artificial intelligence company Nebius to provide Microsoft with artificial intelligence computing services pursuant to a \$17.4 billion contract between the two companies.⁶

² Letter from David Miller, Giordano, Halleran & Ciesla, P.C., to Lauren Keltos, DEP, *RE DataOne Project — Air Permit Applicability Determination Submission 3963 S. Lincoln Avenue, Cumberland County, City of Vineland Program Interest (PI) No. 75894*, at Ex. C (Aug. 28, 2026) [hereinafter Aug. 28, 2026, Letter].

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ SEC Form 6-K for Nebius Group N.V. (Sept. 8, 2025), https://www.sec.gov/Archives/edgar/data/1513845/000110465925088312/tm2525580d1_6k.htm [<https://perma.cc/H53R-SE3E>]; *Nebius x Vineland, New Jersey*, Nebius, <https://nebius.com/vinelandnj> [<https://perma.cc/6VNX-YYZ5>] (last visited Oct. 20, 2026).

A. Data Center Development

The land upon which DataOne is being built—Block 7503, Lots 1.01 & 35.01 totaling approximately 106.59 acres—was previously owned by affiliated entities LJR Real Estate LLC and NEP Real Estate of Vineland NJ Urban Renewal, LLC, (“NEP Real Estate”) respectively.⁷ This land is contiguous and immediately adjacent to the site of the Northeast Precast concrete manufacturing facility.⁸ NEP Real Estate is a real estate holding company formed by the owners of Northeast Precast for the purpose of completing this real estate transaction.⁹ Attorney Michael Fralinger is the listed agent of NEP Real Estate.¹⁰

In June 2024, despite having no end user, NEP Real Estate sought and received preliminary and final major site plan approval from the Vineland Planning Board for a 2,647,628 square foot data center project that would be built over four phases and include “six 2-story data center buildings, a 4-story office building and a 4-story parking garage.”¹¹ NEP Real Estate eventually secured an end user in DataOne, deeding the property to DataOne Vineland I LLC on February 25, 2025.¹² On June 26, 2025, NEP Real Estate requested a modification to the site plan, revising the plan to occur over three phases, comprise of two data center buildings, and removed the garage and office buildings.¹³ On February 26, 2026, DataOne, also represented by Mr. Fralinger at the time, submitted yet another Amended Major Site Plan Application, purporting to reduce the project to two phases, adding a power generation building to house thirty-two Bergen engines powered by natural gas intended to serve as DataOne’s baseline source of electricity, a water treatment plant, a liquified natural gas (“LNG”) tank with related infrastructure, and more.¹⁴ DataOne had submitted a permit application to the New Jersey Department of Environmental Protection (“DEP”) for a preconstruction permit and operating certificate for these Bergen engines a few months prior on December 16, 2025.¹⁵

⁷ DataOne USA LLC, *Amended Major Site Plan Application*, Municipal Application No. PBA-26-00001 (Feb. 26, 2026) [hereinafter *Amended Application*]; City of Vineland, *Special Planning Board Minutes* (June 26, 2024), <https://www.vinelandcity.org/Archive/Planning%20Board/Minutes/2024/Minutes%206-26-24%20%28Special%20Meeting%29.pdf> [<https://perma.cc/B29M-GDSH>].

⁸ DataOne, *Environmental Impact Statement, Vineland, NJ Facility* at 11, 12 (July 8, 2026) [hereinafter EIS].

⁹ Vineland UEZ Loan Committee Loan Proposal for NEP Real Estate of Vineland NJ Urban Renewal, LLC at p. 6 (Dec. 6, 2018).

¹⁰ N.J. Dep’t of the Treasury, Business Entity Status Report for NEP Real Estate of Vineland NJ Urban Renewal, LLC (Sept. 30, 2026).

¹¹ *Amended Application*, *supra* note 7, at p. 1 (Background Section).

¹² Cumberland Cty. Clerk’s Off., Instrument No. 711001, Deed for Block 7503, Lot 35.01 (Feb. 26, 2025).

¹³ City of Vineland, *Planning Board Minutes Special Meeting* (June 26, 2025), <https://www.vinelandcity.org/Archive/Planning%20Board/Minutes/2025/Minutes%206-26-25%20%28Special%20Meeting%29.pdf> [<https://perma.cc/EF74-7Q7E>].

¹⁴ *Amended Application*, *supra* note 7.

¹⁵ DataOne, New Jersey Department of Environmental Protection Permit Application at Reason for Application, p. 1 (Dec. 16, 2025).

In at least seventeen separate inspections from May 2025 through April 2026, City of Vineland inspectors listed Northeast Precast as the agent for the DataOne site.¹⁶ The City of Vineland's June 18, 2025, engineering report similarly labeled the project as the "Northeast Precast – Data Center Amended."¹⁷ When a DEP representative emailed AKRF, the consulting firm supporting DataOne in its permitting application process, in January 2026 to inquire about the possibility of common control between Northeast Precast and DataOne for the data center site,¹⁸ DataOne's attorneys responded shortly thereafter to assert that there existed no such common control of the site, designating a new attorney as DEP's point of contact.¹⁹

Yet when DEP emailed DataOne about the permitting process in March 2026, DataOne directed DEP to email Northeast Precast General Counsel Michael Fralinger.²⁰ Mr. Fralinger communicated with DEP using a Northeast Precast email address, signature, and letterhead while engaging in permitting discussions.²¹

In his March 30, 2026, email to DEP, Mr. Fralinger stated DataOne was exploring an alternative to the Bergen engines for power. On May 23, 2026, a representative of Bloom Energy submitted an applicability determination request to DEP on DataOne's behalf inquiring about the need to obtain permits for a solid oxide fuel cell system comprised of 1,231 units capable of providing 400MW of power.²² After receiving DEP's determination, DataOne requested the application for the thirty-six Bergen engines and supporting equipment be withdrawn on May 27, and on May 28, 2026, DEP officially cancelled DataOne's pending application.²³

In July 2026, DataOne submitted yet another site plan amendment to the Vineland Planning Board, this time changing the site plan to remove the power generation building and affiliated

¹⁶ City of Vineland, *Inspection Activity Report*, Inspections for Permit No. 25-0020+A, Tracking No. C-25-00648 (printed June 22, 2026); City of Vineland, *Inspection Activity Report*, Inspections for Permit No. 25-0020+C, Tracking No. C-25-00955 (printed June 22, 2026); City of Vineland, *Inspection Activity Report*, Inspections for Permit No. 25-0020, Tracking No. C-25-00330 (printed June 22, 2026); City of Vineland, *Inspection Activity Report*, Inspections for Permit No. 25-1267+C, Tracking No. C-26-00286 (printed June 22, 2026); City of Vineland, *Inspection Activity Report*, Inspections for Permit No. 25-1267, Tracking No. C-25-01825 (printed June 22, 2026).

¹⁷ Ryan R. Headley, Board Engineer, Engineering Report submitted to City of Vineland Planning Board, *Northeast Precast – Data Center Amended* (June 18, 2025).

¹⁸ Email from Michelle Taubler, DEP, to Christopher McComb, AKRF, *RE: Common Control Question - Data One PI 75894 PCP250002* (Jan. 13, 2026, 10:50 AM).

¹⁹ Letter from David J. Miller, Giordano, Halleran & Ciesla, P.C. to Danny Won, DEP, *DataOne Project, Vinealnd City, Cumberland County, PI# 75894, PCP250002* at Ex. C (Jan. 30, 2026).

²⁰ See Email from Patrick O'Rourke, DataOne to Kenneth Ratzman, DEP, *[EXTERNAL] RE: DataOne Schedule* (Mar. 30, 2026, 10:55 AM).

²¹ See, e.g., Email from Michael P. Fralinger, Northeast Precast to Kenneth Ratzman, DEP, *RE: EXTERNAL: FW: [EXTERNAL] Re: DataOne Schedule* (Mar. 30, 2026, 12:52 PM); see also Letter from Christopher McComb, AKRF, to Michelle Taubler, DEP, *Re: Response to Notice of Deficiency DataOne PI# 75894 PCP250002* at 3 (Dec. 23, 2025) (cc'ing John Ruga and Michael "Mike" Fralinger as Northeast Precast in communications about thirty-six Bergen engines and their pollution control devices).

²² Brian Reilly, DEP, Response to Bloom Energy Air Permit Applicability Determination Request (request submitted May 23, 2026) [hereinafter Fuel Cell Determination].

²³ DEP, Air Pollution Control Preconstruction Permit and Certificate to Operate Cancellation (Withdrawal) for DataOne, Permit Activity No. PCP 250002, Program Interest No. 75894 (May 28, 2026).

infrastructure in favor of four ground mount fields containing three 2-story platforms and two 3-story platforms for a Bloom fuel cell system to power the facility.²⁴ This application was also submitted by Mr. Fralinger, though this time signed as “Counsel for DataOne USA LLC.”²⁵ As part of this application, DataOne submitted an Environmental Impact Statement (“EIS”).²⁶ The EIS contained only one chart that provided some detail about the facility’s projected emissions.

	Fuel Cells ^(a)	Balance of Plant ^(b)	Total Estimated Emissions	Major Source Threshold
	tpy	tpy	tpy	tpy
NOx	4.9	5.8	10.7	25
CO	21.3	7.8	29.1	100
VOC	16.4	0.4	16.8	25
SO2	0.01	0.04	0.05	100
Particulate	16.4	7.1	23.5	100
HAPs (Total)	0.31	0.26	0.57	25

Figure 1: Emissions Table from July 8, 2026, EIS, page 44.

These emissions estimates, however, were only based on the installation of 374 MW of fuel cells, not the full 400 MW project, and only accounted for the HVAC system, megabay coolers, and LNG equipment.²⁷ It did not mention or include emissions for the sixty-two engines that were operating at the site at the time, without notice to the surrounding community or, upon information and belief, to the Planning Board.

On August 17, 2026, the Vineland Planning Board voted to approve DataOne’s amended preliminary and final major site plan for phase two of its data center project.²⁸ This decision came after two contentious six-hour Planning Board meetings during which extensive expert testimony and public comments were heard. The two hearings revealed several concerning factors in DataOne’s application which the Planning Board assumed would be addressed by DEP during the permitting process. However, DEP has yet to impose permitting requirements on DataOne that are sufficiently protective of the health of Vineland residents. On September 12, 2026, the Planning Board issued its final Notice of Determination approving the application.²⁹

²⁴ Letter from Michael P. Fralinger, Counsel for DataOne USA LLC, to Yasmin Perez, City of Vineland Planning Board, *Re: PBA-24-00022 DataOne USA LLC, Application for Second Amended Preliminary and Final Major Site Plan For a 2-Phase Data Center Project; and Request for Special Meeting* (July 8, 2026).

²⁵ *Id.*

²⁶ EIS, *supra* note 8.

²⁷ *Id.* at 45.

²⁸ City of Vineland, Legal Notice, *Planning Board Notice of Determination – DataOne Vineland, LCC* (Sept. 12, 2026), <https://www.vinelandcity.org/wp-content/uploads/2026/09/Data-ONE-Notice-Of-Determination-Post-9.12.pdf> [<https://perma.cc/Q6DZ-AF2X>].

²⁹ *Id.*



Figure 2: Aerial view of DataOne construction. (Aug. 27, 2026, Evan Simon / Floodlight)

B. DataOne’s Gas-Powered Engines and Their Health Impacts

In late August, 2026, after the Planning Board approved DataOne’s site plan, investigative reporting revealed that, over the course of the last year, DataOne had been operating dozens of illegal, unpermitted gas-powered engines to power its facility.³⁰ Thermal imaging from June 25, 2026, depicted sixty-two engines on site, with twenty-five in operation at the time.³¹ Additional thermal imaging in late August confirmed that at least forty-five of the sixty-two engines were operational on the date of imaging.³² To date, DataOne has not obtained any construction permit or operating certificate for these engines.

³⁰ See EIS, *supra* note 8, at 45; Fuel Cell Determination, *supra* note 22 (“The project consists of approximately 1,231-325kW energy servers.”).

³¹ David Bellman & Will Benfield, *Generators Running — Clear Operational Signal at Vineland*, SynMax Intelligence (July 2, 2026), <https://blog.synmax.com/vulcan-exclusive/the-weekly-vulcan-report> [<https://perma.cc/KP66-8K7S>].

³² Evan Simon, *One of East Coast’s largest data centers accused of ‘violating federal law’*, Floodlight (Aug. 27, 2026), <https://floodlightnews.org/new-jersey-data-center-federal-violation/> [<https://perma.cc/A6EW-CTLY>]; see also DEP, *In re DataOne*, Admin. Order & Notice of Civil Admin. Penalty Assessment, EA ID # PEA260001 - 75894 (Sept. 22, 2026), <https://dep.nj.gov/wp-content/uploads/newsrel/2026/dataone75894-aonocapa.pdf> [hereinafter AONOCAPA].



Figure 3: Fleet of 62 illegally operating gas-powered engines, each approximately 40ft long, 8ft wide, and 9.5ft tall. (Aug. 27, 2026, Evan Simon / Floodlight)

These engines have a potential to emit more than 250 tons per year (“tpy”) of regulated pollutants, including over 100 tpy of carbon monoxide (“CO”), 25 tpy of NO_x, 25 tpy of VOCs and 10 tpy of formaldehyde.³³ DataOne’s potential to emit values surpasses those of nearly every other permitted facility in New Jersey, making DataOne’s capacity to pollute the air on par with the biggest emitters in the State.³⁴

Nitrogen dioxide (“NO₂”), a significant component of NO_x emitted by engines like those depicted above, can irritate airways in the human respiratory system and can lead, in the short term, to respiratory symptoms (such as coughing, wheezing or difficulty breathing), hospital admissions, and visits to emergency rooms.³⁵ Longer exposures to elevated concentrations of NO₂ may contribute to the development of asthma and potentially increase susceptibility to respiratory infections.³⁶

NO_x reacts with other chemicals, including VOCs, in the air to form both particulate matter and ozone. It is also a primary cause of smog. Among other harmful health effects, smog irritates

³³ 40 C.F.R. § 51.166(b)(1)(i)(B); 42 U.S.C. §§ 7412(a)(1), (b)(1); N.J. Admin. Code 7:27-18.7(a)(2).

³⁴ Evan Simon, *REVEALED: NJ data center emitted staggering amounts of air pollution for nearly a year before regulators intervened*, Floodlight (Oct. 1, 2026), <https://floodlightnews.org/vineland-nj-data-center-air-pollution/> [<https://perma.cc/PVL7-TNEE>].

³⁵ *Basic Information about NO₂*, EPA, <https://www.epa.gov/no2-pollution/basic-information-about-no2> [<https://perma.cc/65HZ-Q2D6>] (last updated June 24, 2026).

³⁶ *Id.*

the lungs and causes asthma attacks.³⁷ Particulate matter exposure through inhalation can impact human lungs and hearts. Exposure to such particle pollution has been linked to premature death in people with heart or lung disease; nonfatal heart attacks; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.³⁸

Formaldehyde can cause irritation to human respiratory tracts and eyes and has been characterized as a human carcinogen by the Department of Health and Human Services.³⁹

C. DataOne's Facility-Wide Emissions and Regulatory Obligations

DataOne has a potential to emit that vastly exceeds the emissions threshold for each of the health-harming pollutants above from the sixty-two engines alone. In addition to sixty-two unpermitted engines, however, DataOne is also installing or has installed various other polluting equipment without the permits required by law. This equipment includes, and may not be limited to, 1,231 fuel cell units⁴⁰ and twenty-five gas-powered boilers.⁴¹

On September 22, 2026, DEP issued an administrative penalty against DataOne for its operation of unpermitted engines, allowing the company forty-five days to submit minor source permit applications for the sixty-two engines.⁴² DEP allowed DataOne to continue its unpermitted operations through this period.⁴³ DataOne has claimed it will phase out the first set of sixteen engines it had delivered in July 2025, but will keep the remaining forty-six Phase II and III engines on site.⁴⁴ On October 9, 2026, DataOne nevertheless challenged the Department's determination that it requires a permit and certificate for the engines, claiming the administrative penalty is disproportionate, and requesting both a hearing and a stay on the determination that it obtain permits and certificates by November 6, 2026.⁴⁵ As of today, it is still unclear if, and to what extent, DataOne intends to comply with New Jersey's permitting requirements.

Air permitting under the Clean Air Act provides a layer of regulation and concurrent accountability that Vineland residents would not otherwise have if DataOne's polluting equipment were to remain unpermitted. For example, even if DataOne were to decommission and remove its Phase I engines, as stated above, the remaining forty-six engines would still have the potential to

³⁷ *Health Effects of Ozone Pollution*, EPA, <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> <https://perma.cc/8SAN-R2UK> (last updated Feb. 24, 2026).

³⁸ *Health and Environmental Effects of Particulate Matter (PM)*, EPA, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> [<https://perma.cc/AV29-D9B5>] (last updated May 5, 2026).

³⁹ *Public Health Statement for Formaldehyde*, Agency for Toxic Substances & Disease Registry (May 17, 2021), <https://wwwn.cdc.gov/TSP/PHS/PHS.aspx?phsid=218&toxid=39> [<https://perma.cc/N4MT-4VN7>].

⁴⁰ Fuel Cell Determination, *supra* note 22.

⁴¹ Aug. 28, 2026, Letter, *supra* note 2, at Ex. C.

⁴² AONOCAPA, *supra* note 32.

⁴³ *Id.* at 2.

⁴⁴ Aug. 28, 2026, Letter, *supra* note 2, at p. 2.

⁴⁵ DataOne, *Request for Administrative Hearing and Stay In the Matter of DataOne Administrative Order and Notice of Civil Administrative Penalty Assessment EA ID #PEA260001-75894* (Oct. 9, 2026).

emit hundreds of tons of NO_x per year into an area already suffering poor air quality, manifest in Cumberland County's categorization of ozone nonattainment.⁴⁶ The pollution from the other gas-powered equipment, such as the fuel cell system and boilers, add to the pollution burden DataOne is imposing on Vineland's residents.

DataOne's site plan also signals the potential for continued expansion, which may result in the facility bringing additional polluting equipment online.⁴⁷ DataOne's own CEO has admitted this might be just the beginning, stating in March 2025 when asked about the Vineland project: "Our ambition doesn't stop with what we're announcing today; we aim to build this campus out with multiple clients and tenants to become a gigawatt-scale data centre campus."⁴⁸ The public does not yet know exactly what the final square footage of the facility will be, or the final electricity demand once the project is complete, making it highly likely that the facility will continue to add more sources of pollution and contribute significantly to the deterioration of air quality in Cumberland County.

II. APPLICABLE CLEAN AIR ACT REQUIREMENTS

The Clean Air Act is a broad remedial statute designed to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population."⁴⁹

The Act requires the U.S. Environmental Protection Agency ("EPA") to regulate emissions of air pollutants that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare."⁵⁰ These include "criteria pollutants," and include NO_x, particulate matter ("PM"), and ozone.⁵¹ EPA sets National Ambient Air Quality Standards ("NAAQS") to limit concentrations of criteria pollutants to levels "requisite to protect the public health."⁵²

⁴⁶ *New Jersey Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants*, EPA, https://www3.epa.gov/airquality/greenbook/anayo_nj.html [<https://perma.cc/UM7A-SPQX>] (last updated Sept. 30, 2026).

⁴⁷ See Ryan Headley, Board Planner & Engineer, City of Vineland, Planning Board Report, *DataOne Vineland, LLC (a.k.a. DataOne USA LLC)* at 2 (July 27, 2026) (referencing three construction phases pursuant to Resolution No. 6720); City of Vineland, Amended Decision & Resolution No. 6720 ¶¶ 9-11 (July 9, 2025).

⁴⁸ Marcus Law, *DataOne and Nebius Partner for New US 300MW AI Data Centre*, Data Center Magazine (Mar. 6, 2025), <https://datacentremagazine.com/articles/dataone-and-nebius-partner-for-new-300mw-ai-data-centre> [<https://perma.cc/KC6A-AH45>]; Mark Bowen, *DataOne's new 300MW data centre with Nebius signals America's appetite for AI*, Intelligent Data Centres (Mar. 10, 2025), <https://www.intelligentdatacentres.com/2025/03/10/dataones-new-300mw-data-centre-with-nebius-signals-americas-appetite-for-ai/> [<https://perma.cc/HX4Q-PUB5>].

⁴⁹ 42 U.S.C. § 7401(b)(1).

⁵⁰ *Id.* § 7408.

⁵¹ 40 C.F.R. §§ 50 et seq.

⁵² 42 U.S.C. § 7409(b)(1).

Each state, in turn, must develop a State Implementation Plan (“SIP”) setting forth how the NAAQS will be achieved and maintained within the state.⁵³ SIPs must be submitted to and approved by the EPA.⁵⁴ Through SIPs, state agencies are responsible for ensuring compliance with federal air quality standards.⁵⁵ Once approved by EPA, a SIP is federally enforceable under the Clean Air Act.⁵⁶ EPA has approved the New Jersey SIP,⁵⁷ and the EPA-approved sections of the SIP, the Clean Air Act, and EPA’s implementing regulations are the federally enforceable law governing air pollution sources in the state.

The Clean Air Act also requires EPA to develop federal emissions standards for specific categories of hazardous and criteria air pollutants.⁵⁸ The standards for sources of criteria air pollutants are New Source Performance Standards (“NSPS”).⁵⁹ NSPS are federally enforceable, technology-based emission standards for controlling criteria pollutants that apply to stationary sources based upon the category in which the source falls.

Separately, for hazardous air pollutants, the Clean Air Act requires EPA to issue emissions standards for categories of stationary sources and a list of 188 air pollutants determined by Congress and EPA to be particularly harmful to human health.⁶⁰ The emissions standards set by EPA are federally enforceable.

Generally, with few exceptions not relevant here, new stationary sources of criteria and hazardous air pollutants in New Jersey must obtain permits prior to construction and operation. These permits are meant to ensure that emissions from new sources do not impair air quality, cause or contribute to NAAQS violations, or otherwise harm the public and the environment.

In addition, certain source categories are subject to performance and emissions standards set by federal law. The engines that DataOne uses in Vineland to power its data center operations are stationary sources that are subject to stationary source emission and performance standards under the Clean Air Act for controlling criteria pollutants and hazardous air pollutants.

⁵³ *Id.* § 7407(a). In some areas, not at issue here, the local jurisdiction adopts and submits to EPA a Local Implementation Plan rather than a SIP.

⁵⁴ *See id.* § 7410.

⁵⁵ *Id.* §§ 7410(a)(2)(A), 7502(c)(6). In this way, the Clean Air Act operates as a “cooperative federalism” scheme; EPA sets standards for pollutants, states implement those standards. *Env’t Prot. Agency v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014).

⁵⁶ *See* 42 U.S.C. §§ 7413, 7604.

⁵⁷ *See* 40 C.F.R. § 52.1570(c) – Table 1. This table identifies the effective date for each EPA approved provision of the New Jersey SIP within the New Jersey Administrative Code - and cites the most recent Federal Register Notice for EPA’s approval. Unless otherwise noted, all citations below to the New Jersey Administrative Code are to EPA-approved SIP provisions.

⁵⁸ 42 U.S.C. §§ 7411, 7412

⁵⁹ 40 C.F.R. §§ 60.1 et seq.

⁶⁰ 42 U.S.C. § 7412.

A. Preconstruction Permits and Operating Certificates for Stationary Sources

Subchapter 8 of New Jersey's EPA-approved SIP requires that any significant source of air pollution obtain both a preconstruction permit and an operating certificate.⁶¹ "Source" is defined as "any process, or any identifiable part thereof, that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere," and a source "may include one or more pieces of equipment or control apparatus."⁶² A "significant source" is any source "that may emit one or more air contaminants, except carbon dioxide (CO₂), directly or indirectly into the outdoor air" and that falls into any of the twenty-two categories of equipment listed by DEP.⁶³ And a stationary source is "any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine."⁶⁴

Under Subchapter 8, the preconstruction permit must be obtained before beginning construction for a new or modified source.⁶⁵ The applicant for any preconstruction permit must specify the potential emissions rate for all significant sources, and demonstrate that each significant source listed on the application meets all of the applicable emissions standards for the source type and potential to emit.⁶⁶ DEP may then impose conditions on the preconstruction permit and operating certificate, including requirements to demonstrate compliance with any emissions standards.⁶⁷ The preconstruction permit and operating certificate function as the permit to operate for minor sources and for any major facilities until they apply for and receive an operating permit (as discussed below in Section C).⁶⁸

B. New Source Review Preconstruction Permits

The New Source Review program has two sets of provisions, and which one applies depends on whether an area is in attainment with federal air quality standards (i.e., the NAAQS). Cumberland County, where DataOne is located, is in nonattainment for the 2008 and 2015 8-hour-ozone NAAQS.⁶⁹ Subchapter 18 of New Jersey's EPA-approved SIP implements the Nonattainment New Source Review program under the Clean Air Act.⁷⁰ This subchapter prohibits the building or expansion of a facility subject to Subchapter 18 without first obtaining a permit and applying the best possible pollution controls.⁷¹ A facility is "the combination of all structures,

⁶¹ N.J. Admin. Code § 7:27-8.3(a), (b). Hereinafter, "Subchapter 8" refers to the N.J. Admin. Code § 7:27-8.1 et seq.

⁶² *Id.* § 7:27-8.1.

⁶³ *Id.* § 7:27-8.2(c).

⁶⁴ 42 U.S.C.A. § 7602.

⁶⁵ N.J. Admin. Code § 7:27-8.3(a).

⁶⁶ *Id.* § 7:27-8.3(g); *id.* at § 7:27-8.11, -8.12.

⁶⁷ *Id.* § 7:27-8.13.

⁶⁸ *Id.* § 7:27-8.2(b).

⁶⁹ *NJ Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants*, EPA, *supra* note 46.

⁷⁰ 42 U.S.C. §§ 7475, 7410 (providing that states implement New Source Review through their SIPs); 40 C.F.R. § 52.1578 incorporates N.J. Admin. Code 7:27-18.1 et seq. into NJ's SIP (except for the definition of "significant emission increase" and § 7:27-18.2(e)(1)).

⁷¹ *Id.*

buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons.”⁷²

Under Subchapter 18, a facility located in a nonattainment area is subject to the Subchapter 18 preconstruction permit requirement when it has the potential to exceed certain criteria pollutant emissions thresholds.⁷³ The thresholds for ozone precursors set by DEP are 25 tons per year (“tpy”) of NO_x and 25 tpy of VOCs.⁷⁴

Further, where a facility has the potential to cause a significant net emission increase above that 25 tpy NO_x and/or VOC threshold in the nonattainment area, it is required to control the air contaminants to the “lowest achievable emissions rate” (“LAER”), secure emission offsets, and submit an alternative site analysis to DEP, all prior to the “initiation of operation of the newly constructed, reconstructed, or modified equipment.”⁷⁵ Thus, after construction, a permitted facility must continue to comply with the emissions limits established as LAER.

New Jersey’s SIP also includes EPA’s Prevention of Significant Deterioration (“PSD”) regulations.⁷⁶ These PSD regulations require any “major stationary source” of an “NSR pollutant” in an attainment area to obtain a preconstruction permit demonstrating that it will not cause the area where it is located to fall into nonattainment or otherwise exceed maximum allowable increases for a given criteria pollutant.⁷⁷ An “NSR pollutant” includes any criteria pollutant such as carbon monoxide, and a “major stationary source” is any source which can emit more than 250 tpy or 100 tpy of an NSR pollutant, depending on the type of equipment.⁷⁸ Any facility subject to this regulation must apply the “best available control technology” (“BACT”) for any NSR pollutant it may emit in significant amounts.⁷⁹

C. Subchapter 22 Operating Permits

The Clean Air Act sets forth that it is “unlawful for any person to . . . operate . . . a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts C or D of subchapter I . . . except in compliance with a permit issued by a permitting authority under

⁷² N.J. Admin. Code § 7:27-22.1.

⁷³ *Id.* § 7:27-18.3(a).

⁷⁴ *Id.* § 7:27-18.2(a).

⁷⁵ *Id.* § 7:27-18.7(a)(2); *id.* at §§ 18.3(a), (b)(1), (c)-(f).

⁷⁶ 40 C.F.R. § 52.1603(b) (“The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of New Jersey.”).

⁷⁷ *Id.* § 52.21(a)(2).

⁷⁸ *Id.* §§ 52.21(b)(1)(i)(A), (b)(50)(i).

⁷⁹ *Id.* § 52.21(j)(2).

[subchapter V].”⁸⁰ EPA has approved New Jersey’s state program to implement this Title V operating permit requirement at N.J.A.C. 7:27 Subchapter 22.⁸¹

Facilities subject to Subchapter 22 must obtain operating permits either at the same time they obtain a preconstruction permit or within one year of commencing operation.⁸² Subchapter 22 also requires an owner or operator of a major facility to “ensure that no person shall use or operate any significant source operation at the facility without a valid operating permit for the facility, which covers the source operation.”⁸³ Further, the owner or operator must “ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth at N.J.A.C. 7:27–22 Appendix, Table A, incorporated herein by reference, or 17.9, Tables 3A and 3B, unless emission of the air contaminant is authorized by the operating permit.”⁸⁴

D. National Emissions Standards for Hazardous Air Pollutants

Section 112 of the Clean Air Act states that “no person may construct or reconstruct any major source of hazardous air pollutants unless the [EPA] Administrator (or the State) determines that the maximum achievable control technology emissions limitation . . . for new sources will be met.”⁸⁵ Likewise, a source must submit an “application for approval of construction” prior to commencing construction of a new major source of hazardous air pollutants.⁸⁶ Sources may also satisfy the foregoing requirements by obtaining state-level preconstruction approval if it is sufficiently similar to the federal requirements.⁸⁷

Hazardous air pollutants (“HAPs”) are the approximately 190 toxic air pollutants, including formaldehyde, that Congress specifically identified in Section 112 of the Clean Air Act.⁸⁸ For each pollutant, Section 112 requires EPA to identify the sources of—and set emissions standards for—the pollutants.⁸⁹ The list of hazardous air pollutants includes known carcinogens as well as substances causing serious non-cancer health effects to bodily organs and systems, and to fetal development.⁹⁰ A major source of HAPs is one that emits or has the potential to emit at least 10 tons of any single hazardous air pollutant per year or 25 tons of total aggregate hazardous air

⁸⁰ 42 U.S.C. § 7661a(a).

⁸¹ 40 C.F.R. Pt. 70, App. A; *see also* Clean Air Act Title V Operating Permit Program Revision; New Jersey, 81 Fed. Reg. 74925-01 (Oct. 28, 2016).

⁸² N.J. Admin. Code §§ 7:27-22.1, 22.5(f), (g).

⁸³ *Id.* § 7:27-22.3(b).

⁸⁴ *Id.* § 7:27-22.3(c).

⁸⁵ 42 U.S.C. § 7412(g)(2)(B); *see also* 40 C.F.R. § 63.5(b)(3)(i) (“[N]o person may, without obtaining written approval in advance from the [EPA] Administrator . . . [c]onstruct a new affected source that is major-emitting.”).

⁸⁶ 40 C.F.R. § 63.5(d)(1)(i).

⁸⁷ *Id.* § 63.5(f).

⁸⁸ 42 U.S.C. §§ 7412(a)(6), (b).

⁸⁹ *Id.*

⁹⁰ *La. Env’t Action Network v. Env’t Prot. Agency*, 955 F.3d 1088, 1092 (D.C. Cir. 2020).

pollutant emissions per year.⁹¹ An area source of HAPs is “any stationary source of hazardous air pollutants that is not a major source.”⁹²

The standards EPA has set for major or area sources of HAPs are known as National Emissions Standards for Hazardous Air Pollutants (“NESHAPs”). Each NESHAP is specific to a particular kind of air pollution source and establishes limits for each listed hazardous air pollutant emitted by the relevant kind of source, as well as related monitoring, recordkeeping, and reporting requirements.⁹³ Limits are based on the “maximum degree of reduction in emissions” (i.e., Maximum Achievable Control Technology or “MACT”) that EPA has determined are achievable for that type of source.⁹⁴

EPA has identified stationary reciprocating internal combustion engines as a substantial source of HAPs, and as a result such engines located at major or area sources of HAP emissions are required to comply with NESHAP Subpart ZZZZ and comply with emission limits established therein.⁹⁵ NESHAP Subpart ZZZZ establishes national emission limitations and operating limitations for hazardous air pollutants emissions from stationary reciprocating internal combustion engines located at major or area sources of hazardous air pollutant emissions, as well as imposes requirements to demonstrate initial and continuous compliance with the emission and operating limitations.⁹⁶ Operators of such engines are required to meet MACT emission limits for carbon monoxide and formaldehyde, and continuously monitor emissions or conduct periodic performance tests (in most instances, up to every six months) to assure compliance.⁹⁷

E. New Source Performance Standards for Stationary Spark Ignition Internal Combustion Engines

EPA has also issued New Source Performance Standards (“NSPS”) for a variety of emissions sources, including stationary spark ignition internal combustion engines, which are codified at NSPS Subpart JJJJ.⁹⁸ These NSPS place limits on NO_x, CO, and VOC emissions from regulated engines which vary depending on the date the engine was manufactured.⁹⁹ Owners or operators of stationary spark ignition internal combustion engines are subject to these

⁹¹ 42 U.S.C. § 7412(a)(1); *see also* 40 C.F.R. § 63.2 (“Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants[.]”).

⁹² 42 U.S.C. § 7412(a)(2).

⁹³ *Id.* §§ 7412(d)(1)-(3); *see also* *La. Env’t Action Network v. Env’t Prot. Agency*, 955 F.3d at 1092.

⁹⁴ 42 U.S.C. § 7412(d)(2).

⁹⁵ 40 C.F.R. §§ 63.6580 through 63.6675.

⁹⁶ *Id.* §§ 63.6580.

⁹⁷ *E.g., id.* §§ 63.6600, 63.6610, 63.6615, 63.6625

⁹⁸ 40 C.F.R. §§ 60.4230 et seq.

⁹⁹ 40 C.F.R. Pt. 60, Subpt. JJJJ, Tbl. 1.

emissions standards,¹⁰⁰ and must continuously monitor emissions or conduct periodic performance tests to assure compliance.¹⁰¹

F. Reasonably Available Control Technology Requirements for Stationary Reciprocating Engines

New Jersey's SIP includes emissions limits for ozone precursors under the reasonably available control technology ("RACT") standard because the state has not attained the NAAQS for ozone.¹⁰² The purpose of this RACT standard is to implement control measures "as expeditiously as practicable" in order to "provide for attainment of the national primary ambient air quality standards."¹⁰³

Subchapters 16 and 19 of New Jersey's SIP implement this requirement, imposing emissions limits on air pollution sources including reciprocating engines for the purpose of reducing the ambient ozone concentration in the air.¹⁰⁴ For stationary reciprocating engines, the SIP limits emissions of CO as a proxy for VOCs and emissions of NOx, given that both VOCs and NOx are ozone precursors.¹⁰⁵ To ensure compliance with these limits, the SIP includes monitoring requirements and specifies the test methods to be used.¹⁰⁶

G. DataOne's Engines and Fuel Cell System Are Subject to Permitting and Air Pollution Control Requirements, and No Exemptions Apply Here.

DataOne's engines are significant sources of air pollution under the New Jersey SIP. They are "stationary reciprocating engine[s] with a maximum rated power output of 37 kW or greater, used for generating electricity," not being used for "construction,"¹⁰⁷ and none of the enumerated exemptions to this classification (such as the construction exemption) apply because the engines are being used to power cooling equipment, "HVAC, temporary lighting power for the uninterruptible power supply backup systems, additional temporary power for operating tools, and computing equipment."¹⁰⁸

DataOne's fuel cell system is also a significant source of air pollution under the New Jersey SIP. The system of 1,231 fuel cells has the potential to emit air pollutants and the combined weight of raw materials used by the fuel cell system (here, natural gas) well exceeds 50 pounds in any one hour.¹⁰⁹ The exemption for "fuel cell system[s]" of less than 5 MW of generating capacity does

¹⁰⁰ 40 C.F.R. § 60.4230(a)(4).

¹⁰¹ *E.g.*, 40 C.F.R. § 60.4243; 40 C.F.R. Pt. 60, Subpt. JJJJ, Tbl. 1, Tbl. 2.

¹⁰² *See* 42 U.S.C. § 7502(c)(1); 40 C.F.R. § 81.331.

¹⁰³ 42 U.S.C. § 7502(c)(1).

¹⁰⁴ N.J. Admin. Code § 7:27-16.10; *id.* § 7:27-19.8.

¹⁰⁵ *Id.* § 7:27-16.10(b); *id.* § 7:27-19.8(e).

¹⁰⁶ *Id.* §§ 7:27-16.10(f)-(h); *id.* § 7:27-16.23; *id.* § 7:27-19.17; *id.* § 7:27-19.18.

¹⁰⁷ *Id.* § 7:27-8.2(c)(21); Aug. 28, 2026, Letter, *supra* note 2.

¹⁰⁸ N.J. Admin. Code § 7:27-8.2(d); DEP, Response to DataOne's Air Permit Applicability Determination Request (sent to Applicant on Sept. 9, 2026) [hereinafter DEP Sept. 9, 2026, Applicability Response].

¹⁰⁹ N.J. Admin. Code § 7:27-8.2(c)(19).

not apply because the fuel cell system has a 400 MW generating capacity.¹¹⁰ While DEP stated that DataOne's fuel cell system does not require any preconstruction permit or operating certificate, that conclusion wrongly asserts that no permit or certificate is required because each individual fuel cell has a generating capacity below 5 MW, ignoring the plain regulatory language which focuses on the capacity of the "fuel cell system" rather than individual fuel cells, and which defines "source" to cover multiple "pieces of equipment or control apparatus."¹¹¹ Further, DEP does not have the authority to give a company a free pass to pollute.¹¹²

III. VIOLATIONS OF THE CLEAN AIR ACT

A. Claim 1: In violation of the New Jersey SIP and the Clean Air Act, DataOne failed to obtain the required New Source Review preconstruction permit for its engines and failed to satisfy the Lowest Achievable Emissions Rate and emissions offset requirements or Best Available Control Technology requirements.

Subchapter 18 of New Jersey's SIP requires that any facility whose emissions are above the air contaminant potential to emit ("PTE") threshold levels set by DEP must obtain a Subchapter 18 preconstruction permit when that facility is located in a nonattainment area or when the facility has the potential to cause the area where it is located to fall into nonattainment.¹¹³ Cumberland County, where DataOne is located, is in nonattainment for 2008 and 2015 8hr-ozone NAAQS.¹¹⁴ N.J. Administrative Code 7:27-18.2(a) lays out New Jersey's air contaminant PTE thresholds, the most relevant for ozone being 25 tpy threshold for its precursors, NO_x and VOC.¹¹⁵ DataOne's PTE for both NO_x and VOCs from the 62 engines it installed far exceeds the 25 tpy threshold, signifying that DataOne was required to obtain a Subchapter 18 preconstruction permit to install those engines.

Additionally, under the Clean Air Act, as incorporated in the New Jersey SIP, where a facility has the potential to cause a significant net emission increase above that 25 tpy NO_x and/or VOC in the nonattainment area, it is required to control the air contaminants to the "lowest achievable emissions rate" ("LAER"), secure emission offsets, and submit an alternative site analysis to DEP, all prior to the "initiation of operation of the newly constructed, reconstructed, or modified equipment."¹¹⁶ Upon information and belief, DataOne has not adopted emissions

¹¹⁰ *Id.* § 7:27-8.2(d)(11); EIS, *supra* note 8, at 45; Fuel Cell Determination, *supra* note 22 ("The project consists of approximately 1,231-325kW energy servers.").

¹¹¹ N.J. Admin. Code § 7:27-8.2(d)(11); EIS, *supra* note 8, at 45; Fuel Cell Determination, *supra* note 22; N.J. Admin. Code § 7:27-8.1.

¹¹² *See Ass'n to Protect Hammersley, Eld, & Totten Inlets v. Taylor Res., Inc.*, 299 F.3d 1007, 1011-12 (9th Cir. 2002); *United States v. S. Ind. Gas & Elec. Co.*, No. IP99-1692-CM/F, 2002 WL 1760699, at *4 (S.D. Ind. July 26, 2002).

¹¹³ N.J. Admin. Code § 7:27-18.3(a).

¹¹⁴ *NJ Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants*, EPA, *supra* note 46.

¹¹⁵ N.J. Admin. Code §§ 7:27-18.2, -18.3. 40 C.F.R. § 52.1578 incorporates N.J. Admin. Code 7:27-18.1 et seq. into NJ's SIP (except for the definition of "significant emission increase" and § 7:27-18.2(e)(1)).

¹¹⁶ N.J. Admin. Code § 7:27-18.7(a)(2); *id.* at §§ 18.3(b)(1), (c)-(f).

controls for its engines to achieve LAER, has not secured emissions offsets, or submitted an alternative site analysis to DEP.

Further, the Clean Air Act, as implemented through EPA's Prevention of Significant Deterioration ("PSD") regulations incorporated into the New Jersey SIP,¹¹⁷ requires that any "major stationary source" of an "NSR pollutant" obtain a preconstruction permit demonstrating that it will not cause the area where it is located to fall into nonattainment or otherwise exceed maximum allowable increases for a given criteria pollutant.¹¹⁸ An "NSR pollutant" includes any criteria pollutant such as carbon monoxide, and a "major stationary source" is any source which can emit more than either 250 tpy or 100 tpy of an NSR pollutant, depending on the type of equipment.¹¹⁹ Any facility subject to this regulation must apply the "best available control technology" ("BACT") for any NSR pollutant it may emit in significant amounts.¹²⁰ Cumberland County is in attainment for CO, but DataOne's engines will exceed the PSD threshold of CO and it was thus required to also obtain a preconstruction PSD permit and apply BACT to its engines. Upon information and belief, DataOne has not met this requirement.

DataOne has neither applied for nor received a Subchapter 18 preconstruction permit for the engines it installed, and it has not satisfied the LAER and emissions offset requirements for facilities that would cause a significant net increase in a nonattainment area. Further, it has neither obtained the required preconstruction PSD permit nor satisfied the associate BACT requirements. Every day from the start of construction without a Subchapter 18 preconstruction permit or PSD preconstruction permit through its ongoing operation of the engines without a permit and corresponding LAER and BACT pollution controls and emissions offsets, DataOne is and has been in violation of the New Jersey SIP and Clean Air Act. Each day constitutes a separate violation, subjecting DataOne to a civil penalty per day, per violation.¹²¹

¹¹⁷ 40 C.F.R. § 52.1603(b) ("The provisions of §52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of New Jersey.").

¹¹⁸ *Id.* § 52.21(a)(2).

¹¹⁹ *Id.* §§ 52.21(b)(1)(i), (b)(50)(i).

¹²⁰ *Id.* § 52.21(j)(2).

¹²¹ See *Nat'l Parks Conservation Ass'n v. Tenn. Valley Auth.*, 480 F.3d 410, 419 (6th Cir. 2007) (holding that a failure to obtain a preconstruction permit is a recurring violation for each day of unpermitted operation); see also *United States v. Cemex, Inc.*, 864 F.Supp.2d 1040, 1048 (D. Colo. 2012) ("Given that the CAA is a statute intended to prevent emission of air pollution, the continued emission of pollutants that would otherwise be limited had the source complied with the PSD and NNSR programs could be considered a repeated injury."); *Sierra Club v. Portland Gen. Elec. Co.*, 663 F.Supp.2d 983, 993 (D. Or. 2009) ("Because [the Title V] program contains operational requirements does not mean that the [PSD preconstruction] program must lack similar requirements. As discussed above, the language of both the federal and Oregon PSD programs create ongoing operational requirements."); *Sierra Club v. Dayton Power & Light, Inc.*, No. 2:04 CV 905, 2005 WL 1972549, *3 (S.D. Ohio Aug. 12, 2005) ("[T]he Court finds it illogical to conclude that a defendant may only be held liable for constructing a facility, rather than operating such facility, without complying with the permit requirements.").

B. Claim 2: Under the New Jersey SIP, DataOne was required to obtain minor source preconstruction permits for its engines, fuel cell system, and boilers.

Any “significant source” “is required to have a permit and certificate under [subchapter 8]” of the New Jersey SIP.¹²² Moreover, “[n]o person may construct, reconstruct, install, or modify” a significant source “without first obtaining a preconstruction permit,” nor shall one “operate (nor cause to be operated) a significant source . . . without a valid operating certificate.”¹²³ Subchapter 8 defines a “source” as “any process, or any identifiable part thereof, that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere . . . [and] may include one or more pieces of equipment or control apparatus.”¹²⁴ If a facility’s equipment is listed under Subchapter 8.2(c), it is considered a significant source that requires a minor source permit. Both DataOne’s engines and fuel cell system are subject to Subchapter 8.2(c) and therefore require proper permitting documents. Similarly, DataOne’s boilers are also subject to permitting requirements under Subchapter 8.8(c).

DataOne did not obtain the necessary minor source preconstruction and certificate of operation prior to commencing construction and operation of the sixty-two unpermitted Caterpillar stationary reciprocating engines being used on site, each with a maximum rated power output of 1,982 kW. Subchapter 8.2(c)(21) covers “any stationary reciprocating engine with a maximum rated power output of 37 kW or greater, used for generating electricity.”¹²⁵ The facility is utilizing its engines for non-construction purposes, including to power cooling equipment, “HVAC, temporary lighting power for the uninterruptible power supply backup systems, additional temporary power for operating tools, and computing equipment.”¹²⁶ Its engines are therefore not subject to an exemption and must be properly permitted.

DataOne also did not obtain the required minor source preconstruction permit and certificate of operation prior to commencing construction and operation of the 1,231-unit, fuel cell system it claims will its main source of energy, with each fuel cell unit fueled by methane at a rate of over 50 pounds per hour. Subchapter 8.2(c)(19) covers “equipment in which the combined weight of all raw materials used exceeds 50 pounds in any one hour.”¹²⁷ The 1,231-unit gas-powered fuel cell system is a “significant source” under the regulations, and DataOne was therefore required to obtain a preconstruction permit prior to constructing and operating this significant source.

Finally, DataOne has failed to obtain permits for its 25 gas-burning boilers under the New Jersey SIP. Under Subchapter 8.2, all significant sources are required to have permits and

¹²² N.J. Admin. Code § 7:27-8.2(a).

¹²³ *Id.* §§ 7:27-8.3(a), (b).

¹²⁴ *Id.* § 7:27-8.1.

¹²⁵ N.J. Admin. Code § 7:27-8.2(c)(21).

¹²⁶ DEP Sept. 9, 2026, Applicability Response, *supra* note 108.

¹²⁷ N.J. Admin. Code § 7:27-8.2(c)(19).

certificates.¹²⁸ Alternatively, Subchapter 8.8(c) on general permits applying to significant sources lists “[b]oiler(s) and/or heater(s) each less than five MMBTU/hr (GP-017A)” as eligible for a general permit.¹²⁹ DataOne is operating twenty-five boilers on site ranging from 100,000 to 320,000 BTU/hr.¹³⁰ Upon information and belief, DataOne has not obtained permits for these 25 boilers.

Under the New Jersey SIP, DataOne was required to obtain separate minor source permits for the sixty-two Caterpillar engines, fuel cell system, and twenty-five boilers. DataOne’s failure to do so constitutes separate violations for each significant source, with each violation subject to civil penalties under the Clean Air Act.

C. Claim 3: DataOne has constructed and operated, and continues to operate, a new Subchapter 22 facility without the necessary operating permits in violation of New Jersey Regulations and the Clean Air Act.

The Clean Air Act sets forth that it is “unlawful for any person to . . . operate . . . a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts C or D of subchapter I . . . except in compliance with a permit issued by a permitting authority under [subchapter V].”¹³¹ EPA has approved New Jersey’s state program to implement this Title V operating permit requirement at N.J.A.C. 7:27 Subchapter 22.¹³²

Under Subchapter 22, “[t]he owner or operator of a facility subject to this subchapter shall obtain and maintain an operating permit for the facility pursuant to this subchapter.”¹³³ Subchapter 22 defines “facility” as “the combination of all structures, buildings, equipment, control apparatus, storage tanks, source operations, and other operations that are located on a single site or on contiguous or adjacent sites and that are under common control of the same person or persons.”¹³⁴

Subchapter 22 applies to a facility that has the potential to emit certain pollutants above set thresholds, such as 10 tpy of any HAP, 25 tpy of any combination of HAPs, 25 tpy of NO_x, 25 tpy of VOCs, and 100 tpy of carbon monoxide.¹³⁵ The New Jersey SIP requires new facilities subject to Subchapter 22 to submit an initial operating permit application within 12 months after the new facility commences operation.¹³⁶

¹²⁸ See *id.* § 7:27-8.2(a) (“A source that is required to have a permit and certificate under this subchapter is called a “significant source.”).

¹²⁹ *Id.* § 7:27-8.8(c)(3).

¹³⁰ Aug. 28, 2026, Letter, *supra* note 2, at Ex. C.

¹³¹ 42 U.S.C. § 7661a(a).

¹³² 40 C.F.R. Pt. 70, App. A; see also Clean Air Act Title V Operating Permit Program Revision; New Jersey, 81 Fed. Reg. 74925-01 (Oct. 28, 2016).

¹³³ N.J. Admin. Code § 7:27-22.3(a).

¹³⁴ *Id.* § 7:27-22.1.

¹³⁵ *Id.* § 7:27-22.2(a).

¹³⁶ *Id.* § 7:27-22.5(f).

In addition to the requirement to obtain and maintain an operating permit, the owner or operator of a facility subject to Subchapter 22 “shall ensure that no person shall use or operate any significant source operation at the facility without a valid operating permit for the facility, which covers the source operation.”¹³⁷ Such owner or operation must also “ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth at N.J.A.C. 7:27–22 Appendix, Table A, incorporated herein by reference, or 17.9, Tables 3A and 3B, unless emission of the air contaminant is authorized by the operating permit.”¹³⁸

Based on information that DataOne provided to DEP, the DataOne facility’s sixty-two gas engines, 1,231 fuel cells, and other equipment collectively have the potential to emit pollutants at levels that exceed the Subchapter 22 thresholds. In addition, based on information that DataOne provided, DataOne therefore owns and operates a new facility that is subject to Subchapter 22.

Construction of the gas engines began on or about July 15, 2025.¹³⁹ On information and belief, DataOne began operating the engines soon thereafter, with at least sixteen of the engines being fully operational by October 13, 2025.¹⁴⁰ As of the date of this Notice, upon information and belief, DataOne has not yet applied for or obtained a Subchapter 22 operating permit for its facility.

The operation of the DataOne facility without a state operating permit violates the relevant New Jersey regulations and the Clean Air Act. Each day that DataOne operates without an operating permit—from the start of operation forward—constitutes a separate violation, subjecting DataOne to a civil penalty per day, per violation.

D. Claim 4: DataOne has constructed and operated, and continues to operate, stationary reciprocating internal combustion engines without complying with maximum achievable control technology emission limits in violation of NESHAP Subpart ZZZZ.

Stationary reciprocating internal combustion engines located at major or area sources of hazardous air pollutant emissions are required to comply with NESHAP Subpart ZZZZ and comply with emission limits established therein.¹⁴¹ NESHAP Subpart ZZZZ establishes national emission limitations and operating limitations for hazardous air pollutant emissions from stationary reciprocating internal combustion engines located at major or area sources of hazardous air pollutant emissions, as well as imposes requirements to demonstrate initial and continuous compliance with the emission and operating limitations.¹⁴² Operators of such engines are required

¹³⁷ *Id.* § 7:27-22.3(b).

¹³⁸ *Id.* § 7:27-22.3(c).

¹³⁹ Aug. 28, 2026, Letter, *supra* note 2, at Ex. C.

¹⁴⁰ *Id.*

¹⁴¹ 40 C.F.R. §§ 63.6580 through 63.6675.

¹⁴² *Id.* §§ 63.6580.

to meet MACT emission limits for carbon monoxide and formaldehyde, and continuously monitor emissions or conduct periodic performance tests to assure compliance.¹⁴³

DataOne's stationary reciprocating engines are engines that are located at a major or area source of hazardous air pollutant emissions. Based on estimates drawn from information provided by DataOne to DEP,¹⁴⁴ DataOne's facility has the potential to emit formaldehyde, a hazardous air pollutant, in an amount greater than 10 tpy. It is therefore a major source of hazardous air pollutants, without accounting for other hazardous air pollutants that it may emit.

Given all available information and upon information and belief, the engines here are subject to NESHAP Subpart ZZZZ as stationary reciprocating internal combustion engines and are not in compliance with the requirements to meet emission and operating limits and maintain and report compliance with this Subpart. As such, DataOne's failure to comply with these requirements constitutes a significant and ongoing violation that is resulting in substantial amounts of harmful excess emissions.

The construction and operation of the engines without complying with NESHAP Subpart ZZZZ constitutes a violation of the Clean Air Act. Every day that DataOne operates the unpermitted turbines in violation of the CAA constitutes a separate violation, subjecting DataOne to a civil penalty per day, per violation.

E. Claim 5: DataOne has constructed and operated, and continues to operate, stationary reciprocating internal combustion engines without complying with new source performance standard emission limits in violation of NSPS Subpart JJJJ.

Stationary spark-ignition internal combustion engine are required to comply with the NSPS Subpart JJJJ and comply with emission limits established therein.¹⁴⁵ NSPS Subpart JJJJ establishes national emission limitations and operating limitations for criteria pollutant emissions from stationary spark-ignition internal combustion engines, as well as imposes requirements to demonstrate initial and continuous compliance with the emission and operating limitations.¹⁴⁶ Operators of such engines are required to meet emission limits for NO_x, carbon monoxide, and VOCs, and continuously monitor emissions or conduct periodic performance tests to assure compliance.¹⁴⁷

Given all available information and upon information and belief, the engines here are subject to NSPS Subpart JJJJ as stationary spark-ignition internal combustion engines and are not in compliance with the requirements to meet emission and operating limits and maintain and report

¹⁴³ *E.g., id.* §§ 63.6600, 63.6610, 63.6615, 63.6625

¹⁴⁴ Aug. 28, 2026, Letter, *supra* note 2, at Ex. C.

¹⁴⁵ 40 C.F.R. §§ 60.4230 through 60.4248.

¹⁴⁶ *Id.* §§ 60.4233.

¹⁴⁷ *E.g., id.* § 60.4243, 40 C.F.R. Pt. 60, Subpt. JJJJ, Tbl. 1, Tbl. 2.

compliance with this Subpart. As such, DataOne's failure to comply with these requirements constitutes a significant and ongoing violation that is resulting in substantial amounts of harmful excess emissions.

The construction and operation of the engine facility without complying with NSPS Subpart JJJJ constitutes a violation of the Clean Air Act. Every day that DataOne operates the unpermitted turbines in violation of the CAA constitutes a separate violation, subjecting DataOne to a civil penalty per day, per violation.

F. Claim 6: DataOne has constructed and operated, and continues to operate, stationary source operations that do not meet reasonable available control technology limits in violation of New Jersey SIP Subchapters 16 and 19.

Subchapters 16 and 19 of New Jersey's SIP requires certain polluting sources, like stationary reciprocating engines, to meet reasonably available control technology ("RACT") emission limits for certain pollutants.¹⁴⁸ These requirements stem from New Jersey's historic and continued failure to attain national ambient air quality standards for ozone, and therefore limit the emissions of pollutants that cause ozone.¹⁴⁹ For stationary reciprocating engines, in particular, the SIP limits emissions of carbon monoxide as a proxy for the ozone precursor VOCs, and emissions of the ozone precursor NOx.¹⁵⁰ The SIP sets forth specific monitoring and test methods that facilities must use to assure compliance with the emission limits.¹⁵¹

DataOne's stationary reciprocating engines are subject to the emission limitations of Subchapters 16 and 19 of the New Jersey SIP. Given all available information and upon information and belief, the engines are not in compliance with the requirements to meet emission and operating limits and maintain and report compliance with Subchapters 16 and 19 of the New Jersey SIP. As such, DataOne's failure to comply with these requirements constitutes a significant and ongoing violation that is resulting in substantial amounts of harmful excess emissions.

The construction and operation of the engine facility without complying with New Jersey SIP Subchapters 16 and 19 constitutes a violation of the Clean Air Act. Every day that DataOne operates the unpermitted turbines in violation of the CAA constitutes a separate violation, subjecting DataOne to a civil penalty per day, per violation.

IV. AUTHORITY TO BRING SUIT

Sustain SJ has authority to bring a citizen suit under Section 304 of the Clean Air Act. The Clean Air Act's citizen-suit provision authorizes "any person" to bring a civil action against another "person . . . who is alleged to have violated (if there is evidence that the alleged violation

¹⁴⁸ N.J. Admin. Code § 7:27-16.10; *id.* § 7:27-19.8.

¹⁴⁹ *See* 42 U.S.C. § 7502(c)(1); 40 C.F.R. § 81.331.

¹⁵⁰ N.J. Admin. Code § 7:27-16.10(b); *id.* § 7:27-19.8(e).

¹⁵¹ *Id.* §§ 7:27-16.10(f)-(h); *id.* § 7:27-16.23; *id.* § 7:27-19.17; *id.* § 7:27-19.18.

has been repeated) or to be in violation of . . . an emission standard or limitation under [the Act].”¹⁵² That section defines “emission standard or limitation under this chapter” in part as an “emission limitation, standard of performance or emission standard,” “any condition or requirement of a permit under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment),” “any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise),” “any other standard, limitation, or schedule established under . . . any applicable State implementation plan approved by the Administrator,” and “any requirement to obtain a permit as a condition of operations.”¹⁵³ Congress enacted the citizen-suit provision to “encourage citizen participation in the enforcement of standards and regulations established under [the Clean Air] Act . . . and intended the section to afford citizens very broad opportunities to participate in the effort to prevent and abate air pollution.”¹⁵⁴

As set out above, the New Jersey SIP and relevant sections of the Clean Air Act require a source to obtain various preconstruction permits and operating certificates before commencing construction, obtain an operating permit within one year of commencing operation, and to continue complying with that operating permit and all applicable requirements once issued.

Upon information and belief, DataOne is in violation of “requirement to obtain a permit as a condition of operations”¹⁵⁵ because DataOne did not obtain the necessary preconstruction and operating permits, and continues to operate air pollution sources in violation of those provisions of the SIP and the Clean Air Act.

In addition, upon information and belief, DataOne is in violation of an “emission limitation, standard of performance or emission standard,” “any condition or requirement of a permit under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment),” “any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise),” and “any other standard, limitation, or schedule established under . . . any applicable State implementation plan approved by the Administrator,” by operating in violation of the emission limitations and other standards required by LAER, BACT, NESHAP Subpart ZZZZ, NSPS Subpart JJJJ, and New Jersey’s SIP.¹⁵⁶ As set out above, DataOne has constructed and is operating equipment that is subject to these emission limitations and related requirements, without complying with these requirements.

In addition, Section 304, subsection (a)(3) of the Act authorizes citizens to sue “any person who proposes to construct or constructs any new or modified major emitting facility without a

¹⁵² 42 U.S.C. § 7604(a).

¹⁵³ *Id.* § 7604(f)(1), (3), (4).

¹⁵⁴ *Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 560 (1986) (cleaned up) (internal quotation marks and citation omitted).

¹⁵⁵ 42 U.S.C. § 7604(f)(4).

¹⁵⁶ *Id.* §§ 7604(f)(1), (3), (4).

permit required under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment).”¹⁵⁷ As set out above, DataOne has constructed and is operating a facility that is subject to the Subchapter 18 and Clean Air Act New Source Review preconstruction permit requirements, without complying with these requirements.

V. PERSONS GIVING NOTICE AND LEGAL COUNSEL

Sustain SJ advocates for environmental stewardship, responsible development and local government that works for the people it represents by encouraging citizen involvement and mobilization through information sharing, engagement, and civic activism. The community group works to facilitate the deliberate action and participation of private citizens, driven by community concerns, in efforts to improve, influence and advocate for change within South Jersey.

Sustain SJ’s members live and recreate near the facility at 3963 South Lincoln Avenue, Vineland, New Jersey 08361 and are experiencing concrete and particularized harms due to the heavy pollution caused by the operation of the sixty-two unpermitted gas-powered engines and other unpermitted equipment on site. In addition to health harms, Sustain SJ and its members are experiencing recreational impact, aesthetic harm, and economic harm in the form of property devaluation due to DataOne’s actions.¹⁵⁸

DataOne’s operations are causing injury to Sustain SJ and the surrounding Vineland community. These harms could be redressed should a Court order DataOne to obtain the appropriate permits, install emissions control technology, and provide injunctive relief.

Sustain SJ’s members live close enough to the DataOne facility to be directly impacted by the air pollution. The group is comprised of concerned local residents who created Sustain SJ specifically to advocate against DataOne and its illegal decision that harms Vineland residents, making the interest it seeks to protect here—the residents’ interest in clean air and adequate protections under the CAA and New Jersey regulations—germane to its purpose.

Earthjustice is counsel for Sustain SJ and can be contacted at the mailing and email addresses provided below.

VI. LOCATION OF THE VIOLATIONS

The violations herein are alleged to have occurred, and are continuing to occur, at 3963 South Lincoln Avenue and 4081 South Lincoln Avenue, Vineland, New Jersey 08361.

¹⁵⁷ *Id.* § 7604(a)(3).

¹⁵⁸ *See Allegheny Def. Project, Inc. v. U.S. Forest Serv.*, 423 F.3d 215, 229 (3d Cir. 2005) (associational standing exists where a defendant’s activities “would cause nearby [member] residents to curtail their recreational use of the forest and would subject them to economic and aesthetic harms”).

VII. PERSONS RESPONSIBLE FOR VIOLATIONS

DataOne Vineland LLC (business address 316 Berrhill Drive, Williamstown, NJ 08094)¹⁵⁹ is the record owner and operator of the land upon which the sixty-two engines and other equipment are unlawfully operating. It is listed as the owner of the data center site at issue on the Amended Major Site Plan Approval Application submitted to the Cumberland County Planning Board.¹⁶⁰

DataOne Vineland LLC is a 100% owned subsidiary of DataOne USA LLC (business address 316 Berrhill Drive, Williamstown, NJ 08094).¹⁶¹ DataOne USA LLC is listed as the applicant on the Amended Major Site Plan Approval Application submitted to the Cumberland County Planning Board.¹⁶² On information and belief, DataOne USA LLC is an owner and operator of the facility at issue. It is also included in this letter as the parent company of DataOne Vineland LLC to ensure that all potentially responsible entities are properly noticed and to preserve claims against any entity that may bear responsibility for the conduct at issue.

DataOne and Nebius have held themselves out to be working in partnership or collaboration to construct and operate the proposed data center at issue in this notice. According to Nebius's website, the data center is "designed for Nebius, operated and owned by DataOne, and built locally by Northeast Precast."¹⁶³ On information and belief, pursuant to the terms of a Master Colocation Services Agreement ("MCSA") dated March 5, 2025, DataOne Vineland LLC and DataOne USA LLC are obligated to construct a data center and related improvements to the land to the primary benefit of Nebius Incorporated LLC (business address Princeton South Corporate Center, Suite 160, 100 Charles Ewing Blvd., Ewing, NJ 08628).¹⁶⁴ On information and belief, Nebius is the primary – or possibly exclusive – tenant of the proposed data center. On information and belief, the MCSA provides Nebius with authority to manage, direct, and/or conduct operations at the data center site.¹⁶⁵ Because the MCSA is a non-public document, incorporated only by reference to publicly available documents,¹⁶⁶ Nebius is included in this letter to ensure that all

¹⁵⁹ Address of Cogency Global Inc., the listed agent for service of process according to N.J. Department of the Treasury records. N.J. Dep't of Treasury, Business Entity Status Report for DataOne Vineland LLC (generated Oct. 14, 2026). Report pulled from *Business Record Service*, N.J. Dep't of Treasury, Div. of Revenue & Enterprise Servs., <https://www.njportal.com/DOR/businessrecords/Default.aspx> [<https://perma.cc/E8TF-NHYZ>].

¹⁶⁰ Cumberland Cty. Clerk's Off., Instrument No. 711001, Deed for Block 7503, Lot 35.01 (Feb. 26, 2025).

¹⁶¹ Address of Cogency Global Inc., the listed agent for service of process according to N.J. Department of the Treasury records. N.J. Dep't of Treasury, Business Entity Status Report for DataOne USA LLC (generated Oct. 14, 2026).

¹⁶² Cumberland Cty. Clerk's Off., Instrument No. 711001, Deed for Block 7503, Lot 35.01 (Feb. 26, 2025).

¹⁶³ *Nebius x Vineland, New Jersey*, Nebius, *supra* note 6.

¹⁶⁴ Address of Corporation Service Company, the listed agent for service of process according to N.J. Department of the Treasury records. N.J. Dep't of Treasury, Long Form Standing with Officers and Directors for Nebius Inc. (last updated Aug. 25, 2026); Morgan, Lewis & Bockius LLP, *Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing*, Mortgagor DataOne Vineland LLC, Mortgagee Nebius Inc., p. 1 (recorded Oct. 6, 2026) [hereinafter *DataOne & Nebius Mortgage*].

¹⁶⁵ See *United States v. Bestfoods*, 524 U.S. 51, 64 (1998).

¹⁶⁶ See *DataOne & Nebius Mortgage*, *supra* note 164, at p. 1.

potentially responsible entities are properly noticed and to preserve claims against any entity that may bear responsibility for the conduct at issue.

On information and belief, Northeast Precast is a partner, agent, and operator for the data center at issue here.¹⁶⁷ As such, it has substantial control over the management and development of the proposed data center site, including the land upon which the unpermitted gas engines and other equipment are operating. It is also the owner and operator of the continuous or adjacent concrete manufacturing facility in common control with the data center site. It is included in this letter to ensure that all potentially responsible entities are properly noticed and to preserve claims against any entity that may bear responsibility for the conduct at issue.

VIII. DATES OF THE VIOLATIONS

Upon information and belief, the violations set forth above are ongoing. The violations began on or before the following dates, with DataOne possessing more specific information about the timeline of each violation:

- Claim 1, 4, 5 and 6 began on or before October 13, 2025, when DataOne alleges it began operating the first set of sixteen engines that have since grown to a fleet of sixty-two gas-powered engines which, together, have a potential to emit NOx and other pollutants well in excess of Clean Air Act and New Jersey SIP emissions and permitting thresholds. Upon information and belief, these violations are ongoing.
- Claim 2 began on or around July 15, 2025 for the first sixteen engines, November 13, 2025 for the second set of sixteen engines, and April 7, 2026 for the remaining thirty engines, based on the dates of equipment delivery as stated by DataOne.¹⁶⁸ DataOne has not disclosed information regarding the construction, installation, and operation of the fuel cell system and boilers, so the dates of violation for both sets of equipment are unknown.¹⁶⁹ Upon information and belief, these violations are ongoing.
- Claim 3 began on or before October 13, 2026, twelve months after the date that DataOne claims that the first set of sixteen engines were fully operational at its facility. These engines, together with the engines subsequently installed and operated at the facility and other equipment at the facility, have a potential to emit pollutants in excess of the permitting thresholds of the Clean Air Act and New Jersey regulations. Upon information and belief, these violations are ongoing.

¹⁶⁷ See *supra* note 1; see also *supra* § I(A).

¹⁶⁸ See Aug. 28, 2026, Letter, *supra* note 2, at Ex. C.

¹⁶⁹ Upon information and belief, construction and installation of the fuel cell system began on or before August 10, 2026, pursuant to a stop work order issued by the City of Vineland. City of Vineland, Stop Construction Order, Violation Nos. V-26-00009 & V-26-00006 (issued Aug. 10, 2026).

The Clean Air Act allows for an additional civil penalty to be assessed for each day that a facility is in violation of the Act.¹⁷⁰ This statutory civil penalty is subject to a mandatory inflation adjustment,¹⁷¹ resulting in a potential assessment of \$124,426 of civil penalties per day of violation. DataOne will continue to accrue violations for Claims 1 through 6 until it complies with the Act.

IX. CONCLUSION

DataOne has violated and continues to violate the Clean Air Act and New Jersey's federally approved SIP by failing to obtain the necessary permits and failing to implement pollution controls. Should litigation be necessary, Sustain SJ will seek redress for the violations described herein, including injunctive relief, civil penalties, costs, attorneys' fees, and any other appropriate relief pursuant to 42 U.S.C. § 7604(a).

Sustain SJ is willing to discuss the factual assertions set forth in this letter as well as effective remedies for the violations within the notice period. If you wish to pursue negotiations in lieu of litigation, please initiate such negotiations with the undersigned counsel within twenty days so that negotiations may be completed prior to termination of the notice period. For the failure to obtain a Prevention of Significant Deterioration and Nonattainment New Source Review permit prior to construction claim, Sustain SJ reserves the right to file suit at any time prior to the expiration of the 60-day notice period applying to the remaining claims. Sustain SJ has retained the assistance of the counsel listed below, and all responses to this Notice Letter must be directed to the undersigned counsel.

Thank you for your prompt attention to this matter.

Sincerely,

/s/ Casandia Bellevue

Casandia Bellevue

Jonathan J. Smith

Colin Parts

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Counsel for Sustain SJ

DATED: October 21, 2026

¹⁷⁰ 42 U.S.C. § 7413(b).

¹⁷¹ Fed. Civ. Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 40 C.F.R. § 19.4; Civil Monetary Penalty Inflation Adjustment, 90 Fed. Reg. 1375, 1377 (Jan. 8, 2025).