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March 22, 2022

John Hackett, General Manager  
Kamtek Inc.  
1595 Sterilite Drive  
Birmingham, AL 35215

Kamtek Inc.  
337 Magna Drive  
Aurora, Ontario L4G 7K1  
Canada

**By Certified Mail – Return Receipt Requested**

**Re: 60-Day Notice of Intent to File Citizen Suit under the Clean Water Act for Violations of Pretreatment Standards and Local Limits**

Dear Mr. Hackett:

Black Warrior Riverkeeper, Inc. (Riverkeeper), in accordance with section 505(b)(1) of the Clean Water Act (CWA), 33 U.S.C. § 1365(b)(1) and 40 C.F.R. Part 135, hereby notifies you that Kamtek Inc. (Kamtek) has violated and continues to violate “an effluent standard or limitation” under Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and (f)(4), by failing to comply with applicable categorical pretreatment standards under Section 307(d) of the CWA at its metal finishing and aluminum casting facility in Birmingham, Alabama. Kamtek’s wastewater is discharged to a sewer that flows into the Jefferson County Five Mile Creek Wastewater Treatment Plant (WWTP). That WWTP uses an activated sludge treatment method and discharges into Five Mile Creek, a tributary of Locust Fork of the Black Warrior River, pursuant to its NPDES Permit No. AL0026913.

Section 307 of the CWA addresses “indirect dischargers,” like Kamtek, which discharge their pollutants into publicly owned treatment works (POTWs) rather than directly into navigable waters. 33 U.S.C. § 1317. Congress recognized that the pollutants from these sources could have a detrimental effect on navigable waters by interfering with the operation of the POTWs or passing through the POTWs without adequate treatment. H. Rep. No. 911, 92d Cong., 2d Sess. 112 (1972). To prevent such problems, Congress directed the U.S. Environmental Protection Agency (“EPA”) to promulgate pretreatment standards “to prevent the discharge of any pollutant through POTWs, which pollutant

interferes with, passes through or otherwise is incompatible with such works.” 33 U.S.C § 1317(b)(1). EPA imposes pretreatment standards on indirect dischargers directly rather than through NPDES permits. Section 307(d) makes it unlawful for a source to operate in violation of a pretreatment standard promulgated under Section 307(b). 33 U.S.C § 1317(d).

EPA has promulgated two types of pretreatment standards for indirect dischargers. *See* 43 Fed. Reg. 27736-27773 (June 26, 1978). The first type, the “general” pretreatment standards, which are contained in 40 C.F.R. Part 403, establish a general prohibition on the release of any pollutants by any non-domestic source if those pollutants interfere with or pass through a POTW. *Id.* at 27759-27760; 40 C.F.R. §§ 403.5(a)(1), 403.3(i). Compliance with the requirements of the general pretreatment regulations was required on or about March 13, 1981. 40 C.F.R. § 403.5(f).

The general standards also provide that POTWs can establish their own local limits which are enforceable to the same extent as the federal standards, so long as they are more stringent than federal standards. 40 C.F.R. §§ 403.5(c), (d); *id.*, § 403.4. On April 23, 2019, ADEM established local limits for certain pollutants discharged into the Five Mile Creek WWTP. At that time, those local limits became enforceable under Section 307(d). 40 C.F.R. §§ 403.5(c), (d).

EPA’s pretreatment regulations also establish reporting requirements for industries subject to these standards. Congress intended that the monitoring requirements in Section 308 of the Act, 33 U.S.C. § 1318, apply to indirect dischargers. H. Rep. No. 1236, 92d Cong., 2d Sess. 130 (1972). That section requires EPA to require the owner or operator of any point source to establish and maintain records, to install, use and maintain monitoring equipment, to sample effluents and to report to EPA in the manner prescribed by EPA. Pursuant to this authority, EPA has specified three types of reports that must be submitted by indirect dischargers: baseline monitoring reports, 90-day compliance reports, and periodic compliance reports. 40 C.F.R. § 403.12.

The second type of pretreatment standards, the “categorical” standards, establish numerical limits on the discharge, by twenty-one specific categories of industrial sources, of particular toxic pollutants which could cause interference with or pass through POTWs. 43 Fed. Reg. 27760, 27771-27773. One of these specific categories is the Metal Finishing Point Source category, which applies to the electroplating/metal finishing industry. EPA has stated that “the discharge of wastewater from electroplaters is one of ‘the most significant pretreatment problems.’” 46 Fed. Reg. 9462, 9466 (Jan. 28, 1981). The pollutants regulated by this category, including the nickel, zinc and phenols discharged by Kamtek, are toxic to human beings and aquatic organisms. 44 Fed. Reg. 52590, 52595 (Sept. 7, 1979). EPA also stated that (*id.*):

These pollutants are only partially removed by municipal treatment systems and pass through to the Nation’s waters in varying degrees. The fraction of the metals that does not pass through the municipal system concentrates in the municipal sludge where it hampers

the use of the sludge as fertilizer and soil conditioner. These pollutants can also interfere with the efficient operation of the publicly owned treatment works.

EPA has found that the median pass through rate for activated sludge treatment plants, such as the Five Mile Creek WWTP, is greater than 80 percent for nickel and between 30 and 40 percent for zinc. *Id.* at 52599. Depending on sludge disposal methods, metals in sludge can contaminate the air, the water, or in some cases enter the human food chain. *Id.* at 52597.

On July 15, 1983, EPA established pretreatment standards for existing and new sources in this category. 48 Fed. Reg. 32462. The deadline for compliance with the metal finishing pretreatment standards was February 15, 1986. 40 C.F.R. § 433.15(f). Kamtek’s discharges from Outfall DSNS02 are subject to the pretreatment standards for new sources in this category, which are the following (40 C.F.R. § 433.17(a)):

Pollutant	Daily Maximum (mg/l)	Monthly Average (mg/l)
Cadmium	0.11	0.07
Chromium	2.77	1.71
Copper	3.38	2.07
Lead	0.69	0.43
Nickel	3.98	2.38
Silver	0.43	0.24
Zinc	2.61	1.48
Cyanide	1.20	
Total toxic organics	2.13	

Kamtek’s discharges from Outfall DSNS01 are subject to pretreatment standards for new sources in the aluminum casting category, which are specified for copper, lead, zinc and phenols in 40 C.F.R. § 464.16.

### CWA Violations

Kamtek is a subsidiary of Magna. Its Birmingham facility produces structural components for automobile manufacturers. On January 30, 2017, ADEM issued State Indirect Discharge Permit No. IU393700965 to Kamtek incorporating pretreatment standards and local limits for Outfall DSNS01.<sup>1</sup> That permit became effective on February 1, 2017. On July 20, 2017, ADEM modified the permit, effective August 1, 2017, to impose limits on discharges from Outfall DSNS02.

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<sup>1</sup> ADEM proposes to renew IU393700965 and on January 24, 2022, issued a draft permit for comment by Kamtek and Jefferson County’s Five Mile POTW.

In its monthly discharge monitoring reports, Kamtek has reported violating the pretreatment standards for total nickel (Ni), total zinc (Zn), total copper (Cu) and total phenols (PHEN) at Outfalls DSNS01 and DSNS02 in the following months:

	<b>Month</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Limit</b>	<b>Type</b>	<b>Reported</b>	<b>Units</b>	<b>% Over Limit</b>
1	Sept. 2017	DSNS01	Zn	0.0142	Avg	0.0931	lbs/day	556
2	Sept. 2017	DSNS01	Zn	0.0377	Max	0.1862	lbs/day	394
3	June 2018	DSNS02	Ni	2.38	Avg	3.57	mg/l	50
4	June 2018	DSNS02	Ni	3.98	Max	7.03	mg/l	77
5	June 2018	DSNS02	Zn	1.48	Avg	11.915	mg/l	705
6	June 2018	DSNS02	Zn	2.61	Max	23.7	mg/l	808
7	July 2018	DSNS02	Zn	1.48	Avg	4.495	mg/l	204
8	July 2018	DSNS02	Zn	2.61	Max	8.93	mg/l	242
9	Feb. 2019	DSNS02	Zn	1.48	Avg	1.695	mg/l	15
10	Feb. 2019	DSNS02	Zn	2.61	Max	3.18	mg/l	22
11	Mar. 2019	DSNS02	Ni	2.38	Avg	8.87	mg/l	273
12	Mar. 2019	DSNS02	Ni	3.98	Max	17.6	mg/l	342
13	Mar. 2019	DSNS02	Zn	1.48	Avg	16.175	mg/l	993
14	Mar. 2019	DSNS02	Zn	2.61	Max	32.3	mg/l	1138
15	Apr. 2019	DSNS01	Zn	0.0142	Avg	0.0433	lbs/day	205
16	Apr. 2019	DSNS01	Zn	0.0377	Max	0.0866	lbs/day	130
17	Apr. 2019	DSNS01	Cu	0.0139	Avg	0.1172	lbs/day	743
18	Apr. 2019	DSNS01	Cu	0.0255	Max	0.2344	lbs/day	819
19	Apr. 2019	DSNS02	Zn	1.48	Avg	2.835	mg/l	92
20	Apr. 2019	DSNS02	Zn	2.61	Max	5.6	mg/l	115
21	June 2020	DSNS02	Zn	2.61	Max	2.77	mg/l	1
22	Sept. 2020	DSNS02	Zn	1.48	Avg.	2.14	mg/l	45
23	Sept. 2020	DSNS02	Zn	2.61	Max	4.01	mg/l	54
24	1 <sup>st</sup> Q. 2021	DSNS01	PHEN	0.0007	Avg.	0.0885	lbs/day	43
25	1 <sup>st</sup> Q. 2021	DSNS01	PHEN	0.0020	Max	0.0885	lbs/day	125
26	Aug. 2021	DSNS02	Zn	1.48	Avg.	1.565	mg/l	1
27	Aug. 2021	DSNS02	Zn	2.61	Max	2.78	mg/l	1
28	3 <sup>rd</sup> Q. 2021	DSNS01	PHEN	0.0007	Avg.	0.0349	lbs/day	49
29	3 <sup>rd</sup> Q. 2021	DSNS01	PHEN	0.0020	Max	0.0349	lbs/day	16
30	Nov. 2021	DSNS01	Zn	0.0142	Avg.	0.0581	lbs/day	309
31	Nov. 2021	DSNS01	Zn	0.0377	Max	0.0887	lbs/day	135

The CWA authorizes citizens to sue “any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter.” 33 U.S.C. § 1365(a)(1). An “effluent standard or limitation under this chapter” is defined to include “pretreatment standards under section 307.” *Id.*, § 1365(f)(4). A person who violates a pretreatment standard is therefore in violation of the CWA and subject to a citizen enforcement action under the CWA. Based on Kamtek’s discharge monitoring reports, we believe that Kamtek is violating the pretreatment standards for the metal finishing and aluminum casting categories. If Kamtek does not cease its violations within 60 days, we intend to bring a citizen suit against Kamtek under Section 505(a)(1) of the CWA seeking declaratory and injunctive relief.

### Conclusion

If Kamtek has taken any steps to eradicate the underlying cause of the violations described above, or if Kamtek believes that anything in this letter is inaccurate, please let us know. If Kamtek does not advise us of any remedial steps during the 60-day period, we will assume that no such steps have been taken and that violations are likely to continue. Additionally, we would be happy to meet with Kamtek or its representatives to attempt to resolve these issues within the 60-day notice period.

Sincerely,



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