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pro bono publico

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

December 19, 2007

Frederick R. Croen
Registered Agent for Fontarome Chemical, Inc.
250 E. Wisconsin Ave., Suite 1550
Milwaukee, WI 53202

Carl Sheeley, President
Fontarome Chemical, Inc.
4170 S. Nevada Ave.
St. Francis, WI 53235

**Re: 60 Day Notice of Intent to Sue under the Federal Water
Pollution Control Act, 33 U.S.C. § 1365(a)(1), for Violations
of Wastewater Discharge Permits 96.01 and 96.02 and
Section 11.203 of the Milwaukee Metropolitan Sewerage
District Regulations.**

To Whom It May Concern:

We represent the Friends of Milwaukee's Rivers ("FMR"), a non-profit, membership-based organization whose mission is to protect water quality and wildlife habitat in the river corridors and to advocate for sound land use in the Milwaukee, Menomonee, and Kinnickinnic River Watersheds, which feed into Lake Michigan. FMR is a member of the Waterkeeper Alliance, a national coalition dedicated to protecting and restoring our nation's waterways, and is the licensed Riverkeeper® for Milwaukee. FMR's members use and enjoy the waters of the Greater Milwaukee area rivers and Lake Michigan.

This letter is to inform you that FMR intends to sue Fontarome Chemical, Inc. ("Fontarome"), a domestic corporation doing business in Wisconsin, for violations of Wastewater Permits 96.01 and 96.02 and Section 11.203 of the Milwaukee Metropolitan Sewerage District ("MMSD") regulations. Fontarome began discharging under its first permit from MMSD in February of 2001, and appeared on MMSD's list of

551 W. Main Street, Suite 200 • Madison, WI 53703
Telephone 608.251.5047 • Fax 608.268.0205

1845 N. Farwell Avenue, Suite 100 • Milwaukee, WI 53202
Telephone 414.688.4171

Email: advocate@midwestadvocates.org • Web: www.midwestadvocates.org

industrial dischargers in Significant Non-Compliance with permit terms by 2002. Fontarome's past and ongoing violations of its permit landed them on the Significant Non-Compliance list for all of 2005, part of 2006, and the first half of 2007.

Fontarome has repeatedly violated, and continues to violate, its Permits to discharge pollutants into the MMSD publicly owned treatment works and regulations setting forth limits for pollutants established pursuant to 33 U.S.C. § 1317(b) (2003). See also 40 C.F.R. § 403.5(d) (2003). The Clean Water Act prohibits the operation of a source in violation of an effluent or pretreatment standard. 33 U.S.C. § 1317(d). Violation of a pretreatment standard or permit is a violation of an effluent standard or limitation and is actionable under the citizen suit provision of the Clean Water Act. 33 U.S.C. 1365(f)(4); 40 C.F.R. § 403.5(d).

Records in the public domain indicate that Fontarome continues to engage in a pattern of recurring, intermittent violations sufficient to keep the company from operating in a state of compliance with the Clean Water Act. See Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, 484 U.S. 49, 64 (1987). Furthermore, because Fontarome has made no effort to install the control technology or address the high risk of operator error necessary to prevent present and future violations, Fontarome is "in violation of" the Clean Water Act for purposes of the Act's citizen suit provision. Gwaltney, 484 U.S. at 69; Atlantic States Legal Found. v. Stroh Die Casting Co., 116 F.3d 814, 820 (7th Cir. 1997).

Under Permits Nos. 96.01 and 96.02, section 4.01(1), Fontarome "may not discharge to the sewerage system except in compliance with ch. 11, MMSD Rules, and this permit."

On at least the following dates, records in the public domain show that Fontarome discharged excessive pollutants into the MMSD treatment system from the Fontarome facility located at 4170 S. Nevada Avenue in St. Francis, Wisconsin, violating section 4.01(1) of its Permits Nos. 96.01 and 96.02 for at least 477 separate days of violation.

TOLUENE

Fontarome's illegal discharges of toluene, an organic solvent, began the same year it received its first permit from MMSD to discharge industrial wastewater.¹ This pattern of excessive pollution continued over the years and still persists today with the latest illegal discharge exceeding 12 times the permit limit for toluene.

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of toluene in violation of section 4.01(1) of both Permits; in violation of Permit No. 96.01, section 1.02, Table 2, which originally limited discharges to 9.5 grams/day monthly average, and then allowed 19.1 grams/day daily maximum and 12 grams/day monthly average; and in violation of Permit No 96.02,

¹ Fontarome violated the monthly limit for toluene in October 2001, violated the daily limits on December 18 and 19, 2001, and violated the December 2001 monthly limit.

section 1.02, Table 2, which limits toluene discharges to 9.3 grams/day daily maximum and 5.8 grams/day monthly average.

Sample Date	Result (grams/day)	Permit Limit (grams/day)
6/6/2002	11.7 monthly avg.	9.5 monthly avg.
10/1/2002	20 daily	19.1 daily
10/31/2002	19.98 monthly avg.	12 monthly avg.
9/20/2005	60 daily	9.3 daily
9/30/2005	60 monthly avg.	5.8 monthly avg.
7/2/2007	140 daily	9.3 daily
7/31/2007	70.2 monthly avg.	5.8 monthly avg.

MERCURY

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of mercury in violation of section 4.01(1) of both Permits; and in violation of Permit No. 96.01 and Permit No. 96.02, section 1.02(2), Table 1, which limits mercury discharges to .0026 mg/L daily maximum.

Sample Date	Result (mg/L)	Permit Limit (mg/L)
10/14/2003	0.0027 daily	0.0026 daily
4/3/2006	0.048 daily	0.0026 daily

AMMONIA

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of ammonia in violation of section 4.01(1) of both Permits; and in violation of Permit No. 96.02, section 1.02, Table 2, which limits ammonia discharges to 3,700 grams/day daily maximum and 1,300 grams/day maximum monthly average.

Sample Date	Result (grams/day)	Permit Limit (grams/day)
7/6/2005	5610 daily	3700 daily
7/31/2005	5609 monthly	1300 monthly avg.
5/31/2006	2226 monthly	1300 monthly avg.

ZINC

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of zinc in violation of section 4.01(1) of both Permits; in violation of Permit No. 96.01, section 1.02(2), Table 1, which limited zinc discharges to 8.0 mg/L daily maximum; in violation of Permit No. 96.01, section 1.02, Table 2, which limited zinc discharges to 238 grams/day daily maximum and 95.8

grams/day maximum monthly average; and in violation of Permit No 96.02, section 1.02, Table 2, which limits zinc discharges to 120 grams/day daily maximum and 46 grams/day maximum monthly average.

Sample Date	Result	Permit Limit
7/6/2004	10.8 mg/L daily	8 mg/L daily
7/6/2004	493 grams/day daily	238 grams/day daily
7/31/2004	493 grams/day monthly avg.	95.8 grams/day monthly avg.
7/6/2005	156 grams/day daily	120 grams/day
7/31/2005	156 grams/day monthly avg.	46 grams/day monthly avg.

BIS(2-ETHYLHEXYL)PHTHALATE (EHPL)

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of Bis(2-Ethylhexyl) Phthalate in violation of section 4.01(1) of both Permits; in violation of Permit No. 96.01, Section 1.02, Table 2, which limited EHPL discharges to 23.5 grams/day daily maximum, and 8.67 grams/day monthly average; and in violation of Permit No 96.02, Section 1.02, Table 2, which limits EHPL discharges to 4.2 grams/day monthly average.

Sample Date	Result (grams/day)	Permit Limit (grams/day)
6/1/2005	26 daily	23.5 daily
6/30/2005	26.5 monthly avg.	8.67 monthly avg.
July 2007	4.8 monthly avg.	4.2 monthly avg.

TETRAHYDROFURAN (THF)

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of Tetrahydrofuran in violation of section 4.01(1) of both Permits; in violation of Permit No. 96.01, section 1.02, Table 2, which set THF limits at 839 grams/day daily maximum and 310 grams/day monthly average; and in violation of Permit No 96.02, section 1.02, Table 2, which limits THF discharges to 410 grams/day daily maximum and 150 grams/day monthly average.

Sample Date	Result (grams/day)	Permit Limit (grams/day)
11/5/2002	1429 daily	839 daily
11/30/2002	1429 monthly avg.	310 monthly avg.
9/20/2005	510 daily	410 daily
9/30/2005	510 monthly avg.	150 monthly avg.

ACIDITY (pH)

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of wastewater in violation of section 4.01(1) of both Permits; and in violation of the pH limit in Permit Nos. 96.01 and 96.02, section 1.02(4), by discharging wastewater with a pH below 5.

Sample Date	Time	Lowest Level	Permit Limit
8/23/2002	12:40 pm to 1:05 pm	3.3	> 5
8/28/2002	12:25 am to 1:25 am	4.1	>5
	6:45 am to 7:20 am	2.3	>5
	4:40 pm to 5:20 pm	4.7	>5

METHYLENE CHLORIDE

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of methylene chloride, an organic solvent, in violation of section 4.01(1) of both Permits; and in violation of Permit No 96.02, section 1.02, Table 2, which limits methylene chloride discharges to 83 grams/day daily maximum and 19 grams/day monthly average.

Sample Date	Result (grams/day)	Permit Limit (grams/day)
5/8/2006	266 daily	83 daily
5/31/2006	266 monthly ave.	19 monthly ave.
6/30/2006	21.25 monthly ave.	19 monthly ave.

CHLOROFORM

Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of chloroform in violation of section 4.01(1) of both Permits; and in violation of Permit No 96.02, section 1.02, Table 2, which limits chloroform discharges to 8.4 grams/day daily maximum and 2.8 grams/day monthly average. In fact, during 2007, Fontarome's discharge was 87 times higher than the legal monthly limit.

Sample Date	Result (grams/day)	Permit Limit (grams/day)
6/4/2007	243.2 daily	8.4 daily
6/30/2007	243.2 monthly ave.	2.8 monthly ave.

HEXANE EXTRACTABLE MATERIALS (OIL & GREASE)

Most recently, Fontarome has illegally discharged and continues to present a reasonable likelihood of continuing and future illegal discharges of hexane extractable materials (oil and grease) in violation of section 4.01(1) of Permit 96.02; and in violation of Permit 96.02, section 1.02, Table 1, which limits oil and grease discharges to 300 mg/L daily maximum.

Sample Date	Result (mg/L)	Permit Limit
10/16/2007	550 daily	300 mg/L daily maximum

FMR's members use and enjoy the Greater Milwaukee area rivers, streams, and Lake Michigan, for paddling, fishing, and other recreational and aesthetic purposes. Fontarome has continuously violated its Permits and MMSD's rules by sending excessive amounts of pollutants into the MMSD system. MMSD's sewer system is not designed to treat or remove these chemicals, but instead relies on industrial pretreaters to not discharge in excess if permitted limits. Thus, these chemicals may be discharged into Lake Michigan. Further, due to sewer overflows, these excessive amounts of pollutants in violation of Fontarome's permit limits may discharge into Lake Michigan. FMR's members have a reasonable concern that their use and enjoyment of Lake Michigan has been and will be diminished by Fontarome's Permit violations. Members of FMR are also ratepayers for sewer and water service provided by MMSD whose sewer rates are affected by the extent to which MMSD must expend public resources to monitor and respond to excessive and illegal effluent discharged by Fontarome. FMR believes that a federal court can redress its injuries by ensuring that Fontarome complies with the law and pays penalties for its violations.

FMR intends to file a citizen suit pursuant to 33 U.S.C. §1365(a)(1) of the Federal Water Pollution Control Act against Fontarome for all violations of the Permit and MMSD regulations set forth in this letter, as well as other, yet to be discovered violations of the same nature.

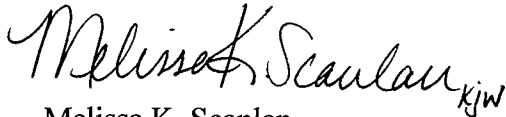
During the 60-day notice period, FMR welcomes discussion that would resolve this matter without litigation. Additionally, we request that you share any information that is relevant but not included in this notice, and any information that may be inconsistent with the facts stated in this notice. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 10 days so that they may be completed before the end of the 60-day notice period.

If the violations described in this letter persist at the end of the 60-day notice period, you may be liable for a civil penalty of up to \$32,500 per day, for each violation. 33 U.S.C. §1319(d); 40 C.F.R. §19.4, Table 1. If FMR files suit, it will seek the imposition of the highest statutory civil penalties for all past and ongoing violations; injunctive relief barring further unlawful discharges; and attorneys' fees and costs as allowed by law.

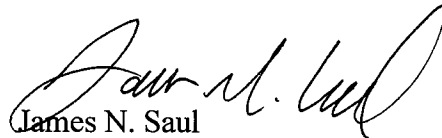
The persons giving notice are Friends of Milwaukee's River, whose office is located at 1845 N. Farwell Avenue, Suite 100, Milwaukee WI 53202, (414) 287-0207 ext. 29. FMR can be contacted through its attorneys as follows: Melissa K. Scanlan and James N. Saul, Midwest Environmental Advocates, 551 W. Main Street, Suite 200, Madison, Wisconsin 53703, (414) 688-4171.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



Melissa K. Scanlan
Senior Counsel



James N. Saul
Staff Attorney

CC: Stephen L. Johnson, Administrator, United States Environmental Protection Agency
Mary A. Gade, Regional Administrator, EPA Region V
Matthew Frank, Secretary, Wisconsin Department of Natural Resources
Todd Ambs, Water Division Administrator, Wisconsin Department of Natural Resources
Tom Nowicki, MMSD