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NORTHERN CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA RIVER WATCH, a non-profit corporation, Plaintiff, v. WASTE MANAGEMENT, INC., ET AL Defendants	**CASE NO. C07-05058 WHA** **PROOF OF SERVICE**

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
7 OCT -9 P4:15

PROOF OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 202, Santa Rosa, CA 95404. On October 4, 2007, I served the following described document(s):

Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation [Clean Water Act 33 U.S.C. § 1251 et seq.]

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

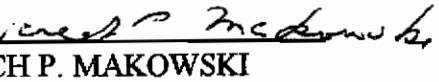
Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

[X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

[ ] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

[ ] (BY ELECTRONIC SERVICE) [FRCP Rule 5(b)(2)(a)]I caused a true and correct copy to be electronically mailed through my electronic mail system to the electronic mail addresses set forth on the attached Service List per agreement in accordance with FRCP Rule 5(b).

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on October 4, 2007 at Santa Rosa, California.



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ORIGINAL FILED
07 OCT -1 PM 3:05
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

C 07 5058

NORTHERN CALIFORNIA RIVER WATCH, a non-profit Corporation, Plaintiff, v. WASTE MANAGEMENT INC., REDWOOD LANDFILL INC. and DOES 1-10, Inclusive, Defendants.	**CASE NO:** **COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION** (Environmental - Clean Water Act 33 U.S.C. §1251 et seq.)

NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter, "PLAINTIFF") by and through its attorneys, and for its COMPLAINT against Defendants, WASTE MANAGEMENT INC., REDWOOD LANDFILL, INC. and DOES 1-10 , Inclusive, (hereafter, ("REDWOOD"), states as follows:

I. NATURE OF THE CASE

1. This is a citizens' suit for relief brought by PLAINTIFF under the Federal Water Pollution Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. §1251 et seq., CWA § 505, 33 U.S.C. §1365, 33 U.S.C. § 1311, 33 U.S.C. § 1342, to stop REDWOOD from repeated and ongoing violations of the CWA. These violations are detailed

in the Notice of Violations and Intent to File Suit made part of the pleadings of this case and attached hereto as EXHIBIT A (hereafter, "NOTICE").

2. REDWOOD is routinely violating the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p) ("General Permit"), by REDWOOD'S non-permitted discharges of contaminated storm water, its discharges of non-storm water pollutants from the landfill site identified in this Complaint and in the NOTICE, and composting operations at the landfill site identified in this Complaint and in the NOTICE, in violation of effluent limitations; and, REDWOOD'S violations of the procedural requirements of the General Permit.

3. REDWOOD is routinely violating the CWA's prohibition of discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a), in the course of its operation of the landfill site identified in this Complaint and in the NOTICE. Point source discharges to United States waters occur every day due to the hydrological connection between the waste disposal site and adjacent surface waters, including San Antonio Creek, the Petaluma River and surrounding wetlands. REDWOOD is also routinely violating the Basin Plan, Environmental Protection Agency ("EPA") regulations codified in the Code of Federal Regulations, and toxics standards promulgated by the State Water Resources Control Board in the course of its operation of the landfill site identified in this Complaint and in the NOTICE

4. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for REDWOOD'S violations of the terms of its GENERAL PERMIT and violations of the CWA's prohibition of discharging a pollutant from a point source to waters of the United States without a NPDES PERMIT.

5. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.

6. REDWOOD illegally discharges to waters which are habitat for threatened or endangered species as that term is defined by the California EPA and the United States EPA.

II. PARTIES

7. PLAINTIFF NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of California, with headquarters, and main office located at 6741 Sebastopol Avenue, Suite 140, Sebastopol, California. PLAINTIFF is dedicated to protect, enhance and help restore the surface and subsurface waters of Northern California. PLAINTIFF's members live in Northern California including Sonoma County where the landfill site and facilities under REDWOOD'S operation and/or control are located.

8. PLAINTIFF''s members live nearby to waters affected by REDWOOD'S illegal discharges. PLAINTIFF's members have interests which are or may be adversely affected by REDWOOD's violations as set forth in this Complaint. Said members use the effected waters and effected watershed areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks, religious, spiritual and shamanic practices, and the like. Furthermore, the relief sought will redress the injury in fact, likelihood of future injury and interference with the interests of said members.

9. DEFENDANT, REDWOOD LANDFILL, INC. is a private California corporation doing business in the State of California with administrative and registered offices located at 8950 Redwood Highway, Novato, California..

10. DEFENDANT WASTE MANAGEMENT, INC. Is a private corporation with corporate offices located at 1001 Fannin, suite 4000, Houston, Texas and administrative/legal offices located at 801 2nd Avenue, Seattle, Washington.

11. DEFENDANTS DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and entities, who are, or were, responsible for, or in some way contributed to, the

violations which are the subject of this Complaint or are, or were, responsible for the maintenance, supervision, management, operations, or insurance coverage of REDWOOD's facilities and operations as identified in this Complaint and the NOTICE. The names, identities, capacities, and functions of defendants DOES 1 - 10, Inclusive are presently unknown to PLAINTIFF. PLAINTIFF shall seek leave of court to amend this Complaint to insert the true names of said DOES defendants when the same have been ascertained.

III. JURISDICTIONAL ALLEGATIONS

12. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own behalf against any person . . . .who is alleged to be in violation of (A) an effluent standard or limitation . . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation." For purposes of CWA § 505, "the term 'citizen' means a person or persons having an interest which is or may be adversely affected."

13. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the waterways and associated natural resources into which REDWOOD discharges pollutants, or by which its operations adversely affect members' interests, in violation of REDWOOD's PERMITS and CWA § 301(a), 33 U.S.C. § 1311(a). The health, economic, recreational, aesthetic and environmental interests of PLAINTIFF and its members may be, have been, are being, and will continue to be adversely affected by REDWOOD's unlawful violations as alleged in this Complaint. PLAINTIFF contends there exists an injury in fact to its members, causation of that injury by the REDWOOD's complained of conduct, and a likelihood that the requested relief will redress that injury.

14. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C.§1365(b)(1)(A), PLAINTIFF gave notice of the violations alleged in this Complaint more than sixty (60) days prior to commencement of this lawsuit, to: (a) REDWOOD, (b) the United States Environmental Protection Agency, Federal and Regional, and (c) the State of California Water Resources Control Board.

//

15. Pursuant to CWA § 505(c)(3), USC § 1365(c)(3), a copy of this Complaint has been served on the United States Attorney General and the Administrator of the Federal EPA.

16. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the waste storage, composting and sludge storage, disposal and processing facilities under REDWOOD's operation and/or control, and the sites where illegal discharges occurred, which are the source of the violations complained of in this action, are located within this District.

IV. GENERAL ALLEGATIONS

17. PLAINTIFF incorporates by reference all the foregoing including the NOTICE attached to this complaint as EXHIBIT A.

18. REDWOOD owns and/or operates a Class III landfill, composting facility and Class II temporary sludge storage, disposal and processing facility, located on approximately 600 acres in northern Marin County, California ("the FACILITIES"). The physical address of the FACILITIES is 8950 Redwood Highway North, Novato, California. The FACILITIES receive most of Marin County's waste and sludge as well as waste from numerous sites outside of Marin County. The FACILITIES discharge both directly and indirectly into the waterways referenced below.

19. All illegal discharges and activities complained of in this Complaint occur in the waterways named in the attached NOTICE, all of which are waters of the United States.

20. The Regional Water Quality Control Board has determined that the watershed areas and affected waterways identified in the NOTICE are beneficially used for drinking water, water contact recreation, non-contact water recreation, fresh water habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial service supply, navigation, and sport fishing.

V. STATUTORY AND REGULATORY BACKGROUND

21. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a "point source" into the navigable waters of the United States, unless such discharge is in compliance with applicable effluent limitations as set by the EPA and the applicable State agency. These limits are to be incorporated into an NPDES permit for that point source specifically. Additional

sets of regulations are set forth in the Basin Plan, California Toxics Plan, the Code of Federal Regulation and other regulations promulgated by the EPA and the State Water Resources Control Board. CWA § 301(a) prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent standard or limitation or an order issued by the EPA or a State with respect to such a standard or limitation including an NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. The FACILITIES owned and/or operated by REDWOOD are point sources under the CWA.

22. The affected waterways detailed in this Complaint and in the attached NOTICE are navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7)

23. The Administrator of the EPA has authorized the Regional Water Quality Control Board to issue NPDES permits, subject to specified conditions and requirements, pursuant to CWA § 402, 33 U.S.C. § 1342.

24. REDWOOD has no NPDES Permit for discharging pollutants other than storm water to waters of the United States. Without a NPDES Permit, all unauthorized point source discharges to waters of the United States are illegal. The landfill site is itself a point source. Discharges from this point source via tributary groundwaters to waters of the United States, without a NPDES Permit, are illegal.

25. CWA § 402(p), 33 U.S.C. § 1342; 40 C.F.R. § 122.26, prohibits industrial storm water discharges without a permit. For storm water discharges allowed under CWA §402(p), California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) require dischargers in operation prior to October 1, 1992, to have developed and implemented a Storm Water Pollution Prevention Plan ("SWPPP"). REDWOOD was in operation prior to October 1, 1992 and continues to operate. REDWOOD has not fully developed and/or adequately implemented a SWPPP for its combined operations, as evidenced by the fact that REDWOOD has failed to eliminate non-storm water discharges from its FACILITIES.

VI. VIOLATIONS

26. PLAINTIFF incorporates by reference all the foregoing including the NOTICE attached to this complaint as EXHIBIT A.

27. REDWOOD's point source discharges not regulated by a NPDES permit violated the CWA's prohibition against discharge of pollutants from a point source without a NPDES permit. The violations are established in REDWOOD's monitoring data or lack of monitoring and reporting which are necessary for REDWOOD to prove compliance with its Waste Discharge Requirements Order, as well as data sent to the Regional Water Quality Control Board by REDWOOD and data by Regional Water Quality Control Board staff recording direct observations.

28. The enumerated violations are detailed in the NOTICE, incorporated herein by reference, and below, designating the section of the CWA violated by the described activity. The location of the discharges are the discharges points as described in the NOTICE, incorporated herein by reference, and as described in REDWOOD's SWPPP.

29. REDWOOD's failure to comply with the terms of California's General Industrial Storm Water Permit violated the CWA's prohibition against the discharge of contaminated storm water and non-storm water pollutants. The violations are established in REDWOOD's monitoring data or lack of monitoring and reporting which are necessary for REDWOOD to prove compliance with its Waste Discharge Requirements Order, as well as data sent to the Regional Water Quality Control Board by REDWOOD and data by Regional Water Quality Control Board staff recording direct observations.

VII. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF

Violation of CWA 33 U.S.C. § 1251 et seq., 33 U.S.C. §§ 1342 (a) and (b), 33 U.S.C. § 1311

Discharge of Pollutants from Point Sources Must be Regulated by NPDES Permit

30. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 29 as though fully set forth herein including all allegations in the attached NOTICE

incorporated herein by reference.

31. **REDWOOD** has violated and continues to violate the CWA as evidenced by the discharges of pollutants from a point source without a NPDES permit in violation of CWA § 301, 33 U.S.C. § 1311.

32. Said violations are ongoing and will continue after the filing of this Complaint. PLAINTIFF alleges herein all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by REDWOOD to the Regional Water Quality Control Board or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will file additional amended complaints if necessary to address REDWOOD's State and Federal violations which may occur after the filing of this Complaint. Each of REDWOOD's violations is a separate violation of the CWA.

33. PLAINTIFF avers and believes and on such belief alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, REDWOOD will continue to violate the CWA as well as State and Federal standards with respect to the enumerated discharges and releases. PLAINTIFF avers and believes and on such belief alleges that the relief requested in this Complaint will redress the injury to PLAINTIFF and its members, prevent future injury, and protect the interests of its members which are or may be adversely affected by REDWOOD's violations of the CWA, as well as other State and Federal standards.

B. SECOND CLAIM FOR RELIEF

Violation of CWA , 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26

Discharger Must Comply With California's General Industrial Storm Water Permit

34. PLAINTIFF realleges and incorporates by reference the allegations of Paragraphs 1 through 33 as though fully set forth herein including all allegations in the attached NOTICE and incorporated herein by reference.

35. REDWOOD has violated and continues to violate the CWA as evidenced by the violations of California's General Industrial Storm Water Permit. By law and by the terms of California's General Industrial Storm Water Permit, which REDWOOD has not objected to,

violations of California's General Industrial Storm Water Permit are violations of the CWA. (See 40 C.F.R. § 122.41(a)).

36. REDWOOD's violations are ongoing, and will continue after the filing of this Complaint. PLAINTIFF alleges all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by REDWOOD to the Regional Water Quality Control Board or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will file additional amended complaints if necessary to address State and Federal violations of California' General Industrial Storm Water Permit which may occur after the filing of this Complaint. Each of REDWOOD's violations in excess of its PERMIT limits or State and Federal standards has been and is a separate violation of the CWA. REDWOOD has violated and continues to violate an "effluent standard or limitation" under CWA § 505(a)(1), 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26 ,or an order issued by the State with respect to such a standard or limitation.

37. PLAINTIFF avers and believes and on such belief alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, REDWOOD will continue to violate California's General Industrial Storm Water Permit as well as State and Federal standards with respect to the enumerated discharges and releases. PLAINTIFF avers and believes and on such belief alleges that the relief requested in this Complaint will redress the injury to PLAINTIFF and its members, prevent future injury, and protect the interests of its members which are or may be adversely affected by REDWOOD's violations of California's General Industrial Storm Water Permit, State and Federal standards.

VIII. RELIEF REQUESTED

WHEREFORE, PLAINTIFF prays that the Court grant the following relief:

38. Declare REDWOOD to have violated and to be in violation of the CWA;

39. Issue an injunction ordering REDWOOD to immediately operate its FACILITIES in compliance with the CWA and applicable effluent and receiving water limitations in California's General Industrial Storm Water Permit, as well as State and Federal standards;

//

40. Order REDWOOD to pay civil penalties per violation per day for its violations of the CWA;

41. Order REDWOOD to pay PLAINTIFF's reasonable attorneys' fees and costs (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,

42. Grant such other and further relief as may be just and proper.

DATED: September 28, 2007

JERRY BERNHAUT
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net

February 6, 2007

VIA CERTIFIED MAIL /
RETURN RECEIPT REQUESTED

Owner/Managing Agent
Waste Management, Inc.
Redwood Landfill, Inc.
P.O. Box 793
Novato, CA 94948

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

Dear Owner/Site Manager:

I am writing this Notice of Violations on behalf of Northern California River Watch ("River Watch") to express its great concern regarding a threat to Marin wetlands, San Antonio Creek, the Petaluma River and San Francisco Bay by the operations of Redwood Landfill, Inc. ("Redwood") located at or near 8950 Redwood Highway North, Novato, California. Currently, the landfill receives most of Marin County's waste and sludge as well as waste from numerous sites outside of Marin County. Redwood is on Bay mud, situated adjacent to San Antonio Creek which feeds into the Petaluma River. Groundwater in and around the landfill is hydrologically connected to adjacent wetlands and San Antonio Creek. The water table is often above the bottom of the landfill allowing toxic materials from the mass of waste to leak into adjacent wetlands, San Antonio Creek, the Petaluma River, and hence into San Francisco Bay.

River Watch believes that preferential pathways within the Bay mud under the landfill allow accelerated release of waste into groundwater and the adjacent waters of the United States. Redwood's Final EIR (page 3.4-30) acknowledges the likelihood of migration of leachate into the sand lenses in the Bay mud beneath the landfill. Redwood's Waste Discharge Requirements, WDR Order 95-110 (pages 5-6) identifies sand and silty sand channels within Bay mud beneath the landfill as areas of increased permeability and likely preferential groundwater flow pathways to the hydrologically connected surface waters adjacent to the Novato operations site.

Redwood is the last, bay-front landfill remaining in operation in the Bay Area. All others, including the Contra Costa landfill have closed.

Redwood is located in flat, low-lying, drained marshlands along the western margin of the Petaluma Valley and adjacent to hills of the Coast Ranges west of the site. The site contains and is surrounded by a complex network of natural and manmade surface water bodies including ditches, ponds, creeks, and sloughs. The tidally influenced San Antonio Creek, Mud Slough, West Slough, and South Slough surround the site. These surface waters, sloughs are tributaries of San Antonio Creek which flows to the Petaluma River and eventually into San Pablo Bay, all waters of the United States.

San Antonio Creek, which forms the northern and eastern boundary of the site, drains an area of approximately 33 square miles northwest of the site. The Creek is approximately 120 to 230 feet wide near the landfill levees. The bottom elevation of the Creek varies from 5 to 12 feet below mean sea level ("msl"). The elevation of the tidal mud flats through which the Creek flows east of the site, ranges from approximately 2 to 3 feet above msl. The estimated 100-year flow for San Antonio Creek is 5,900 cubic feet per second. The West Slough, on the site's western border, is approximately 10 to 15 feet wide and has a bottom elevation of 2 to 15 feet below msl. The South Slough, on the site's southern border, is approximately 10 feet wide. Its bottom elevation has not been surveyed.

The Petaluma River, San Antonio Creek, adjacent wetlands, sloughs and mudflats east of the site are subject to tidal influence. Occasionally the sloughs overflow due to heavy rains or tidal peaks resulting in widespread, shallow flooding of the marshlands located east of the site. The Oxbow area and southern third of the site, where sludge processing takes place and the new administrative facilities are planned, are within the 100-year flood plain of the Petaluma River and San Antonio Creek. As shown on Federal Emergency Management Agency Flood Insurance Rate Maps (1982 and 1991), the base flood elevation associated with the 100-year event is 6 to 7 feet. According to Redwood's Report of Waste Discharge (1994), the highest tide recorded at the confluence of the Petaluma River and San Antonio Creek was 6.25 feet above msl; however, this elevation was likely exceeded during storm events in 1995, 1998, 2003 and 2004.

Local residents once harvested and consumed fish from the Petaluma River such as salmon, bass, and anchovies. Shellfish such as crabs in addition to numerous birds species including the great blue heron and ducks continue to rely upon the Petaluma River, San Antonio Creek and adjacent wetlands for migration and foraging purposes. The Petaluma River is now listed as impaired for sediment and nutrients under Clean Water Act § 303(d). Redwood's activities create discharges of nutrients to the Petaluma River. Beneficial uses of San Antonio Creek and Mud Slough bordering Redwood are estuarine and wildlife habitat.

Redwood consists of three separate and distinct operations:

1) Class III landfill (SIC 4953);
2) Composting facility (SIC 5093 and 4226); and
3) Class II temporary sludge storage, disposal, and processing facility (SIC 4953).

All of these operations are located on approximately 600 acres in northern Marin County, California. The physical address is 8950 Redwood Highway North, Novato, California. The site is further described in WDR Order # 95-110 issued from the Regional Water Quality Control Board, San Francisco Region. The site and operations on site are also discussed in greater detail in *Redwood Landfill Solid Waste Facilities Permit Revision Draft Subsequent Environmental Impact Report* (July 2003).("Redwood DEIR")

The landfill, composting, sludge storage, disposal, and processing sites which Redwood owns and operates sit in converted wetlands. The sites are surrounded by a complex network of natural and manmade surface water bodies including San Antonio Creek, Mud Slough, West Slough, and the Petaluma River. These surface waters flow into San Pablo Bay. All of these bodies of water, including the wetlands, are waters of the United States.

There are 32 identified storm water outlets on the perimeter of the site. According to WDR Order # 95-110, Redwood's leachate pond is lined. However, there is no indication of the liner material. Many lined ponds still experience significant leakage. There is no indication in the records of water balance data for the leachate pond.

As a condition for approval of WDR Order # 95-110, Redwood agreed to construct a leachate collection and removal system ("LCRS") along the entire perimeter of the landfill site as a necessary means of containing "contaminated" groundwater on site. In an email from Alan Friedman of the Regional Water Quality Control Board, San Francisco Bay Region, dated July 01, 2004, Mr. Friedman expressed concern regarding the ability of Redwood's LCRS to capture all the leachate generated at the site. Mr. Friedman called for specific measures to demonstrate the effectiveness of the LCRS, including updated leachate level data in the landfill and updated water balance data for the landfill. River Watch would add updated water balance data for the leachate pond. In response to concerns raised in Mr. Friedman's email, Redwood committed to continue evaluating hydraulic characteristics of leachate at the site and to collect water balance data (September 1, 2004 letter from Mark Verweil). However, data from leachate monitoring wells was not used in preparing a groundwater contour map for the site based on several factors including the alleged degree of separation between Bay mud groundwater and leachate (First Semiannual 2006 Monitoring Report, p.4). This separation is alleged despite the fact there are areas in the landfill where refuse is below groundwater level.

Further doubts are raised regarding the effectiveness of the LCRS by Redwood's failure to integrate the LCRS trench with the perimeter levee, as originally proposed; and, by the failure of Redwood to key the trench into Bay mud along the entire perimeter of the site. . The trench bordering Area E is not keyed into Bay mud because waste fill in the area is deeper than the trench's design depth of -5.5 feet msl, again raising doubts about the separation of leachate from groundwater. Master Response 13 of the Final EIR responds to these doubts with the dubious claim that as long as a maximum fluid level of -1foot msl is maintained in the LCRS trench, a gravity based hydraulic barrier would be maintained preventing off-site leachate migration. Violations detailed below clearly show that Redwood's LCRS is not succeeding in preventing releases of leachate from the site. Redwood has no NPDES permit allowing it to discharge pollutants from a point source to any waters of the United States.

Discharges by Redwood from its sites to adjacent wetlands and San Antonio Creek occur both directly and indirectly. Direct and unpermitted discharges of polluted storm water occur to intermittent drainages, wetlands, sloughs, and San Antonio Creek - all tributaries of the Petaluma River, all waters of the United States. Discharges also occur due to the fact that the site is hydrologically connected to the adjacent wetlands and San Antonio Creek. Drainages and pollutants move subsurface to the surface waters via tributary groundwater acknowledged above as being hydrologically connected to surface waters.

Redwood's own self monitoring reports filed witb the Regional Water Quality Control Board, San Francisco Region show that the groundwater in the area of these sites is contaminated by Redwood's activities. Present in amounts that exceed State of California Minimum Contaminant Levels as well as historic background limits are ammonia (Annual Reports 2005 and 2006), iron (Annual Report 2005, issued May 23, 2006), acetone and carbon disulfide (First Semiannual Groundwater Monitoring Report of 2006). Some of these substances are known to be toxic to humans and the environment in very small amounts – parts per billion. Recurrent ammonia detections raise concerns by regulators regarding the ability of Redwood's leachate management system to control leachate migration (Friedman email, July 1, 2004).

Under Redwood's Discharge Monitoring Program, Part A, Section F., Reports To Be Filed With The Board - when an initial sample showing a statistically significant difference between the sample result and a WQPS is confirmed by a resampling, the discharger must submit to the Board an amended Report of Waste Discharge to establish an Evaluation Monitoring Program. Although there are a number of confirmed, statistically significant exceedances of a WQPS in Redwood's groundwater monitoring reports, Redwood has always opted to offer some excuse rather than complying with the protocol for reporting a violation.

In the 2005 Annual Report, (pages 12) an Optional Demonstration Report ("ODR") is quoted, explaining an apparent violation as a natural background occurrence: "the presence of ammonia (TKN) in groundwater samples is not unusual from the standpoint of its natural formation and accumulation within organic rich, fine-grained reducing sediments". In a Resampling Result for Volatile Organic Compound Detection, First Semiannual 2006 Groundwater Monitoring Report, detections of acetone and carbon disulfide were explained as the result of a laboratory contaminant and possible matrix interference. There was also a reference to an ODR completed in 2003 which determined that earlier detections of carbon disulfide were from a natural source, i.e. "Bio-slime" observed within the well bore, and not related to a release from the landfill. This is questionable since volatile organic carbons are strictly man made. There are numerous other examples in Redwood's Monitoring Reports of confirmed exceedances explained away as the result of sampling contamination or bias, or natural background levels, begging the question when would Redwood recognize a resampling result confirming a statistically significant exceedance of a WQPS as an indication of a leachate release from the landfill?

River Watch hereby places Redwood on notice that following the expiration of sixty (60) days from the date of this Notice of Violations, River Watch intends to bring suit against Redwood in Federal District Court for the following:

1. Redwood's failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to § 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p) ("General Permit"), for Redwood's un-permitted discharges of contaminated storm water, its discharges of non-storm water pollutants from the landfill site and composting operations in violation of effluent limitations; and, Redwood's violations of the procedural requirements of the General Permit.

For stormwater discharges allowed under CWA § 402(p) the General Permit requires dischargers in operation prior to October 1, 1992, to have developed and implemented a Storm Water Pollution Prevention Plan ("SWPPP") no later than that date. Redwood continues to operate subsequent to October 1, 1992 and is required to develop and properly implement a SWPPP for its combined landfill, sludge and composting operations.

Information available to River Watch indicates that Redwood has not fully developed and/or adequately implemented a SWPPP for its combined operation as evidenced by the fact that Redwood has failed to eliminate non-stormwater discharges from its landfill operation. For example, total suspended solids and specific conductivity in the stormwater exceed EPA benchjmarks, indicating a failure to utilize Best Management Practices. Redwood has been and will continue to be in violation of the Clean Water Act every day it discharges unauthorized non-stormwater and every day it discharges stormwater containing pollutants identified above without adequately implementing a SWPPP for the landfill site.

The Clean Water Act prohibits storm water discharges without a permit (33 U.S.C. § 1342; 40 C.F.R. § 122.26). The General Permit prohibits the discharge of material other than storm water to waters of the United States which causes or threatens to cause pollution, contamination, or nuisance. The General Permit prohibits the discharge of storm water to surface or groundwater that adversely impacts human health or the environment. Redwood's discharges contain metals, solvents, organics, toxins and nutrients including nitrogen, phosphate and ammonia which adversely impact the environment including the jurisdictional adjacent wetlands, San Antonio Creek and the Petaluma River.

Since the beginning of operations, Redwood has discharged stormwater containing pollutants and non-stormwater pollutants from its landfill site into adjacent wetlands, San Antonio Creek and/or their tributaries, in violation of the General Permit, during at least every rain event over 1 inch as measured by the National Oceanographic and Atmospheric Administration. These violations of the Clean Water Act are ongoing. Redwood will continue to be in violation of the General Permit each day it discharges non-storm pollutants and contaminated storm water from its landfill, sludge and composting operation which cause or threaten to cause pollution, contamination or nuisance or which adversely impacts human health or the environment.

2. The Clean Water Act regulates the discharge of pollutants into waters of the United States. The statute is structured in such a way that any discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a NPDES permit to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit, all unauthorized point source discharges to waters of the United States are illegal. Redwood has no NPDES permit for discharging pollutants other than storm water to waters of the United States, including the wetlands surrounding its landfill operation.

Redwood's continuing violations of effluent standard or limitations, permit condition or requirement and/or orders issued by the Administrator or a State with respect to such standard or limitation under CWA § 505(a)(1), CWA § 402(b) and CWA § 301(a) the Code of Federal Regulations, and the Basin Plan, are exemplified by Redwood's illegally discharging to waters of the United States without a NPDES permit.

To prevent any confusion River Watch wishes to make it clear that this second allegation relates to **point source** discharges rather that **non-point sources** discharges covered by the General Permit. Due to the fact that the landfill is itself a point source, it is discharging from this point source via tributary ground waters to San Antonio Creek, the Petaluma River and adjacent wetlands, all waters of the United States.

Due to the hydrological connection between the waste disposal site and waters of the United States, point source discharges occur every day, as evidenced by the groundwater monitoring results referenced above. Therefore this Notice of Violations covers all point source discharges occurring from February 6, 2002 through February 6, 2007. Redwood has violated the Clean Water Act, the Basin Plan and the Code of Federal Regulations for discharging pollutants into waters of the United States without a NPDES permit. Redwood has done little or nothing to abate these violations. River Watch believes these violations are ongoing and continuing.

Pursuant to § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), Redwood's operations are prohibited by law. Beneficial uses of the Petaluma River, San Antonio Creek and their tributaries and wetlands in the vicinity of Redwood's landfill and composting operations are being affected in a prohibited manner by these violations. Redwood's landfill and composting facilities are point sources, the discharges from which contribute to violations of applicable water quality standards.

Redwood, owner and operator of the landfill site is a wholly-owned subsidiary of USA Waste of California, Inc., a holding company for the California holdings of Waste Management Inc.

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its

address is 6741 Sebastopol Avenue Ste. 140 Sebastopol, CA 95472. Phone / Fax: (707) 824-4372. Email US@ncriverwatch.org.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

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Tel. 707-528-8175 Fax. 707-526-8675
lhm28843@sbcglobal.net

River Watch believes this Notice of Violations sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under § 505(a) of the Clean Water Act against Redwood for the violations as described herein.

During the notice period, River Watch is willing to discuss effective remedies for the violations set forth in this Notice of Violations. However, if Redwood wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Sincerely,

Jack Silver

cc:

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