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Via Certified Mailing - Return Receipt

April 11, 2014

Nick Circosta, Owner
Steven Circosta, President and Registered Agent
Circosta Iron & Metal Co. Inc.
1801 Evans Avenue
San Francisco, CA 94124

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

Dear Owner, President, and Site Manager:

NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. §1251 *et seq.*, that River Watch believes are occurring at the Circosta Iron & Metal facility located at 1801 Evans Avenue in San Francisco, California. Notice is being sent to you as the responsible owners, operators or managers of this facility. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit and unlawful discharge of pollutants from the Circosta Iron & Metal facility into San Francisco Bay. River Watch is sending you this Notice to preserve its rights under the CWA, but would welcome the opportunity to resolve these issues out of court.

CWA § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the CWA, this Notice provides detail of the violations that have occurred, and continue to occur at the Circosta Iron & Metal facility. Consequently, Circosta Iron & Metal Co., Inc. (the "Discharger") is placed on formal notice by River Watch that following the expiration of sixty (60) days from the date of this Notice, River Watch will be

entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the San Francisco Bay Regional Water Quality Control Board (Region 2) Water Quality Control Plan or "Basin Plan".

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The specific standard, limitation, or order alleged to have been violated.

Based on information thus far received, River Watch believes pollutants are being discharged from the storage, processing, and recycling activities at the Circosta Iron & Metal site. These pollutants include, but are not limited to, petroleum hydrocarbons, oil and grease, PCBs, benzene, solvents, and toxic metals which include copper, zinc, aluminum, iron, and lead. River Watch contends the Discharger has no individual facility NPDES permit for these discharges, and is failing to apply for coverage and comply with the General Industrial Storm Water Permit, NPDES Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit"). These discharges are in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to waters of the United States, in this instance, San Francisco Bay, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

Without obtaining coverage under, and complying with the terms of, the General Permit, the Discharger has failed to prepare and implement a Storm Water Pollution Prevention Plan ("SWPPP,") failed to develop and implement a Monitoring and Reporting Program, and failed to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to control the discharge of pollutants in storm water at the Circosta Iron & Metal facility. These violations will continue until the Discharger submits a Notice of Intent to obtain coverage under the General Permit, implements a SWPPP and Monitoring and Reporting Program, and demonstrates following sampling and testing after storm events, that its implementation of Best Management Practices ("BMPs") is effectively controlling storm water and non-storm water discharges from the Circosta Iron & Metal facility.

2. The activity alleged to constitute a violation.

Operations at the Discharger's outdoor facility (classified in the General Permit under "Scrap Recycling Facilities" under SIC 5093[1]) include, but are not limited to, the processing and recycling of "all ferrous and non-ferrous metals". The facility accepts various products including cast iron, steel, copper, aluminum, nickel, radiators, electric motors, etc., from customers which include auto dismantlers, electrical contractors, and industrial accounts. Operations are undertaken with the use of a "full fleet of trucks and trailers". http://www.circostametals.com/services.html.

The Discharger claims to be the largest scrap recycling business in San Francisco; however, it is not abiding by the terms of the General Permit. Furthermore, the EPA has specifically asserted that "scrap and waste recycling facilities ... engaged in processing, reclaiming, and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass ... " that are covered under SIC 5093 "require coverage under an industrial stormwater permit." (Page 1 "Industrial Stormwater Fact Sheet Series, Sector N: Scrap Recycling and Waste Recycling Facilities" (EPA Office of Water, EPA - 833 - F - 06 - 029, December 2006; which can be reviewed at http://epa.gov/npdes/pubs/sector_n_scraprecycling.pdf)

Operations at the Circosta Iron & Metal facility are conducted outdoors and in close proximity to the navigable waters of San Francisco Bay. Because the property on which the Discharger's facility is located is subject to rain events, and because there is no Regional Water Quality Control Board exemption from collecting and analyzing the range of pollutants identified above, there can be a discharge of these pollutants from the facility into Islais Creek and then into San Francisco Bay.

To properly regulate these activities and control the discharge of these types of pollutants into San Francisco Bay, the State Water Resources Control Board requires industrial recycling facilities to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch does not reveal the Discharger being covered by the required permit, nor having obtained exemption from coverage under the CWA for the Circosta Iron & Metal facility.

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[1]SIC 5093 "Scrap Recycling Facilities" include "metal scrapyards ... and recycling facilities that are engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste material such as bottles, wastepaper, textile wastes, oil waste, etc."

3. The person or persons responsible for the alleged violation.

The entity responsible for the alleged violations is Circosta Iron & Metal Co., Inc. and its owners site and managers, collectively referred to herein as 'the Discharger'.

4. The location of the alleged violation.

The locations of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is the permanent address of the Circosta Iron & Metal facility at 1801 Evans Avenue in San Francisco, California.

5. The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.

The range of dates covered by this Notice is from April 11, 2009 to April 11, 2014. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The full name, address, and telephone number of the person giving notice.

The entity giving this Notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472 – a non-profit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

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STATUTORY BACKGROUND

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA § 402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition Order Section A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the waters of the United States. Discharge Prohibition Order Section A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation Order Section C(1) prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation Order Section C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit

by filing a Notice of Intent ("NOI"). The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP which must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility, and identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Permit Section A(2)]. BMPs must implement BAT and BCT [Permit Section B(3)].

- Include a description of individuals and their responsibilities for developing and implementing the SWPPP [Permit Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Permit Section A(4)]; a list of significant materials handled and stored at the site [Permit Section A(5)]; and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Permit Section A(6)].

- Include a narrative assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective [Permit Section A(7), (8)].

- Conduct one comprehensive site compliance evaluation by the facility operator in each reporting period (July 1 - June 30), with SWPPP revisions made, as appropriate, and implemented within ninety (90) days of the evaluation [Permit Section A(9),(10)]

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the

effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report [Permit Section B(4)]. Dischargers must also collect and analyze storm water samples from at least two (2) storms per year in compliance with the criteria set forth in Permit Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Permit Section B(3).

Permit Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1st of each year to the executive officer of the relevant Regional Water Quality Control Board. Permit Section A(9)(d) of the General Permit requires the discharger to include in the annual report an evaluation of the discharger's storm water controls, including certifying compliance with the General Permit. *See also* Permit Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). CTR limitations are also applicable to all non-storm water and storm water discharges. (40 C.F.R. part 131).

The San Francisco Bay Regional Water Quality Control Board (Region 2) has established water quality standards for the San Francisco Bay Basin. This Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, and other hydrocarbons.

VIOLATIONS

River Watch contends that between April 11, 2009 and April 11, 2014 the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by reason of discharging pollutants from the Circosta Iron & Metal facility to waters of the United States without an individual NPDES permit, without compliance with the General Permit, or in violation of the General Permit.

The violations discussed herein, impacting Islais Creek and San Francisco Bay, are derived from eye witness reports and records publicly available, or from records in the possession and control of the Discharger. Furthermore, River Watch contends these violations are continuing. Halting the discharge of pollutants to these waterways is critical if they are to sustain both maritime and natural habitats for bird, animal, and plant life.

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding the Circosta Iron & Metal facility:

1. Prohibition of the discharges of all the pollutants identified in the General Permit applicable to scrap recycling facilities including aluminium, iron, lead, copper, and zinc identified in Table D, petroleum hydrocarbons, oil & grease, PCBs, benzene, and solvents.

2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's "Industrial Stormwater Fact Sheet Series, Sector N: Scrap Recycling and Waste Recycling Facilities" (EPA Office of Water, EPA - 833 - F - 06 - 029, December 2006; http://epa.gov/npdes/pubs/sector_n_scraprecycling.pdf).

3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit.

4. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at "first flush"; the first significant rain after "first flush"; the first significant rain after April 1; and the second significant rain after April 1.

5. Preparation of an updated SWPPP, including a monitoring program, with a copy provided to River Watch.

CONCLUSION

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography,

nature walks and the like. Their health, use and enjoyment of this natural resource are specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against the Discharger for the violations of the CWA identified and described in this Notice.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified herein. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

Jack Silver

JS:lhm

cc: Administrator
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