LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760/fax. 415-460-9762
david@weinsofflaw.com

Via Certified Mailing – Return Receipt

May 27, 2015

Mr. Bob Pestoni, Owner and Operator
Registered Agent for Service
Upper Valley Disposal Service
Upper Valley Recycling, Inc.
1285 Whitehall Lane
St. Helena, California 94574

Upper Valley Recycling, Inc.
Upper Valley Disposal Service
Attn: Site Manager
P.O. Box 382
St. Helena, California 94574

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

Dear Owners, Operators and Site Managers:

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 Upper Valley Disposal and Recycling facility ("Upper Valley Facility") located at 1285 Whitehall Lane in St. Helena, California. Notice is being sent to you as the responsible owners, operators, and managers of the Upper Valley Facility and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Upper Valley Facility into Bale Slough, a tributary to the Napa River.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the state in which the violations occur.

ED_001083_00000638-00001

As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Upper Valley Facility. Consequently, Bob Pestoni, Upper Valley Disposal Service and Upper Valley Recycling, Inc. (collectively, the "Discharger") is placed on formal notice by River Watch that after 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 ("RWQCB") 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.

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (the "General Permit") relating to the recycling services at the Upper Valley Facility.

The Discharger filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board approved the NOI on or about March 19, 1992, and the Discharger was assigned Waste Dischargers Identification ("WDID") number 2 28I00730. River Watch contends that in the operation of the Upper Valley Facility, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit requiring the preparation, implementation, review and update of an adequate Storm Water Pollution Prevention Plan ("SWPPP"), the elimination of all non-authorized storm water discharges, and the development and implementation of an adequate monitoring and reporting program.

Compliance with the monitoring and reporting program is central to the effectiveness of the General Permit program. The Discharger, however, has failed and is failing to comply with the following General Permit requirements as detailed in the Annual Reports submitted in reporting years 2013-2014:

a. <u>Sampling and Analysis Results Were Incorrectly Provided in the 2013-2014 Annual Report</u>

The Annual Report form, in the Section titled *Specific Information,* "Monitoring and Reporting Program," <u>E. Sampling and Analysis Results</u>, identifies the following violations:

i. <u>Subparagraph 1</u> specifically questions "How many storm events did you sample?"

ED_001083_00000638-00002

Under Section B.5 of the General Permit, two (2) storm water samples are required. The Discharger, which concedes in Section D.1 of the Annual Report Form that it is not "exempt" from collecting and analyzing samples from two storm events, provides sampling results from only one storm water event in the Annual Reporting Permit year 2013-2014. The Discharger provides no "explanation" for its failure to comply with the mandated requirement to sample and provide analysis from two storm events per year, in conflict with evidence of rain events during the July 1, 2013 – June 30, 2014 period.

ii. Subparagraph 10 specifically questions "Does Table D contain any additional parameters related to your facility's SIC codes(s)?" and "Did you analyze all storm water samples for the applicable parameters listed in Table D?" The Discharger checked the "Yes" box for each question on the Annual Report form but fails to sample and analyze for lead, aluminum, zinc, copper, and COD, all of which are specific Table D "parameters" required to be sampled by SIC code 5093 Scrap and Waste facilities; and for nitrate & nitrite nitrogen, lead, zinc, and phosphorus, all of which are specific Table D "parameters" required to be sampled by SIC code 2875 Fertilizers, Mixing Only facilities. The Discharger identifies its operations in the NOI and Annual Report as SIC Code 5093 and 2875 operations. The Discharger provides no "explanation" for its failure to comply with the mandated requirement to sample and provide analysis for the full spectrum of Table D "parameters."

b. SWPPP and Monitoring Program Requirements Were Not Properly Prepared and Implemented in the 2013-2014 Annual Reporting Year

The Annual Report form, in the Section titled *Specific Information*, "Annual Comprehensive Site Compliance Evaluation (ACSCE)," H. ACSCE Checklist, Subparagraph 2, asks "Have you reviewed your SWPPP to assure that its BMPs address existing potential pollutant sources and industrial activities areas?" Assuming the Discharger has prepared a SWPPP, it fails to ensure that the BMPs address the elimination of the full spectrum of Table D pollutant discharges identified in a. above and in the Discharger's laboratory analysis as alleged in paragraph c. below.

c. Noncompliance with General Permit Storm Water Controls in the 2013-2014 Annual Reporting Year

The Annual Report form, in the Section titled *Specific Information*, "Annual Comprehensive Site Compliance Evaluation (ACSCE)," I. ACSCE Evaluation Report, requires "[t]he facility operator … to provide an evaluation report that includes … any incidents of non-compliance and the corrective actions taken." The Discharger allegedly failed and is failing to eliminate the reported ongoing discharges from the Upper Valley Facility that exceed the EPA "Benchmarks" for the following pollutant and provides no statement of "corrective actions taken":

- February 10, 2014 Sample

  Discharge Location – "Yard Storm Drain Area"

  Specific Conductance – 820 μmhos/cm

d. Certification of Compliance With General Permit in the 2013-2014 Annual Reporting Years

The Annual Report form, in the Section titled *Specific Information*, "Annual Comprehensive Site Compliance Evaluation (ACSCE)," J. ACSCE Certification requires facilities covered under the General Permit to state "[b]ased on your ACSCE, do you certify compliance with the Industrial Activities Storm Water General Permit?" The alleged failures to fully and accurately ensure compliance with the requirements of the General Permit as detailed above contradicts both the ACSME Certification" and the signed "Annual Report Certification," which provides that the signer of the Annual Report attests that the "information submitted is, to the best of my knowledge and belief, true, accurate and complete."

2. The activity alleged to constitute a violation.

The Discharger's scrap recycling operations (classified under SIC Code 5093) include the collection and transport in debris boxes of "refuse, clean green waste, clean wood waste, dirt, [illegible] irrigation material, shrink wrap and special winery products" (http://www.uvds.com/debris.htm; [illegible] May 11, 2015). The Discharger's compost sales and wine industry recycling operations (classified under SIC code 2875) include the production of "organic compost from winery grape pomace" and the collection of "vineyard stakes, grape canes, glass bottles, cardboard, shrink wrap, [illegible] concrete, wood debris and other special projects" (http://www.uvds.com/compostsales.htm; May 11, 2015). The work at the Upper Valley Facility is conducted both indoors and outdoors. Because the real property on which the Upper Valley Facility is located is subject to rain events, and because there is no RWQCB exemption from the collecting and analyzing of the range of pollutants identified above, there can be a discharge of these pollutants, measured at the point the discharge enters into Bale Slough, a tributary to the Napa River.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain a proper exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch reveals that the Discharger obtained coverage under the General Permit for the Upper Valley Facility, but fails to comply with its environmentally protective requirements, in particular the implementation of effective BMPs.

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

The persons and entities responsible for the alleged violations are Bob Pestoni, Upper Valley Disposal Service, and Upper Valley Recycling, Inc., referred to collectively herein as the Discharger.

4. The location of the alleged violation.

ED_001083_00000638-00004

The location or locations of the various violations is the permanent address of the Upper Valley Facility at 1285 Whitehall Lane in St. Helena, California, including the waters of the Bale Slough, a tributary to the Napa River – a water of the United States.

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 May 27, 2010 to May 27, 2015. River Watch will from time to time further 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.*

California River Watch is an Internal Revenue Code § 501(c)(3) nonprofit, Public Benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. River Watch's northern California mailing address is 290 S. Main Street, #817, Sebastopol, California 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd., #422, Los Angeles, California 90043. River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

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 directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 4[illegible]
Email: David@WeinsoffLaw.com

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

ED_001083_00000638-00005

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 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 groundwater 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 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

ED_001083_00000638-00006

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 all industrial activities and potential pollutant sources at the facility [Permit Section A(7)]. Include a narrative description of the BMPs to be implemented at the facility for each potential pollutant and its source, and consider both non-structural BMPs (including "Good Housekeeping") and structural BMPs where non-structural BMPs are not effective [Permit Section A(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 90 days of the evaluation [Permit Section A(9)].

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(14)]. Dischargers must also collect and analyze storm water samples from at least two 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(7).

Permit Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1 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 dischargers 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 ("EPA Benchmarks") as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. California Toxics Rule ("CTR") limitations are also applicable to all non-storm water and storm water discharges.

The RWQCB has established applicable water quality standards. 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

ED_001083_00000638-00007

or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

VIOLATIONS

River Watch contends that between May 27, 2010 and May 27, 2015 the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from the Upper Valley Facility to waters of the United States without an individual NPDES permit, or in violation of the General Permit.

The violations discussed herein are derived from eye witness reports and records publicly available, or records in the possession and control of the Discharger. Furthermore, River Watch contends these violations are continuing.

Finally, River Watch also believes that the Upper Valley Facility is not operated to ensure that storm and non-storm water discharges are properly contained, controlled, and/or monitored. As a result, the Discharger fails to follow the requirements of the General Permit in its sampling protocols for the Upper Valley Facility by failing to accurately capture "first flush" samples and failing to properly sample from all the outfalls of the Upper Valley Facility.

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 from its non-compliance upon public health and the environment surrounding the Upper Valley Facility:

1. Prohibition of the discharges of pollutants including, but not limited to, pH, total suspended solids, specific conductance, total organic carbon or oil & grease (the standard pollutants); for iron, lead, aluminum, zinc, copper, and COD, all of which are specific Table D "parameters" required to be sampled by SIC code 5093 Scrap and Waste facilities; and for iron, nitrate & nitrite nitrogen, lead, zinc, and phosphorus, all of which are specific Table D "parameters" required to be sampled by SIC code 2875 Fertilizers, Mixing Only facilities.

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 (www.epa.gov/npdes/pubs/sector_n_scraprecycling.pdf)).
   - "Sector C: Chemical and Allied Products Manufacturing and Refining" (EPA Office of Water, EPA-833-F-00-016, December 2000 (http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_c_chemical.pdf)).

ED_001083_00000638-00008

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. 100% of the discharge from the Upper Valley Facility must be discharged through discrete conveyances.

6. Any discharge from the Upper Valley Facility to a water of the United States must be sampled during the four (4) sampling events identified in paragraph #4 above.

7. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Upper Valley Facility and its operations.

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

CONCLUSION

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 is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

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 un-permitted 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. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger to contact River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

ED_001083_00000638-00009

Very truly yours,

David Weinsoff

DW:lhm

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street / Suite 1400
Oakland, CA 94612

ED_001083_00000638-00010