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Via Certified Mailing – Return Receipt

April 17, 2015

Dwight E. Herring, General Manager
Shoreway Environmental Center
South Bay Recycling, LLC
333 Shoreway Road
San Carlos, CA 94070

Kevin McCarthy, Executive Director
Members of the Board of Directors
RethinkWaste, a Joint Powers Authority
aka South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070

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

Dear Mr. Herring, Mr. McCarthy and Members of the Board:

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 Shoreway Environmental Center ("Shoreway facility") located at 333 Shoreway Road in San Carlos, California. Notice is being sent to you as the responsible owners, operators, and/or managers of this 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 Shoreway facility into San Francisco Bay, a CWA § 303(d) listed waterway.

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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.

As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Shoreway facility. Consequently, the Shoreway facility, South Bay Recycling, LLC as operator of the Shoreway facility, and RethinkWaste also known as South Bayside Waste Management Authority, the owner of the Shoreway facility (collectively referred to hereafter as 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 refuse and recycling services at the Shoreway 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 December 15, 2010, and the Discharger was assigned Waste Discharger Identification ("WDID") number 2 411022946. River Watch contends that in the operation of the Shoreway 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"), and ensuring that the Best Management Practices ("BMPs") in the SWPPP are not only being implemented, but are adequate in reducing or preventing pollutants

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discharged from the Shoreway facility.

a. SWPPP and BMPs are Inadequate to Reduce or Prevent Discharges of Pollutants from the Shoreway Facility During 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 6, questions "Have you reviewed your SWPPP to assure that a) the BMPs are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges, and b) the BMPs are being implemented?" Assuming the Discharger has prepared and implemented a current SWPPP, it fails to ensure that the BMPs provide for the reduction or prevention of the pollutant discharges identified in the Discharger's Annual Report as alleged in paragraph "b" below.

b. 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 Shoreway facility that exceed EPA "Benchmarks" for the following pollutants:

2013-2014 Reporting Year[1]

November 19, 2013 Sample:

- *MRF*

Copper – 0.35 mg/L
Lead – 0.13 mg/L
Zinc – 1.6 mg/L
Iron – 11 mg/L
Aluminum – 5.9 mg/L
Chemical Oxygen Demand (COD) – 3400 mg/L
Specific Conductance – 2000 µmhos/cm
Total Suspended Solids (TSS) – 250 mg/L

[1] EPA "Benchmarks" for the listed pollutants –Copper (Cu) 0.0636 mg/L; Zinc (Zn) 0.117 mg/L; Aluminum (Al) 0.75mg/L; Iron (Fe) 1.0 mg/L; COD 120 mg/L; Specific Conductance 200 µmhos/cm; Total Suspended Solids (TSS) 100 mg/L; Oil & Grease 15 mg/L.

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- *WTS*

Copper – 0.072 mg/L
Zinc – 0.25 mg/L
Iron – 2.1 mg/L
Aluminum – 1.3 mg/L
Chemical Oxygen Demand (COD) – 200 mg/L
Specific Conductance – 1200 µmhos/cm
Total Suspended Solids (TSS) – 250 mg/L

- *Truck Scales*

Copper – 0.11 mg/L
Lead – 0.12 mg/L
Zinc – 2.1 mg/L
Iron – 9.9 mg/L
Aluminum – 5.1 mg/L
Chemical Oxygen Demand (COD) – 1700 mg/L
Specific Conductance – 990 µmhos/cm
Total Suspended Solids (TSS) – 790 mg/L

- *Mech Shop Area*

Copper – 0.22 mg/L
Lead – 0.12 mg/L
Zinc – 2.8 mg/L
Iron – 14 mg/L
Aluminum – 9.7 mg/L
Chemical Oxygen Demand (COD) – 2300 mg/L
Specific Conductance – 1200 µmhos/cm
Oil & Grease – 30 mg/L
Total Suspended Solids (TSS) – 1600 mg/L

February 5, 2014 Sample:

- *MRF*

Copper – 0.072 mg/L
Iron – 1.4 mg/L
Chemical Oxygen Demand (COD) – 130 mg/L
Specific Conductance – 415.6 µmhos/cm

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Total Suspended Solids (TSS) – 250 mg/L

- *WTS*

Zinc – 0.61 mg/L
Iron – 5.3 mg/L
Aluminum – 3.1 mg/L
Chemical Oxygen Demand (COD) – 2300 mg/L
Oil & Grease – 16 mg/L
Total Suspended Solids (TSS) – 210 mg/L

- *Truck Scales*

Copper – 0.11 mg/L
Lead – 0.14 mg/L
Zinc – 1.3 mg/L
Iron – 7.7 mg/L
Aluminum – 4.8 mg/L
Chemical Oxygen Demand (COD) – 1900 mg/L
Specific Conductance – 731 µmhos/cm
Oil & Grease – 47 mg/L
Total Suspended Solids (TSS) – 770 mg/L

- *Mech Shop Area*

Zinc – 0.45 mg/L
Iron – 4 mg/L
Aluminum – 2.1 mg/L
Chemical Oxygen Demand (COD) – 640 mg/L
Specific Conductance – 278.5 µmhos/cm
Oil & Grease – 30 mg/L

c. Certification of Compliance With General Permit for the 2013-2014 Annual Reporting Year

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

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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 operates a scrap and waste materials operation (classified under SIC 5093). The Discharger accepts the following items at the Shoreway facility: "Construction & Demolition (C&D) materials," "Yard debris," "Wood materials," "Scrap metals," "Cardboard," "CRW beverage containers," "Oil & Hydraulic Fluids," "Latex Plaint," "Electronic materials (monitors, computers, & television)" (http://www.sbrecycling.net/; April 8, 2015). The work at the Shoreway facility is conducted both indoors and outdoors. Because the property on which the Shoreway 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 to San Francisco Bay.

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 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 responsible for the alleged violations are the Shoreway facility, South Bay Recycling, LLC as operator of the Shoreway facility, and RethinkWaste also known as South Bayside Waste Management Authority, a Joint Powers Authority, the owner of the Shoreway facility, collectively referred to herein as the Discharger, and those other persons who hold an ownership or operating interest in the Shoreway facility.

4. *The location of the alleged violation.*

The location of the various violations is the permanent address of the Shoreway facility at 333 Shoreway Road in San Carlos, California, including the waters of San Francisco Bay – a water of the United States.

5. *The date or dates of violation or a reasonable range of dates during which*

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the alleged activity occurred.

The range of dates covered by this Notice is from July 1, 2013 to April 16, 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.*

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043. River Watch is dedicated to protect, enhance, and help restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educate the public concerning environmental issues associated with these environs.

River Watch members residing and recreating in the area of the Shoreway facility and the surrounding watershed have a vital interest in bringing the Discharger's operations at the Shoreway facility into compliance with the CWA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

David Weinsoff, Esq.
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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

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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 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:

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- 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 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 through 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.

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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 dischargers' 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. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). California Toxics Rule ("CTR") limitations are also applicable to all non-storm water and storm water discharges. (40 C.F.R. part 131).

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

VIOLATIONS

River Watch contends that between July 1, 2013 and April 16, 2015, the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from the Shoreway facility to waters of the United States, in particular San Francisco Bay, 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 Shoreway facility is not operated to ensure that storm and non-storm water discharges are properly contained, controlled,

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and/or monitored. As a result, the Discharger fails to follow the requirements of the General Permit in its sampling protocols for the Shoreway facility by failing to accurately capture "first flush" samples and failing to properly sample from all the outfalls of that 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 of its non-compliance upon public health and the environment surrounding the Shoreway 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 (standard parameters); and,

   - Total Suspended Solids, COD, heavy metals (including aluminum, iron, lead, copper and zinc, the Table D parameters for Sector "N" SIC 5093 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, http://www.epa/gov/npdes/pubs/sector_n_scrapprecycling.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. 100% of the discharge from the Shoreway facility must be discharged through discrete conveyances.

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

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7. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Shoreway facility and its operations.

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

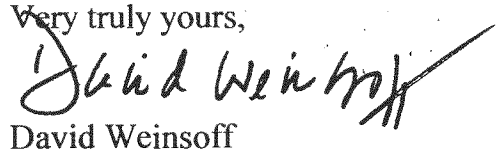
CONCLUSION

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 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 CWA to obtain the relief provided for under the law.

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 violations of the CWA as set forth in this Notice.

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 of the Shoreway facility. 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.

Very truly yours,



David Weinsoff

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