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CWA COMPLAINT

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CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH, a 501(c)(3) nonprofit, public benefit Corporation,

Plaintiff,

v.

COLD CREEK COMPOST, INC.; MARTIN MILECK; DOES 1-10, Inclusive,

Defendants.

CASE NO: 3:14-cv-01212 NC

CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND UNITED STATES DEPARTMENT OF JUSTICE

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
14 MAR 21 P4:49

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CERTIFICATE 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 318, Santa Rosa, CA 95404. On the date set forth below, I served the following described document(s):

COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION (Environmental - 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 7415
Ben Franklin Station
Washington, DC 20044-7415

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
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.

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 March 18, 2014 at Santa Rosa, California.

Wojciech P. Makowski

ED_001083_00000711-00003

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CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA RIVER WATCH, a 501(c)(3), nonprofit, public benefit Corporation, Plaintiff v. COLD CREEK COMPOST, INC.; MARTIN MILECK; 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, CALIFORNIA RIVER WATCH (hereafter, "RIVER WATCH"), by and through its attorneys, and for its Complaint against Defendants, COLD CREEK COMPOST, INC., MARTIN MILECK and DOES 1-10, Inclusive, (hereafter collectively "DEFENDANTS") states as follows:

I. INTRODUCTION

1. This is a citizens' suit for relief brought by RIVER WATCH 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, including 33 U.S.C. § 1365, 33 U.S.C. §1311, and 33 U.S.C. § 1342, to prevent DEFENDANTS from repeated and ongoing violations of the CWA. These violations

are detailed in the "Supplemental Notice of Violations and Intent to File Suit" dated December 3, 2013, made part of the pleadings of this case, and attached hereto as EXHIBIT A (hereafter, "CWA NOTICE").

2. RIVER WATCH alleges Defendants MARTIN MILECK and COLD CREEK COMPOST, INC. who obtained coverage as a facility operator under the California General Industrial Storm Water Permit for Industrial Storm Water Discharges, National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ) issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p) (hereafter, "General Permit"), for the private compost manufacturing business located and operating at 6000 Potter Valley Road in the City of Ukiah, Mendocino County, California, (hereafter, "the Facility") have failed and are failing to comply with the clear and specific terms imposed by the General Permit. DEFENDANTS have no individual facility NPDES permit authorizing any discharges from the Facility. RIVER WATCH alleges the failure of Defendants MARTIN MILECK and COLD CREEK COMPOST, INC. to comply fully with the General Permit's mandatory sampling and analysis requirements results in the illegal discharge from the Facility of the specific pollutants identified in the General Permit applicable to compost facilities under SIC Code 2875 ("Fertilizers, Mixing Only") – iron, nitrate & nitrite nitrogen, lead, zinc, and phosphorus – as well as the pollutants resulting from an exceedance of the Environmental Protection Agency ("EPA") Benchmarks for pH, total suspended solids, specific conductance and total organic carbon or oil and grease. RIVER WATCH alleges that the failure to comply strictly with the mandatory terms and conditions and best management practices ("BMPs") required by the General Permit (e.g., covering compost materials, ensuring no discharge from open holding ponds, installing complete berming of the site, and washing trucks prior to their exiting the Facility) results in discharges of pollutants 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 the Russian River and its tributaries, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. 1365(f).

3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for DEFENDANTS' violations as set forth in this Complaint.

II. PARTIES TO THE ACTION

4. Plaintiff, CALIFORNIA RIVER WATCH, is now, and at all times relevant to this Complaint was, an Internal Revenue Service Code § 501(c)(3), nonprofit, public benefit corporation duly organized under the laws of the State of California, located at 290 South Main Street, #817, Sebastopol, California. The specific purpose of RIVER WATCH is 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.

5. Members of RIVER WATCH reside in northern California where the Facility which is the subject of this Complaint is located. Said members have interests in the waters and watersheds which are or may be adversely affected by DEFENDANTS' discharges and violations as alleged herein. Said members use the effected waters and watershed areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Furthermore, the relief sought will redress the injury in fact, likelihood of future injury and interference with the interests of said members.

6. RIVER WATCH is informed and believes, and on such information and belief alleges, that Defendant COLD CREEK COMPOST, INC. is now, and at all times relevant to this Complaint was, a corporation registered with the State of California, doing business as the private compost manufacturing business known as Cold Creek Compost, located and operating at 6000 Potter Valley Road in the City of Ukiah, Mendocino County, California, referred to in this Complaint as the Facility.

7. RIVER WATCH is informed and believes, and on such information and belief alleges, that Defendant MARTIN MILECK is now, and at all times relevant to this Complaint was, an individual residing in the County of Mendocino and the owner and operator of the private compost manufacturing business located and operating at 6000 Potter Valley Road in the City

of Ukiah, Mendocino County, California, referred to in this Complaint as the Facility.

8. RIVER WATCH is informed and believes and on such information and belief alleges that Defendant DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and entities, who are, or were, responsible for, or in some way contributed to, the CWA violations which are the subject of this Complaint or are, or were, responsible for the maintenance, supervision, management, operations, or insurance coverage of the Facility as identified in the CWA NOTICE and this Complaint. The names, identities, capacities, and functions of defendants DOES 1 - 10, Inclusive, are presently unknown to RIVER WATCH. RIVER WATCH 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. GENERAL ALLEGATIONS

9. Defendants MARTIN MILECK and COLD CREEK COMPOST, INC. submitted a Notice of Intent ("NOI") to the California State Water Resources Control Board ("SWRCB") for coverage under the General Permit and on or about April 6, 1995 obtained said coverage. The SWRCB assigned Waste Discharger Identification ("WDID") number 1 23I011534 to said Defendants, authorizing them to operate the Facility consistent with the strict terms and requirements imposed under the General Permit. Compliance with the terms and conditions (the environmental protections) within the General Permit are not voluntary. In the absence of an express "exemption" by the SWRCB from any of the General Permit's terms and conditions, DEFENDANTS are required to comply strictly with each and every one of them. RIVER WATCH's review of the mandated Annual Reports submitted to the North Coast Regional Water Quality Control Board ("RWQCB") for the Facility for reporting years 2008-2009 through 2012-2013 reveals violations of the General Permit at the Facility during this time period, specifically the failure to comply fully with the requirements to: conduct annual sampling of two storm events, collect storm water samples at required times, accurately identify and sample from all storm water discharge locations at the Facility, and sample for all identified pollutants. These alleged violations are detailed and specifically described in the CWA NOTICE.

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IV. JURISDICTIONAL ALLEGATIONS

10. 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 relevant 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.

11. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), which states in relevant part,

> " ... 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." (33 U.S.C. § 1365(g)).

12. All illegal discharges and activities complained of in this Complaint and in the CWA NOTICE occur in the Russian River and its tributaries, all waters of the United States.

13. Members and supporters of RIVER WATCH 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 waterway and associated natural resource into which DEFENDANTS allegedly discharges pollutants, or by which their operations at the Facility adversely affect those members' interests, in violation of the protections embedded in the NPDES Permitting program and the General Permit, CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), CWA § 402, and 33 U.S.C. § 1342. The health, economic, recreational, aesthetic and environmental interests of RIVER WATCH and its members may be, have been, are being, and will continue to be adversely affected by DEFENDANTS' unlawful violations as alleged herein. RIVER WATCH contends there exists an injury in fact to its members, causation of that injury by DEFENDANTS' 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), RIVER WATCH gave notice of the violations alleged in this Complaint more than sixty days prior to commencement

of this action, to: (a) Defendants COLD CREEK COMPOST, INC. and MARTIN MILECK, (b) the United States EPA, Federal and Regional, and (c) the California State Water Resources Control Board and Regional Water Quality Control Board.

15. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 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 location of the Facility where the alleged illegal discharges occurred, as well as the source of the violations complained of in this action, are located within this District.

V. STATUTORY AND REGULATORY BACKGROUND

17. 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 a NPDES permit for that specific point source. Additional sets of regulations are set forth in the applicable Regional Water Quality Control Board's Water Quality Control Plan or "Basin Plan," the California Toxics Rule, the Code of Federal Regulations and other regulations promulgated by the EPA and the SWRCB.

18. 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 a NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. The pollutants from the Facility are discharged from point sources under the CWA.

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

20. 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.

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21. In addition to the general prohibition against the unpermitted discharge of pollutants from a point source, CWA § 402(p), 33 U.S.C. § 1342 and 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 Permit requires all facilities that discharge storm water associated with industrial activity to develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"). RIVER WATCH alleges DEFENDANTS have not fully developed BMPs and/or have not adequately implemented a SWPPP for their operations at the Facility and the property upon which the Facility is sited, as evidenced by the fact that DEFENDANTS have failed and are failing to operate the Facility in full compliance with the terms and conditions imposed by the General Permit.

VI. VIOLATIONS

22. The enumerated violations are detailed in the CWA NOTICE and below, designating the section of the CWA violated by the described activity.

VII. CLAIM FOR RELIEF

Violation of 33 U.S.C. § 1311(a), CWA § 301(a) – Violation of the Prohibition on the Discharge of Pollutants from Point Sources to Waters of the United States Without a NPDES Permit Issued Under CWA § 402, 33 U.S.C. § 1342

RIVER WATCH re-alleges and incorporates by reference the allegations of Paragraphs 1 through 22 as though fully set forth herein including all allegations in the CWA NOTICE. RIVER WATCH is informed and believes, and on such information and belief alleges, as follows:

23. DEFENDANTS have violated and continue to violate the CWA as evidenced by their violations of the General Permit as set forth in Paragraphs 2 and 9 of this Complaint and the CWA NOTICE.

24. As described in the CWA NOTICE and herein, pursuant to CWA §§ 301(a) and 402(p), 33 U.S.C. §§ 1311(a) and 1342(p), and 40 C.F.R. § 122.26, RIVER WATCH alleges DEFENDANTS to be in violation of an effluent stand or limitation under the CWA and/or an order issued by the State with respect to such standard or limitation.

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25. By law and by the terms of the General Permit, violations of California's General Permit are violations of the CWA. (40 C.F.R. § 122.4(a)).

26. DEFENDANTS' violations are ongoing, and will continue after the filing of this Complaint. RIVER WATCH 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 to the SWRCB, the RWQCB, or to RIVER WATCH with regard to the Facility prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary to address DEFENDANTS' State and Federal CWA violations which may occur after the filing of this Complaint. Each violation is a separate violation of the CWA.

27. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as well as State and Federal standards with respect to the enumerated discharges and releases alleged herein. Further, that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect the interests of its members that are or may be adversely affected by DEFENDANTS' violations of the CWA, as well as other State and Federal standards.

28. RIVER WATCH alleges that continuing violations of the CWA by DEFENDANTS will irreparably harm RIVER WATCH and its members, for which harm RIVER WATCH and its members have no plain, speedy or adequate remedy at law.

VIII. RELIEF REQUESTED

WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

29. Declare DEFENDANTS to have violated and to be in violation of the CWA;

30. Issue an injunction ordering DEFENDANTS to immediately operate the Facility in compliance with the NPDES permitting requirements in the CWA;

31. Order DEFENDANTS to pay civil penalties per violation/per day for their violations of the CWA as alleged in this Complaint;

32. Order DEFENDANTS to pay RIVER WATCH's reasonable attorneys' fees and costs (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California

law; and,

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

DATED: March 14, 2014

David Weinsoff

DAVID WEINSOFF
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

EXHIBIT A

LAW OFFICE OF
DAVID J. WEINSOFF
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Via Certified Mailing - Return Receipt

December 3, 2013

Mr. Martin Mileck
Facility Operator, Site Manager and Registered Agent
Cold Creek Compost, Inc.
6000 Potter Valley Road
Ukiah, CA 95482

Mr. Charles Guntly
Property Owner
5010 Highway 20
Ukiah, CA 95482

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

Dear Owner, Operator 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 Cold Creek Compost, Inc. ("Cold Creek") facility located at 6000 Potter Valley Road in Ukiah, 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 Cold Creek into the north fork of the Russian 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.

As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Cold Creek facility. Consequently, Cold Creek Compost, Inc. and Charles Guntly (the "Dischargers") are 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 Dischargers 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 North Coast 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 Dischargers of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (the "General Permit") relating to the compost facility services at the Cold Creek site.

The Dischargers 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 April 6, 1995, and the Dischargers were assigned Waste Dischargers Identification ("WDID") number 1 23I011534. River Watch contends that in the operation of the Cold Creek facility, the Dischargers have failed and are 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 Dischargers, however, have failed and are failing to comply with the following Annual Reporting requirements in reporting years 2008-2009,

2009-2010, 2010-2011, 2011-2012, and 2012-2013:[1]

a. Two Storm Events Were Not Sampled in 2011-2012 and 2012-2013

The Annual Report form, in the Section titled *Specific Information*, D. Sampling and Analysis Exemptions and Reductions, subparagraph 1., specifically requires dischargers to inform the Regional Board - "[f]or the reporting period, was your facility exempt from collecting and analyzing samples from **two** storm events in accordance with section B.12 or 15 of the General Permit?" In the 2011-2012 and 2012-2013 Annual Reports, the Dischargers checked the "No" box but obtained no sampling and analysis exemption from the RWQCB under General Permit Section B.12 (i.e., following submission and approval of a "No Exposure Certification") or B.15 ("Group Monitoring").

b. Sampling and Analysis Results Were Incorrectly Provided in the 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013 Annual Reports

The Annual Report form, in the Section titled *Specific Information*, E. Sampling and Analysis Results, identifies the following further violations:

Subparagraph 1. specifically asks "[h]ow many storm events did you sample?" In the 2011-2012 and 2012-2013 Annual Reports, the Dischargers state that only one storm event was sampled, with no required "explanation" attached. Publicly available reports of storm events in the Ukiah region demonstrate that the Dischargers had sufficient opportunity to conduct the full complement of water quality samples during the 2011-2013 reporting periods.

Subparagraph 2. specifically asks "[d]id you collect storm water samples from the first storm of the wet season that produced a discharge during the scheduled facility operating hours?" The Dischargers state "No" with no "explanation" in the 2009-2010 Annual Report;

[1] These alleged violations are in addition to those identified by the RWQCB in its September 29, 2009 "Notice of Noncompliance: Failure To Comply With the General Storm Water Permit, NPDES No. CA000001 Associated With the Industrial Activities at Cold Creek Compost Inc., 6000 Potter Valley Rd, Ukiah CA 95482, WDID No. 1 23I011534 addressing the facility's failure to timely submit its 2008-2009 Annual Report, and similar RWQCB letters of noncompliance on August 8, 2011 and October 7, 2011 regarding the 2010-2011 Annual Report. The RWQCB also issued a "Notice of Violation, General Industrial Storm Water Permit Request for Modification to Storm Water Pollution Prevention Plan (SW3P)" on March 23, 2012 regarding the unpermitted delivery of "liquid oil and grease from restaurant grease traps," an activity inconsistent with the County's Solid Waste Permit and the facility's SWPPP in violation of the General Permit. This letter also identified the unpermitted receipt of water treatment sludge from Lake County. The RWQCB letter sternly stated that "[w]e have discussed this issue with you many times and you are aware of this process. A review of our files records shows that acceptance of unpermitted waste has occurred many times and is a recurring issue. At this time Cold Creek Compost is in violation of General Industrial Storm Water Permit and its Storm Water Pollution Prevention Program (SW3P) for accepting unpermitted waste material."

with the "explanation" in the 2010-2011 Annual Report that "Cold Creek has no discharge;" and in the 2011-2012 Annual Report with the "explanation that "[n]o discharges were produced by the facility." There is no "explanation," however as to why, if there are no discharges from the facility, it remains covered under the General Permit and regulated under the CWA. A facility covered under the General Permit is mandated under its specific terms to comply strictly with the detailed sampling and analysis requirements. In the recent 2012-2013 Annual Report, the Dischargers also state "No," with the explanation that a "[s]econd water sample was not taken due to lack of late spring rains." As stated above, publicly available records of storm events in the Ukiah region demonstrate that the Dischargers had the opportunity to obtain a second sample in the most recent reporting year.

Subparagraph 3. specifically asks "[h]ow many storm discharge locations are at your facility?" The 2008-2009 Annual Report states "6," while the 2009-2010, 2010-2011, and 2011-2012 Annual Reports state "0" with the "explanations" relating to Subparagraph 2 similarly applicable to Subparagraph 3. Each of these Annual Reports, however, identify and include "sampling" from "6" sampling locations. The 2012-2013 Annual Report states "No" without providing the required "explanation."

Subparagraph 4. Specifically asks "[f]or each storm event sampled, did you collect and analyze a sample from each of the facility's storm water discharge locations?" The sampling points identified in each of the Annual Reports and the Dischargers' SWPPP (specifically Section 6.2 titled "Monitoring of Surface Water" in the SWPPP as amended on January 2, 2012 and date stamped by the RWQCB on December 19, 2012), states that sampling is conducted at "Bear Up," "Bear Down," "Silver Up," "Silver Down," "Culvert," and "River." Public records, including the pictures provided to the RWQCB by the Dischargers in a letter dated February 13, 2012, indicate that none of these sampling collection points is properly at the point of discharge from the facility or at the edge of the receiving waters in close proximity to the site. The Dischargers' failure to properly sample is a violation of General Permit Section B.7.a, which requires "[f]acility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event."

Subparagraph 6. specifically asks "[w]ere <u>all</u> samples collected during the first hour of discharge?" and Subparagraph 7 asks "[w]as <u>all</u> storm water sampling preceded by three (3) working days without a storm water discharge?" In each Annual Report the Dischargers state "No," as to Subparagraph 6, and "No" as to Subparagraph 7 (except in the 2008-2009 Annual Report) with the "explanations" relating to Subparagraph 2 applicable to Subparagraphs 6 and 7.

Subparagraph 10. specifically asks whether "Table D contain[s] any additional

parameters related to your facility's SIC code(s)," and if so "[d]id you analyze all storm water samples for the applicable Table D parameters." The Dischargers state in the 2008-2009 Annual Report that additional parameters apply to the facility, identify on the cover page of the 2009-2010 Annual Report the "Additional Table D Parameters," and state in the 2009-2010, 2010-2011, 2011-2012, and 2012-2013 Annual Reports that "No" additional parameters apply to the facility. In fact, in addition to requiring the sampling for pH, Total Suspended Solids (TSS), Specific Conductance (SC), Total Organic Carbon (TOC) or Oil and Grease (O&G) required of all industrial facilities covered under the General Permit, the Dischargers are required to additionally sample for Iron (Fe), N+N (Nitrate & Nitrite Nitrogen), Lead (Pb), Zinc (Zn), and Phosphorus (P). None of the Dischargers' Annual Reports identify sampling for Iron, Lead, and Zinc.

c. Annual Comprehensive Site Compliance Evaluation (ACSCE)

The Annual Report Form, in the Section titled I. *ACSCE Evaluation Report*, identifies the following further violation: The Evaluation Report requires that "[t]he facility operator ... provide an evaluation report that includes ... any incidents of non-compliance and the corrective actions taken." The Dischargers allegedly failed and are failing to identify and correct the deficiencies in regarding Sections "D" and "E" of the Annual Reports detailed above.

The Annual Report Form, in the Section titled J. *ACSCE Certification*, identifies the following further violations: The 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?" On each Annual Report the Dischargers stated "Yes" – certifying compliance that both the SWPPP and Monitoring Program are up to date and fully implemented. The alleged failures to fully and accurately provide the required information on the Annual Report contradicts 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 operations at the Dischargers' compost facility are covered under the General Permit and classified in the NOI and Annual Report under SIC Code 2875. These operations are conducted in close proximity to the navigable waters of the Russian River (and its tributaries impacted by the Dischargers' activities on the site). Because the real property on which the Cold Creek facility is located is subject to rain events, and because there is no RWQCB exemption from collecting and analyzing the range of pollutants identified above, there can be a discharge of these pollutants from the facility to the Russian 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 exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch reveals that the Dischargers obtained coverage under the General Permit, but fail to comply with its environmentally protective requirements, in particular the implementation of effective Best Management Practices ("BMPs"), and compliance with the critically important sampling and comprehensive annual reporting requirements.

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

The persons responsible for the alleged violations are Martin Mileck, Operator and Manager of Cold Creek Compost, Inc; and Charles Guntly, owner of the real property on which Cold Creek Compost, Inc. is located – collectively referred to herein as the Dischargers.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Cold Creek facility at 6000 Potter Valley Road in Ukiah, California, including the adjoining waters of the Russian River (and its tributaries located in close proximity to the facility) – 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 December 3, 2008 to December 3, 2013. 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 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 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 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 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)). 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 December 3, 2008 and December 3, 2013 the Dischargers violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from the Cold Creek 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 Cold Creek and the Dischargers. Furthermore, River Watch contends these violations are continuing.

As discussed above, the Dischargers have failed and are failing to consistently sample for the full range of pollutants mandated by the General Permit (including those specifically identified in Table D).

Finally, River Watch also believes that the Cold Creek site is not operated to ensure that storm and non-storm water discharges are properly contained, controlled, and/or monitored. As a result, the Dischargers fail to follow the requirements of the General Permit in their sampling protocols for Cold Creek by failing to accurately capture "first flush" samples and failing to properly sample from all the outfalls of the facility.

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Dischargers into compliance with the CWA and reduce the biological impacts of their non-compliance upon public health and the environment surrounding the Cold Creek facility:

1. Prohibition of the discharges above EPA Benchmarks of all the pollutants identified in the General Permit applicable to compost facilities, specifically including the additional Table D sampling requirement for Iron, Nitrate & Nitrite Nitrogen, Lead, Zinc, and Phosphorous;

2. Compliance with all the terms and conditions of the General Permit (including sampling, monitoring, and reporting), and preparation of an updated SWPPP that conforms to, and incorporates the applicable provisions contained in: (i) *Stormwater Best Management Practice Handbook*, California Stormwater Quality Association, January 2003; and (ii) BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series "Section C: Chemical and Allied Products Manufacturing and Refining" (EPA-83-F-06-018; December, 2006, which can be found on the EPA's website at http://www.epa.gov/npdes/pubs/sector_c_chemical.pdf); and,

3. 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.

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.

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 Dischargers' 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 Dischargers for the violations of the CWA described in this Notice.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the Dischargers wish 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,

David Weinsoff

David Weinsoff

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