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Via Certified Mailing - Return Receipt

August 21, 2014

Dan Hardgrove, Deputy
Department of Public Works/
Integrated Waste Management
540 W. Chevy Chase Drive
Glendale, CA 91204

Susan Hutcheson, Manager
Glendale Recycling Center
540 W. Chevy Chase Drive
Glendale, CA 91204

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 Glendale Recycling Center facility located at 540 W. Chevy Chase Drive in Glendale, California. Notice is being sent to you as the responsible owners, operators, lessees 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 into the Glendale Municipal Separate Storm Sewer System ("Glendale MS4"), which discharges to the Los Angeles River, CWA §303(d) listed as impaired for copper, lead, zinc and refuse.

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 Glendale Recycling facility. Consequently, the City of Glendale, Department of Public Works/Integrated Waste Management, Glendale Recycling Center, and Allan Company (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 Los Angeles 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 Glendale Recycling 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 July 21, 2005, and the Discharger was assigned Waste Discharger Identification ("WDID") number 4 19I019666. River Watch contends that in the operation of the Glendale Recycling 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 2009-2010, 2010-2011, and presumably in reporting years 2011-2012, 2012-2013 and 2013-2014:[1]

a. SWPPP and Monitoring Program Requirements Were Not Properly Prepared and Implemented in the 2009-2010 through 2013-2014 Annual Reporting Years

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 pollutant discharges identified in the Discharger's Laboratory Analyses as alleged below.

b. Noncompliance with General Permit Storm Water Controls in the 2009-2010 through 2013-2014 Annual Reporting Years

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 Glendale Recycling facility that exceed EPA "Benchmarks" and "California Toxics Rule" limits for the following pollutants:

- 2013-2014 Reporting Year[2]

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[1]Neither the 2011-2012 nor the 2012-2013 Annual Report were included in the documents provided by the RWQCB to River Watch in response to its March 18, 2014 Public Records Act request, nor was it available on or before the date of this Notice at the SWRCB on-line "Water Boards Storm Water Multiple Application & Report Tracking System" (https://smarts.waterboards.ca.gov/smarts/faces/PublicDataAccess/PublicNOISearch.jsp.) .The SWRCB website does, however, include "Laboratory Results" from "storm events" that occurred during the three Annual Reporting years 2011-2012 through 2013-2014. Note that only one "storm event" was sampled in Reporting Year 2010-2011.

[2]EPA "Benchmarks" for the listed pollutants – Specific Conductance (SC) 200 µmhos/cm; pH 6.0 – 9.0 standard units; Total Suspended Solids (TSS) 100 mg/L; Aluminum (Al) 0.75mg/L; Iron (Fe) 1.0 mg/L; Lead (Pb) 0.0816 mg/L; Zinc (Zn) 0.117 mg/L; Copper (Cu) 0.0636 mg/L; Total Oil & Grease (O&G) 15 mg/L; COD 120 mg/L; and TOC 100 mg/L. The following "California Toxics Rule" limits apply as the Los Angeles River is impaired for these metals - Copper 0.013 mg/L criteria maximum concentration, 0.009 mg/L criteria continuous concentration; Lead 0.065 mg/L criteria maximum concentration, 0.0025 criteria continuous concentration; and Zinc

Specific Conductance (12/19/13) – 300 μmhos/cm
Oil and Grease (2/6/14) – 27 mg/L
Oil and Grease (12/19/13) – 19 mg/L
TOC (2/6/14) – 150 mg/L
TOC (12/19/13) – 140 mg/L
TSS (2/6/14) – 280 mg/L
TSS (12/19/13) – 570 mg/L
Aluminum (2/6/14) – 3.1 mg/L
Aluminum (12/19/13) – 6.3 mg/L
Copper (2/6/14) – 0.13 mg/L
Copper (12/19/13) – 0.19 mg/L
Iron (2/6/14) – 6.4 mg/L
Iron (12/19/13) – 9.1 mg/L
Lead (12/19/13) – 0.10 mg/L
Zinc (2/6/14) – 0.92 mg/L
Zinc (12/19/13) – 1.4 mg/L

- 2012-2013 Reporting Year

Specific Conductance (11/30/12) – 230 μmhos/cm
Specific Conductance (10/11/12) – 300 μmhos/cm
Oil and Grease (10/11/12) – 18 mg/L
TSS (1/24/13) – 140 mg/L
TSS (10/11/12) – 160 mg/L
Aluminum (1/24/13) – 2.4 mg/L
Aluminum (11/30/12) – 1.3 mg/L
Aluminum (10/11/12) – 2.8 mg/L
Copper (10/11/12) – 0.15 mg/L
Iron (1/24/13) – 3.6 mg/L
Iron (11/30/12) – 3.4 mg/L
Iron (10/11/12) – 6.2 mg/L
Zinc (1/24/13) – 0.53 mg/L
Zinc (11/30/12) – 0.63 mg/L
Zinc (10/11/12) – 1.2 mg/L

- 2011-2012 Reporting Year

0.120 mg/L criteria maximum concentration and continuous concentration.

Specific Conductance (10/5/11) – 557 μmhos/cm
Oil and Grease (10/5/11) – 16 mg/L
TSS (10/5/11) – 176 mg/L
pH (10/5/11) – 5.49
Aluminum (10/5/11) – 3.64 mg/L
Copper (10/5/11) – 0.143 mg/L
Iron (10/5/11) – 6/12 mg/L
Lead (10/5/11) – 0.097 mg/L
Zinc (10/5/11) – 1.67 mg/L

- 2010-2011 Reporting Year

TSS (12/17/10) – 359 mg/L
pH (12/17/10) – 5.63
Aluminum (12/17/10) – 3.63 mg/L
Iron (12/17/10) – 10.1 mg/L
Zinc (12/17/10) – 0.722 mg/L

- 2009-2010 Reporting Year

Specific Conductance (10/13/09) – 1120 μmhos/cm
Specific Conductance (1/26/10) – 286 μmhos/cm
Oil and Grease (10/13/09) – 2470 mg/L
Oil and Grease (1/26/10) – 250 mg/L
TOC (10/13/09) – 650 mg/L
TSS (10/13/09) – 456 mg/L
pH (10/13/09) – 5.27
Aluminum (10/13/09) – 8.09 mg/L
Aluminum (1/26/10) – 175 mg/L
Copper (10/13/09) – 0.376 mg/L
Iron (10/13/09) – 16.7 mg/L
Iron (1/26/10) – 4.44 mg/L
Lead (10/13/09) – 0.119 mg/L
Zinc (10/13/09) – 4.22 mg/L
Zinc (1/26/10) – 0.791 mg/L

c. <u>Certification of Compliance With General Permit for 2009-2010 through 2013-2014 Annual Reporting Years</u>

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) identified as "the central processing facility for materials collected in the City's Recycling Program," is a collection point, in addition to papers, glass, and plastic, for aluminum, tin, metal and bi-metal cans, electronics (including batteries, cables, CD players, cell phones, computers/towers, printers, radios, tablets, televisions, and vacuums), and scrap metal (including appliances, bottle caps, brass, copper, pans, pie tins, wire and wire hangers) (http://glendaleca.gov/government/departments/public-works/integrated-waste-management/refuse-trash-recycling/recycling-center; August 21, 2014). The work at the Glendale Recycling facility is conducted both indoors and outdoors. Because the property on which the Glendale Recycling facility is located is subject to rain events, and because there is no RWQCB exemption from the collecting and analyzing the range of pollutants identified above, there can be a discharge of these pollutants to the Glendale MS4, which discharges to the Los Angeles 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 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 City of Glendale, Department of Public Works/Integrated Waste Management and Allan Company, collectively referred to herein as the Discharger, and those other persons who hold an ownership or operating interest in the Glendale Recycling facility.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Glendale Recycling facility at 540 W. Chevy Chase Drive in Glendale, California, including the waters of the Los Angeles 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 August 21, 2009 to August 21, 2014. 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)). 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 August 21, 2009 and August 21 2014, the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from the Glendale Recycling 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 Glendale Recycling 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 Glendale Recycling facility 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 Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding the Glendale Recycling facility:

1. Prohibition of the discharges of pollutants including, but not limited to, petroleum hydrocarbons, oil and grease, accumulated particulate matter, BOD, TSS, heavy metals (including aluminum, iron, lead, copper and zinc) from the "recycling systems" operated at the Glendale Recycling facility.

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).

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 Glendale Recycling facility must be discharged through discrete conveyances.

6. Any discharge from the Glendale Recycling 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 Glendale Recycling facility and its operations.

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

CONCLUSION

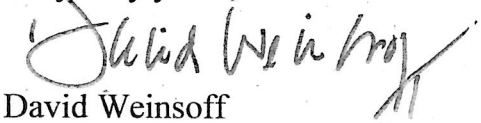
CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive 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 Discharger's violations of the CWA as described in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against the Discharger for the violations of the CWA 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 Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



David Weinsoff

DW:lhm

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