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October 7, 2016

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Re: Notice of Violation of Federal Law and Notice of Intent to Begin
Citizen Enforcement Action

Greetings:

I write on behalf of the Citizen Alliance for the Protection of Environment (hereinafter "CAPE") to notify you of violations of federal law cause by your continuing failure to comply with the Cleanup and Abatement Order.[1] CAPE 's investigation of extensive documents and images of the subject site[2] reveals an imminent threat caused by ponds which discharge, leak, spill, drip, deposit and discard toxic chemicals that endanger health and the environment. Once in the environment, these toxic chemicals enter the food chain and cause and threaten to cause cancer, reproductive, developmental and immunological harm to humans and other mammals, fish, birds and other wildlife.

It is undisputed that Veolia is an "operator" within the meaning of the subject statutes. As such, Veolia has liability for cleanup of the Mountain Pass site, "The California Water Board has found that a reasonable estimate for the treatment and disposal of the contaminated aquafers would be between $10,436,445 to $27,951,449." [3]

This letter begins the process by which CAPE will seek available remedies under the Federal Resource Conservation and Recovery Act ("RCRA"), the federal Clean Water Act ("CWA") and CERCLA. CAPE will pursue these remedies so as to prevent future disposal and discharge of this waste and pollution. CAPE will further seek civil penalties for CWA violations.

This letter is provided to notify you of Veolia's unlawful discharge of pollutants from the Mountain Pass Molycorp Mining Site into surrounding aquifers and the ongoing continuous violations of the substantive and procedural requirements of the Clean Water Act and National

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[1] On July 22, 2014 the California Water Board issued Cleanup and Abatement Order No. R6V-2014-0062 to address past and ongoing unauthorized discharges of mine tailing waste to groundwater from historical operations at the Mountain Pass Mine Site in San Bernardino County.
[2] 67750 Bailey Road, Mountain Pass, California 92366.
[3] April 13, 2016 Financial Assurance Update Letter from the California Water Board

Pollution Discharge Elimination System ("NPDES") General Permit No. CAS00001 [State Water Resources Control Board].

This letter further provides you notice of the imminent and substantial endangerment to human health and the environment caused by the handling, storage, treatment, transportation, or disposal of solid wastes at the Facilities in violation of RCRA section 7002(a)(1)(B), 42 USC § 6972(a)(1)(B)

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), 33 USC § 1365(a), a citizen must give notice of his/her intent to file suit. Section 7002(b)(2)(A) of RCRA, 42 USC 6972 (b)(2)(A), requires that notice of intent to sue be given 90 days prior to initiation of a civil action under 7002(a)(1)(B), 42 USC § 6972(a)(1)(B). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violation occurred. As required by the CWA and RCRA, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred and which are continuing to occur at Molycorp's facility.

It is unlawful to discharge pollutants to waters of the United States without an NPDES permit or in violation of the terms and conditions of and NPDES permit. Based on information available to CAPE, Veolia has not filed a Notice of Intent (NOI) to be covered by the General Permit for the Molycorp Facility. Thus, Your Facility lacks NPDES permit authorization for discharge of pollutants into aquifers of the United States. CAPE believes that Your Facility has violated and is in violation of the General Permit and of CWA's prohibition on the unpermitted discharge of pollutants. In addition, CAPE believes that Your Facility possess an imminent and substantial endangerment to health or the environment in violation of 42 USC § 6972(a)(1)(B). Consequently, You are hereby placed on formal notice from CAPE that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CAPE intends to file suit in federal court against you under CWA section 505(a), 33 USC § 1365(a), for violations

of the CWA. After the expiration of ninety (90) days from the date of this Notice of Violation and Intent To File Suit, CAPE intends to file suit in federal court against Veolia under RCRA section 7002(a)(1)(B), 42 U.S.C. § 6972 (a)(1)(B) for violations of RCRA.

I. The Noticing Party

CAPE is Non-profit 501(c) under the laws of the State of California. CAPE's main office is at 8275 S. Eastern Ave Suite 200 Las Vegas NV 89123. CAPE's telephone number is 702/573-0106. Members of CAPE reside in Los Angeles, California, and Clark County, Nevada and use and are dependent upon the safety of underground water sources and surrounding soil and water bodies located in these counties.

II. The Noticed Party

Veolia Water Americas-Industrial Business Group, a division of Veolia Water North America Operating Services, LLC, a Delaware limited liability company, with offices at 4760 World Houston Parkway, Suite 100, Houston Texas 77032 ("Veolia"); (each a "Party" and collectively the "Parties").

III. Operator Liability

CERCLA imposes liability on "any person who at the time of disposal of any hazardous substance owned or *operated* any facility at which such hazardous substances were disposed of." (42 USC 9607(a)(2))

Responsible parties under CERCLA laws are as follows:

- Owners and past owners of facility
- Operators and past operators of facility
- Those that "arranged for" the transport of hazardous substances
- Transporters of hazardous substances

An operator is a party who has the "authority to control the cause of the contamination at the time the hazardous substances were released into the environment." *Kaiser Aluminum and Chemical Corp. v. Cattellus Development Corp., 976 F.2d §1338, 1341 (9th Cir. 1992)*

RCRA imposes liability on generators, owners/operators of disposal and storage facilities, and transporters.[4]

Our investigation reveals that Veolia Water North America Operating Services ("VWNAOS")[5] was the operator of the produced water treatment facility located at the Molycorp site[6] from at least 2013 through at least 2015 pursuant to a written agreement ("Agreement").[7]

The Agreement provides, in pertinent part, as follows:

RECITALS

WHEREAS, Customer owns property at 67750 Bailey Road, Mountain Pass, California 92366 (""Customer Site") on which it operates a rare earth mining and processing facility ("Facility") and has entered into that certain Engineering Equipment Procurement and Construction Agreement (the "Design Build Agreement") with NAWS California, Inc., to design

[4] RCRA §3004, 3005
[5] Veolia Water Americas-Industrial Business Group, a division of Veolia Water North America Operating Services, LLC, a Delaware limited liability company, with offices at 4760 World Houston Parkway, Suite 100, Houston Texas 77032.
[6] Molycorp Minerals, LLC, a Delaware limited liability company with an address at 5619 DTC Parkway, Greenwood Village, Colorado 80111.
[7] Interim Operation began on or about December 1, 2012. Veolia's Full Staff Operation began April 1, 2013.

and build a water treatment plant ("Plant") at the Customer site, which will be an integral part of the Facility, and desires to have Veolia provide certain operation and maintenance services related to the Plant, as detailed herein; and

WHEREAS, Veolia has expertise in the operation and maintenance of water treatment plants and desires to undertake the performance of such services, pursuant to the terms and conditions of this Agreement (as set forth) below in Footnote 8:[8]

In particular Veolia has admitted:

Section 2. Representations & Engagement

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[8] "Environmental Conditions" means the presence or existence of any Regulate Substance on or at the Plant and/or Customer site, including but not limited to, the presence in containers, on the surface, or in surface water, storm water, groundwater, soils or subsurface strata, or the migration of such a Regulated Substance from the Plant and/or Customer Site.

"Environmental Laws" means any Applicable Law relating to: (i) the protection, pollution, contamination, reclamation or remediation of public health, safety, natural resources or the environment; (ii) any Release, including investigation and cleanup of any Release or threatened Release; (iii) the manufacturing, handling, generation, storage, treatment, processing, transportation, release, discharge, emission or disposal of Regulated Substances; (iii) Environmental Conditions; or (iv) the protection of human health and safety.

"Governmental Approval" means any Permit, license, approval, authorization, consent, waiver, exemption, variance, ruling, entitlement, certification or other order, decision or authorization which is required under Applicable Law to be obtained or maintained by any person with respect to the operation and maintenance of the Plant, or for the performance of any of the obligations under this Agreement.

"Hazardous Substance" small mean any pollutant, contaminant, constituent, chemical, mixture, raw material, intermediate product, finished product or by-product, hydrocarbon or any fraction thereof, or industrial, solid, toxic, radioactive, infectious, disease-causing or hazardous substances, material, waste or agent, including all substances, materials, wastes, substances, objects or chemicals that may threaten life, health or property or adversely affect the environment or are regulated under or deemed to be hazardous under Environmental Law, including, but not limited to (i) each "hazardous substance" as defined under CERCLA, and (ii) the presence of any quality or condition of a substance that violates any Applicable Law.

(a) Veolia represents and warrants that: (i) it is engaged in the business of operating water treatment plants and has developed the requisite expertise necessary to perform the Services; and (ii) it has sufficient employees with the requisite skills, training, and experience necessary to perform the Services.

Section 4. Term

(a) This Agreement shall have an initial term of five (5) years, beginning on the Effective Date and ending on the fifth (5th) anniversary of the Full Staff Operation Date ("Initial Term"), and unless Customer provides, and Veolia receives, written notice of termination on or before one-hundred twenty (120) days prior to the expiration of the Initial Term pursuant to the notice provisions herein (the "Termination Option"), this Agreement will be automatically extended for an additional five-year (5-year) term on the same terms and conditions as express herein, subject to a Service Fee adjustment in accordance with Schedule E ("Renewal Term").

Section 5. Services

(a) Veolia shall provide Services consisting of the mobilization of staff, development or operations programs, operation of the plant during acceptance testing, initial Interim Operation, and ongoing Full Staff Operation of the Plant. Interim Operation shall begin on or about December 1, 2012 (the "Interim Operation Date"). Veolia shall begin Full Staff operation on the earlier of: (i) April 1, 2013 or (ii) 60 days after receipt of notice from Customer requesting commencement of Full Staff Operation (the "Full Staff Operation Date"). Beginning on the date that Interim Operation begins, Veolia shall (i) operate and maintain the Plant, from and including the Raw Water supply Entry Point to and including the Treated Water Supply Point; (ii) supply Treated Water (which shall include nitrate removal and lignin pretreatment as these systems are completed under the Design Build Agreement); and (iii) perform Residuals Handling, all in accordance with this Agreement.

(b) Services, as further specified in Section B, shall include the following: (i) making adjustments to Plant operating parameters as required to maintain treatment performance; (ii) testing, monitoring, and recording on readings sheets and operator logs; (iii) maintaining optimized chemical feed rates and control; (iv) troubleshooting and correction of off-set parameters; (v) Plant maintenance services, including preventive maintenance and break repairs, equipment overhauls and upgrades, as required, including the building and HVAC systems; (vi) manage chemical supply; (vii) monitoring of the quantity and quality of the both Raw Water and Treated Water and testing and calibration of all meters used for such purposes; (viii) analytical testing for process control; (ix) routine and emergency communications with Customer designated staff; (x) troubleshooting and correction of off-set parameters; (xi) management of consumables, including membranes, resin, media, and cartridge filters; and (xii) dewatering and loading sludge into containers for disposal by Customer. Except as otherwise specifically set forth in this Agreement, Veolia, as its expense, shall furnish all personnel, labor, supervision, insurance, transportation, equipment, consumables (including Spare Parts and Consumables), and other goods, services, information, and data necessary to provide the Services.

(d) The Services shall be performed in accordance with: (A) Applicable Laws; (B) Operating Guidelines; (C) Prudent Industry Practices; and (E) Customer health & Safety Rules.

(e) ***Veolia shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the performance of this Agreement, including appropriate precautions and programs for areas in and around the Plant.*** Veolia shall comply with all applicable safety regulations in its access to the customer Site and operations of the Plant, including MSHA, OSHA, and Customer Health & Safety Rules. Veolia shall maintain reasonable records and make reports concerning health, safety and welfare of persons, and damages to property. Veolia shall appoint a member of its staff to be responsible for maintaining the safety, and protection against accident, of personnel on the Customer Site.

This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents.

Section 6. Performance Guarantee

(a) At all times during the term of this Agreement, Veolia shall perform the Services in accordance with Prudent Industry Practices.

IV. Specific Permits, Standards, Regulations, Conditions, Requirements or Orders Violated by Veolia

A. RCRA Standard Violated

With regard to RCRA, this notice pertains to Veolia's violation of 42 U.S.C. § 6972(a)(1)(B) (Section 7002 of the Solid Waste Disposal Act), which provides that:

> Any person may commence a civil action of his own behalf – against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past of present transporter, or past of present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

For purposes of 42 U.S.C. § 6972(a)(1)(B), Veolia is a generator of waste oil-pentachlorophenol mixture and has contributed and is contributing to the past, present and future storage and disposal of solid waste, to wit: the oil-pentachlorophenol mixture referenced above (including all of the toxic contaminants referenced above which make up that oil-pentachlorophenol mixture), and all soil, sediment and water contaminated with oil-

pentachlorophenol mixture. Veolia's disposal of this waste presents an imminent and substantial endangerment to health and the environment.

Definition of hazardous waste under RCRA "A solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infections characters may . . . pose a substantial present or potential hazard to human health and the environmental . . ." 42 U.S.C. 6903(5). Specific characteristics of wastes, lists of wastes and exemptions can be found in EPA regulations. See 40 CFR. Part 261.

The Citizen Suit provisions are set forth in Section 7002 of the Resource Conservation and Recovery act (RCRA), 42 U.S.C. Section 6972, where in subpart (a)(1)(B), it states that any person may commence a civil action on his own behalf or:

> [A]gainst any person ... and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Thus, where an entity "may" present an "imminent and substantial endangerment" to "health or the environment" as a result of the disposal of any "solid or hazardous waste," such a claim is permitted. These terms have been liberally interpreted. Maine People's Alliance v. Mallinckrodt, Inc., 471 F. 3d 277 (1st Cir. 2006) (after first noting that at least four of its sister circuits have also construed the terms liberally, the court did so as well holding that "reasonable prospect of future harm" is adequate so long as the threat, as opposed to the harm, is near-term, and involves potentially serious harm, but not need be an emergency situation and does not require a showing an immediate threat of grave harm); United States v. Conservation Chemical Co., 619 F. Supp. 162 (D.C. Mo. 1985) (endangerment need not be immediate to be imminent;

specific quantification of the endangerment not requires, rather a consideration of all factors is proper based on the unique facts of each case; and, if an error is to be made in applying the endangerment standard, it must be made in favor of protecting the environment); Paper Recycling, Inc. v. Amoco Oil Co., 856 F. Supp. 671, 678 (N.D. Ga. 1993) ("imminent and substantial endangerment" to "health or tee environment" requires only a showing that a risk of threatened harm is present, not that actual harm will immediately occur); Lincoln Props., Ltd. v. Higgins, 1993 WL 217429 (E.D. Cal. 1993) (merely need show a risk of threatened harm, not actual injury; remedy is not limited to emergency situations). The fact that the disposal that created the endangerment happened years ago is of no matter—a claim can still be brought if the endangerment exists. Main People's Alliance, supra; City of Toledo v. Beazer Materials & Services, Inc., 833 F. Supp. 646 (N.D. Ohio 1993); Gache v. Town of Harrison, 813 F. Supp. 1037 (S.D.N.Y. 1993)); Nuckols v. National Heat Exchange Cleaning Corporation, Case No. 4:00CV1698 (N.D. Ohio 2000) (case prosecuted by the author in which Judge Economus held that former tenant's contamination of leased property can be the basis of an endangerment claim).

The types of waste covered under the Citizen Suit provisions are not confined to "hazardous waste"; rather, it includes "solid waste", which is very broadly defined. 42 U.S.C. Section 6803 (5) defines "hazardous waste" to include solid hazardous waste which may cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating eversible illness or pose a substantial present or potential hazard to human health or the environment. 42 U.S.C. Section 6803 (27) defines "solid waste" to include "discarded material, including solid, liquid, semisolid, or contaminated gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities". Connecticut Costal Fisherman's Ass'n. v. Rernington Arms Co., Inc., 989 F.2 1305 (2nd Cir. 1993) (discussion of hazardous and solid waste under the Citizen Suit provisions); Zands v. Nelson 779 F.Supp. 1254 (S.D. Cal. 1991); Paper Recycling, supra. (gasoline included as a solid waste);

Southern Fuel Co. v. Amoco Oil Co., 1994 U.S. Dist. LEXIS 15769 (D.Md. 8/23/94) (analysis of interplay between hazardous and solid waste provisions); Lincoln, supra.

Causation, must, ultimately, be established between the endangerment and the defendant's acts. Agricultural Excess v. ABD Tank & Pump Co., 878 F. Supp. 1091 (N. Ill 1995) (claim against a UST manufacturer); First Sand Diego Properties v. Exxon Co., 859 F. Supp. 1313 (S.D. Cal. 1`994) (no liability for mere "passive" owner of contaminated property). Liability is joint and several unless the defendant can establish that the damages are divisible and that there is a reasonable basis for an apportionment. Maine People's Alliance, supra; Waste, Inc. Cost Conservation Chem. Co., supra. Liability is strict, as is true under CERCLA, though there is legislative language that can be cited to the contrary. United States v. Northeastern Pharm. & Chem. Co., 810 F. 2d 726 (8th Cir. 1986); Cox v. City of Dallas, 256 F. 3d 281 (5th Cir. 2001) (court cites case law and legislative history supportive of strict liability and cites contrary legislative history).

Jurisdiction over such action is granted to the United States District Court pursuant to that same subpart:

> Any action under paragraph (a)(1) … shall be brought in the district court for the district in which the alleged violation occurred or the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia.

Sauers v. Pfiffner, 29 Env't Rep. Cas (BNA) 1716 (D. Minn. March 23, 1991) (venue proper where violation or endangerment occurs).

The grant of jurisdiction extends to all parties, regardless of the amount at issue and in controversy and regardless of the citizenship of the parties; and, the court's power is broad, including the power to grant injunctive relief:

> The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

The nature of the remedy, under a Citizen Suit, is injunctive in nature, which can include an order that the defendant is responsible for site investigation, monitoring and testing costs as well as an order barring further endangerment; however, such a claim cannot be brought for money damages, such as plaintiff's past cleanup costs. Mehrig v. KFC Western, Inc., 516 U.S. 479 (1996) (CERCLA, not RCRA, provides the framework for recovery of past cleanup costs); Interfaith Community Organization v. Honeywell, Inc., 399 F. 3d 248 (3rd Cir. 2005) (defendant ordered to abate the endangerment by removal of the contamination); Tanglewood E. Homeowner v. Charles-Thomas, Inc., 849 F. 2d 1568 (5th Cir. 1988) (the remedy package includes civil penalties, injunctive relief and attorney fees); Walls v. Waste Resource Corp., 761 F. 2d 311 (6th Cir. 1985) (there is no private cause of action for economic compensation or F. 2d 311 (6th Cir. 1985) (there is no private cause of action for economic compensation or punitive damages); Express Car Wash Corp. v. Irinaga Brothers, Inc., 967 F. Supp. 1188 (D. Or. 1997) (while declining to issue an injunction requiring plaintiff to pay response costs that may be incurred in the future, the court noted that a request to require defendant to take additional action

to address the contamination, including that it take over responsibility for the remediation, would be viable); cf. Southern Fuel Co., supra. (cannot transform a claim for damages into one for equitable relief by requesting an injunction that orders the performance of future abatement work because RCRA does not provide for the payment of restoration costs); Fallowfield Dev. Corp. v. Strunk, 1993 WL 157723 (E.D. Pa.) (order to remediate the site not permitted under RCRA, where CERCLA remedy was available). Damage claims can be asserted as separate counts with a request that the federal court exercise supplemental jurisdiction, pursuant to 28 U.S.C. Section 1367 (a) and (c), over such claims (such as state common law claims for trespass, nuisance, etc.). Murray v. Bath Iron Works, 867 F. Supp. 33 (D. Maine 1994) (claims under state law can be filed in federal court with Citizen Suit claim, as the state claims do not "substantially predominate"); City of Toledo v. Beazer, supra; Nuckols, supra. (assertion of state common law claims for nuisance and trespass addressed); but see Avondale Federal Savings Bank v. Amoco Oil Company, 997 F. Supp. 1073 (N.D. Ill., E. Div. 1998) (court declines exercise of supplemental jurisdiction after barring a RCRA Citizen Suit).

Costs, including attorney and expert fees, may be awarded to the prevailing or substantially prevailing part pursuant to 42 U.S.C. Section 6972(e):

> The court may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate.

Bowder v. Moab, 2005 LEXIS 22200 (10th Cir. 10/14/05) (court, after noting the dearth of case law construing the statute, reversed the trial court's denial of attorney fees, noting, on remand, that while such award is discretionary, where a party has prevailed on at least one count, thereby changing the legal relationship between the parties, that party qualifies for consideration of an award of fees); Environmental Defense Fund v. EPA, 1 F. 3rd 1254 (D.C. Cir. 1993) (fees granted to "prevailing" party, with an excellent discussion of that term and how request for fees

should be analyzed); Fallowfield Dev. Corp., supra. (fee request denied, noting court's granting of such claims have done so where, unlike here, the suit was brought to benefit a community, rather than an individual property).

B. Unauthorized Discharges in Violation of Clean Water Act Section 301(a)'s Discharge Prohibition.

i. Discharge in Violation of the General Permit.

Under the CWA, the discharge of any pollutant is unlawful except in compliance with specified CWA provisions. See 33 USC §1311(a). The CWA and its implementing regulations require any person who discharges or proposes to discharge pollutants into waters of the United States in California to submit a National Pollutant Discharge Elimination System ("NPDES") permit application to the State Water Resource Control Board ("State Board"). 40 CFR §122.21(a) ["Duty to Apply"], §122.26(a)(ii) ["Permit Requirement"]; 33 USC §1342(p)(2)(b).

Veolia does not possess any individual NPDES wastewater permit for its discharges of contaminated wastewater into public aquifers from various wastewater ponds and storage tanks.

Furthermore, the requirement to obtain coverage under a General Permit applies to the following: "material handling sites, sites used for the storage of maintenance of material handling equipment… Shipping and receiving areas, storage areas (including tank farms) for raw materials… intermediate and finished products… and areas where industrial activity has taken place in the past and significant materials remain." Significant materials are defined to include "raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act; The Facility currently uses storage tanks to hold used and hazardous substances as defined above in section 101(14).

According to site investigations conducted by the California Water Board, pollutants found in the aquifers surrounding your wastewater ponds and tanks include, but are not limited to the following: TDS, nitrate (as nitrogen), barium, strontium, radium, and uranium. Additionally, mercury and sodium lignin sulfonate are observed in groundwater at levels above background water quality conditions.[9]

ii. Discharges of Pond Water from Molycorp Site Contain Elevated Levels of Numerous Pollutants.

The California Regional Water Quality Control Board, Lahontan Region (Water Board), Finds:

1. Molycorp Minerals, LLC, a wholly-owned subsidiary of Molycorp Incorporated (Molycorp, Inc.), owns and operates an open pit mine, mill, and ore processing facilities (Mine) for the economic extraction of lanthanide elements in Mountain Pass. Molycorp Minerals, LLC, has been actively remediating this Site since 2008. The Mine is located within an area (2.223 acres) of land that is in sections 11, 12, 13, 14, and 15, Township 16 North (T16N), Range 23 East (R13E), and sections 30 and 31, T16N, R14E, San Bernardino Baseline and Meridian, in San Bernardino County, California, hereafter referred as the "Site." The mailing address is: HC1, Box 224, Mountain ass, CA 92366. For the purposes of this Cleanup and Abatement Order (Order), Molycorp Minerals, LLC, is hereafter referred to as the "Discharger."

3. This Order is issued to the Discharger based on provisions of California Water Code, sections 13304 and 13267, which authorize the Executive Officer of the Water Board to issue a Cleanup and Abatement Order where a discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the state and United States and to require said discharger to submit technical and monitoring reports.

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[9] Taken from page 2, paragraph 6 from Cleanup and Abatement Order R6V-2014-0062

4. Groundwaters in the Ivanpah Valley and Upper Kingston Valley Groundwater Basins and surface waters (including ephemeral springs) in the Ivanpah Hydrologic Unit that are tributary to Wheaton Wash have been polluted by waste discharges from unlined tailings ponds and unlined product storage ponds used in lanthanide mining date back to the 1950s.

5. This Order requires the Discharger to clean up and abate groundwater contaminated by mining operations; to submit technical and monitoring reports; and to maintain adequate financial assurances.

Sources

6. Site investigations show that groundwater beneath the Site and adjacent areas are polluted with TDS, nitrate (as nitrogen), barium, strontium, radium, and uranium. Additionally, mercury and sodium lignin sulfonate are observed in groundwater at levels above background water quality conditions. Radium is also detected in some wells east of the Site, beneath Wheaton Wash, at concentrations that are above state maximum contaminant levels (MCLs) (2001, Site Investigation Report). The discharges have contaminated groundwater and comingled with groundwater contaminated by waste discharges from other locations at the Site, causing conditions of pollution in some areas. Contaminated and polluted groundwater is located beneath the Site (on-site) as well as outside of the Site boundaries (off-site [see Attachment]). Off-site, groundwater contamination is located primarily beneath federal lands under management of the U.S. Bureau of Land Management (BLM) and potentially beneath national Park Service (NPS) lands.

7. The ongoing (residual) and past waste discharges to groundwater from: (a) closed North Tailings Pond P-16, (b) the drainages that were used for product and waste

storage, and (c) closed West Tailings Pond P-1, violate waste discharge requirements (WDRs) in Board Order Nos. 6-00-74 and R6V-2004-0042 for this Site and the *Water Quality Control Plan for the Lahontan Region* (Basin Plan).[10]

8. Interim Corrective Actions

a. Pond P-16

i. Currently, discharges from Pond P-16 occur due to the settlement and drainage of free water from the historical tailings solids. To augment the tailings seepage collection system (initiated in 1994), an enhanced system of capture was installed in 2000 (extraction wells 2000-4RW and 2000-5RW). This is referred to as the Pond P-16 Interim Remedial Measures (IRM).

ii. Mathematical modeling was conducted to assess the effectiveness of Pond P-16 collection system in 2002, which indicated that the extraction system was capturing greater than 90 percent of the discharges from Pond P-16. From 2005 through 2008, system effectiveness declined, falling below the 85 percent performance standard required by CAO No. 6-98-19 A1. The Discharger performed an evaluation of the extraction system and submitted a report *Recovery Well Performance Evaluation*, dated December 1, 2008. That report provided an assessment of the Pond P-16 extraction system and the work that was performed to rehabilitate several extraction wells, resulting in an increased extraction rate that met the performance standard. Based on this assessment, the extraction system appears to have the capacity for greater groundwater capture.

[10] The basin Plan is available at: http://www.waterboards.ca.gov/lahontan/water issues/programs/basin plan/references.shtml

iii. Discharges without NPDES Permit Authorization

40 CFR Section 122.21(a) provides that "Any person who discharges pollutants… and does not have an effective permit...must submit a complete application" for an NPDES permit. Veolia has a duty to apply for an NPDES permit to regulate the discharge of pollutants from the Molycorp Facility.

Veolia has not applied for NPDES permit coverage for the discharges of industral pollutants from the facilities. You have discharged and are continuing to discharge pollutants to aquifers of the United States from the exessive leakage from wastewater ponds operated by Veolia.

C. Superfund or Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or CERLCA Standard Violations

VI. Lack of Compliance & Reasonable Plan of Action

A. Executive Summary Feasibility Study Report Dated October 30, 2014

On October 30, 2014 Molycorp Minerals LLC produced to the California Water Board an extensive Feasibility Study Report (FS) to address the requirements of Cleanup and Abatement Order (CAO) No. R6V-2014-0062, which was adopted by the California Regional Quality Control Board (RWQCB) Lahontan Region (RWQCB, July 2014).

The report provided a comprehensive evaluation of potential remedial measures for addressing documented groundwater impacts related to past mining operations at the site. The key tool proposed for evaluating the relative effectiveness of the systems and potential enhancements needed for the site was a numerical 3-D groundwater flow and mass transport model.

However, a comprehensive review of recovery system performance will be conducted 5 years after system implementation to verify the accuracy of model predictions. At that time, recommendations may be made to streamline or expand the monitoring and/or recovery systems, or to implement the contingency alternatives described above. The calibrated groundwater model developed for this study may be used as a tool to assist in these evaluations.

B. October 5, 2015 Water Board Responds to Molycorp's October 30, 2014 Feasibility Report

On October 30, 2014, the California Regional Water Quality Control Board, Lahontan Region (Water Board) staff received a Feasibility Study Report (Report), prepared by Molycorp Minerals LLC., (Molycorp) and TRC, to cleanup and abate groundwater impacts from historical and recent mining waste discharges at the Mountain Pass Mine site. This Report was submitted in response to Cleanup and Abatement Order R6V-2014-0062 (CAO), requirement Order No. 3, issued July 22, 2014. Based on the information provided in this Report, Water Board staff cannot accept the Report.

Molycorp has not complied with CAO Order No. 3.a. by providing the results of an updated groundwater model of the mine site, and CAO Order No. 3.a. by providing the cleanup strategies as compared to the existing interim remediation. However, Molycorp has not complied with CAO Order No. 3.c., which requires estimated times and costs for cleanup to background water quality conditions.

Report Conclusions

The main conclusions presented in the Report include the following:

- Cleanup to site backgroundwater quality conditions for the constituents of concern (COCs) involved in the groundwater release is not feasible;

- Onsite groundwater contaminant plume control using groundwater extraction is only feasible corrective action strategy;
- Onsite groundwater extraction (mass removal) and surface treatment/disposal is the only viable remediation method; and
- Installation of an off-site remediation system is not feasible.

Remedial Action Objectives

The Report establishes two remedial action objectives (ROAs), upon which alternative remediation strategies were measured against: 1) on-site, hydraulic plume containment, and 2) ongoing, increased mass removal.

General Comments

1. Based on the information in the Report, Water Board staff conclude that neither the preferred alternative nor other seven alternatives presented will remediate the groundwater to meet water quality objectives (California Drinking Water Standards) and therefore will continue to adversely impact the beneficial uses (for municipal use) of the aquifer for the areas beneath Molycorp property and immediately adjacent to Molycorp properly excess of 30 years. This is based on the graphical modeled results in the Report with a remediation time of 45 years.

2. The Report does not provide a risk assessment to human health and the environment for risks posed to both onsite and offsite receptors

during the cleanup time period. Molycorp must provide this analysis considering such and extended remediation time frame.

3. The proposed remediation essentially constitutes an active groundwater extraction system, and onsite treatment disposal that would operate in excess of 45 years, which does not provide for a reasonable cleanup time period assuming a mass removal time period In excess of 45 years). Please provide justification for this extended remediation time frame.

4. The report does not propose to cleanup to those water quality objectives below which the residual levels would not pose a risk to the most sensitive receptors. Please provide those cleanup levels.

5. The Report does not clearly show when COCs will be reduced to concentrations that will not adversely impact beneficial uses designated to the ground waters beneath the site. Please provide the time-frame to achieve this goal or additional justification as to why this cannot be achieved.

6. For the areas east of the mine site in Wheaton Wash, the preferred remediation alternatives appears to indicate groundwater impacts beneath the upper and lower portions of Wheaton Wash will decline to levels "approaching background." Exceptions include the "hot spot" occurring in well WW-11, in Wheaton Wash, which may be influenced by flows along deeper structures (fault/fractures). However, remediation of this hospot was not proposed. Please provide remediation alternatives for this hot spot or justifivation as to why this area cannot be remediated.

7. The parameters used in the Report included costs of wastewater handling (storage/disposal/processing) and wastewater disposal capacity. It is unclear if these costs assumed augmentation of existing mine processing systems or design of new independent treatment systems. If existing processing facilities are intended to be the only treatment facilities, the maximum capacity that those facilities can handle before augmentation of the infrastructure must be installed should have been presented. If new independent treatment systems need to be installed, a cost comparison of installing new facilities versus augmenting the existing facilities should also have been included. Please provide clarification and/or this additional information.

C. February 29, 2016 Response to Board Staff Comments on the Feasibility Study Report

This letter is a response from Molycorp Minerals, LLC ("Molycorp") to the above-referenced comment letter, dated October 5, 2015, pertaining to the Feasibility Study (FS) Report for groundwater submitted to Board staff on October 30, 2014. The letter notes various deficiencies I the report, and aspects requiring clarification, but most significantly indicates the Board's rejection of the report for failing to comply with Order No. 3c of the CAO, which requires time estimates and costs for cleanup of groundwater to background water quality conditions. Molycorp is of the opinion that the report demonstrates the infeasibility of this objective, and fairly evaluates a range of reasonable alternatives that are protective of existing beneficial uses. Based on the substantial period of monitoring and remedial history, it is clear to us that the site is not compromised. Our responses to the general and specific comments raised by Board staff are provided below.

As Board staff we are aware, Molycorp's Mountain Pass operation has suffered significant challenges since submittal of the FS report in 2014. Molycorp is hoping to emerge from bankruptcy later this year and likely under new ownership. While Molycorp is committed to continuing work on the FS report, current conditions will likely require Molycorp to request extended time schedules to revise and resubmit this Feasibility Study report.

EXECUTIVE SUMMARY

This Feasibility Study Report (FS) has been prepared to assess appropriate groundwater corrective measure at Molycorp Minerals LLC's (Molycorp's) Mountain Pass Mine and Mill Site (site) located in eastern San Bernardino County, California (Figure 1.1). This FS addresses the requirements of Cleanup and Abatement Order (CAO) o. R6V-2014-0062, which was recently adopted by the California Regional Quality Control Board (RWQCB) Lohontan Region (RWQCB, July 2014). This report provides a comprehensive evaluation of potential remedial measures for addressing documented groundwater impacts related to past mining operations at the site. The key tool in evaluating the relative effectiveness of these systems and potential enhancements needs for the site is a numerical 3-D groundwater flow and mass transport model.

An assessment of any remaining surface contamination was also required by the CAO, and a comprehensive soil report was submitted to RWQCB staff for review earlier this year (TRC, February 2014). That work concluded that while some areas of the site still exhibit impacted soil that will require remediation, those areas are relatively small and residual soil does not constituent a significant continuing risk to groundwater quality. Extensive soil excavation was conducted in 2005-2006 to address areas with elevated concentrations of mining-related constituents, and ultimately resulted in the excavation and onsite disposal of approximately 250,000 cubic yards (cy) of impacted soil and residual product materials from site impoundments and drainages. The modeling work present in this FS assumes that there are no significant continuing sources to groundwater, based on the soil investigation, the extensive exaction work,

and on the closure and covering of site impoundments which were the primary sources of groundwater impacts.

The primary object of this FS was to develop a final, holistic strategy for containment and remediation of onsite and offsite groundwater that has been affected by operations extending back to the commencement of mining more than 60 years ago. Several interim remedial measures (IRMs) and facility impoundment closures have been conducted since then, and groundwater conditions have improved in many areas as a result. However, residual mining-related constituents remain in groundwater at elevated concentrations in a number of onsite areas and extend offsite. Effective capture and recovery of impacted groundwater at the site has been hindered by the breadth of existing impacts, the heterogeneity of the fractured bedrock and cemented debris flow sedimens, and the typically low permeability of these formations. Based on recovery operations conducted over the last 20-plus years, and the results of recent modeling contained in this FS, it is considered impractical that background water quality conditions can be restored to pre-mining levels.

Fortunately, the majority of site impacts are comprised principally of constituents that exceed only secondary ("sensory-based") drinking water standards (MCLs) established for domestic water supplies (e.g., TDS, chloride and sulfate). The number and extent of constituents that exceed primary MCLs is much more limited and with the exception of nitrate, are confined to onsite areas. Regardless of the remedial alternative selected, adverse human health effects posed by site constituents are unlikely due to the non-hazardous nature of site constituents and to the limited occurrence and offsite extent of constituents exceeding MCLs.

Prior to identifying the remedial alternatives, the first step was to define the Remedial Action Objective (RAOs) against which the alternatives are evaluated. Based on the above considerations, it is Molycorp's position that potential remedial action alternatives are most appropriately evaluated on the basis of attaining the following RAOs):

(1) Enhanced perimeter control/onsite containment of impacted water.

(2) `Removal of constituent mass to the extent practicable.

RAO (1) is the primary and more heavily weighted RAO. Onsite groundwater is not used for domestic purposes, but protection of offsite beneficial uses/resources such as the fresh water withdrawal in the Shadow Valley and Ivanpah Basins is paramount. Removal of constituent mass, RAO (2) should improve onsite water quality over time and lessen the potential for future offsite migration that could impact benefit uses. However, mass balance evaluations presented in this FS indicate that mass recovery efforts will not appreciably reduce the total mass in the system, regardless of alternative considered, and that restoration of the site to background conditions is infeasible. Therefore, this RAO was assigned half the weight of RAO (1). The focus of this FS is therefore more on preserving potential beneficial uses offsite of mine sit property, via enhanced perimeter control, than on restoring background water quality.

Initial screening of General Response Actions (GRAs) and technologies was conducted prior to developing the remedial alternatives. The GRAs were screened on the basis of their relative effectiveness in meeting the RAOs, on their implementability (technical viability, reliability, permitability), and cost. This was a relatively streamlined process, as extensive remedial work has been conducted at the site and both recovery and treatability options are well known. The short listed GRAs were hydraulic capture and mass removal onsite recovery wells, and treatment using reverse osmosis with recycling or disposal of brine streams to the OEP (through these brines eventually undergo recycling or disposal of brine streams to the OEP (through these brines eventually undergo recycling as well). Consideration of potential offsite recovery for plume control was rejected at this stage, primarily on the basis of implementability due to the significant land disturbance and permitting issues involved, but also to obvious cost-benefit factors in accessing distal, relatively low concentration areas of the plume which largely only equated to exceedances of secondary drinking water standards.

The maximum case scenario did not, however, include the potential recovery wells at P-16. One key objective of this FS in addressing the CAO was to assess the effectiveness of the IRM in the P-16 area. An updated water balance was performed using the calibrated model to evaluate the current system's performance against recovering at least 85 percent of tailings seepage, a CAO/WDR requirement. The waater balance indicates that capture provided by the current system using 2014 rates would be short by approximately 0.9 gpm. Molycorp considers the calculated 0.9 gpm shortfall to be reasonably compliant with the 85 percent capture criterion, i.e., that the current system is reasonably effective in capturing the ever-declining volume of P-16 seepage, in essence meeting RA No. 1 specific to the P-16 impoundment. The small shortfall certainly does not warrant the significant expenditure needed for installing wells, utilities, storage and conveyance facilities, and treatment, not to mention for considerable operational difficulties in maintaining recovery wells in the P-16 tailings dam area. It is evident that any effects from residual P-16 on downgradient water quality are rapidly waning based on the generally decreasing concentrations observed downgradient of P-16. In lieu of new wells and facilities, Molycorp will plan to optimize the existing system such that production rates can be increased by several gpm, which will thus surpass the 85 percent capture criterion. Most of the well rehabilitation work that could be performed has been done, but storage and treatment capacity limitations have periodically curtailed maximum well production. Molycorp plans to modify current VSEP treatment system operation for P-16 tailings water treatment, such that a current backup system will be more fully utilized. When completed, it is believed that the current 2014 well recovery rates can be increased such that the 85 percent criterion is met. The performance of the optimized system will be reported during the 2015 P-16 IRM system evaluation report.

Potential mass recovery efforts in the Central Drainage/hotspot area of the site or near P-1 do not substantially affect downgradient concentrations due to limited yields from the generally low permeability formations, and do not materially affect the overall solute mass in the

groundwater system. The need for continued or enhanced IRM operation in these areas do not appear to be warranted based on the model simulations.

Molycorp purpose is to provide the Lahontan Region Water Quality Control Board with an updated, Revised Feasibility Study Report no later than July 1, 2017. We understand that this is an extended request but feel it is appropriate given the time that can be required for new modeling scenarios and incorporating a risk analysis component into the report. Additionally, while our current ownership and financial situation does not preclude continuing site remediation and planning for future activities, including revision of the Feasibility Study Report, it does require that we request additional time above what we would normally seek due to budgetary and implementation constraints.

V. Counsel

CAPE has retained legal counsel to represent it in this matter. Please direct all communications to:

Frank Frisenda (SB#85580) Frisenda, Quinton & Nicholson 8275 S. Eastern Avenue Suite 200 Las Vegas, Nevada 89123

Frank Frisenda is a member of the California Bar and rated "AV Preeminent" by Martindale-Hubbell and has received America's Most Honored Professionals Top One Percent Award, certified by American Registry.

VI. Remedies

CAPE will seek declaratory and injunctive relief preventing further CWA violations pursuant to CWA sections 505(a) and (d), 33 USC §1365(a) and such other relief as permitted by law. In addition, CAPE will seek civil penalties pursuant to CWA section 309(d), 33 USC § 1319(d) and 40 CFR section 19.4, against You in this action of up to $25,000 a day for Your

CWA violations. *See* 69 Fed. Reg. 7121 (Feb. 13, 2004). CAPE will seek to recover attorneys, experts' fees and costs in accord with CWA section 505(d), 33 USC § 1365(d).

CAPE intends to seek injunctive relief preventing further violations of RCRA pursuant to Section 7002(a), 42 USC § 6972(a), and such other relief as is permitted by law.

In addition to the violations set forth above, this notice covers all ongoing Violations of the CWA and RCRA and violations evidenced by information which becomes available to CAPE after the date of this Notice Intent to File Suit.

CAPE believes this Notice of Violations and Intent to Sue sufficiently states grounds for filing suit. CAPE intends, at the close of the 60-day notice period or thereafter, to file citizen suit under CWA section 505(a) against You for the above-referenced violations. At the close of the 90-day notice period or thereafter, CAPE intends to amend its CWA complaint to add violations pursuant to RCRA section 7002(a)(1)(B).

CAPE seeks a mutually beneficial discussion relating to effective remedies for the violations referenced in this Notice. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate these discussions immediately so that a resolution may be reached before the end of the 60-day notice period (for CAPE's alleged CWA violations) and 90-day notice period (for CAPE's alleged RCRA violations). Although CAPE is always interested in avoiding unnecessary litigation, in order to preserve its remedies, CAPE will not delay filing a complaint if satisfactory remedy has not been reached by the time the applicable notice periods have expired.

Should you have any questions, please do not hesitate to give me a call at my direct line number 702/792-3910.

Sincerely,

Frank Frisenda

Enclosure
CD