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MAR 21 2017
BY:

March 15, 2017

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sergio Perez
SA Recycling LLC
3055 Commercial St
San Diego CA 92113

Corporation Service Company dba Lawyers Incorporating Service
2711 Centerville Road, Suite 400
Wilmington, DE USA 19808

Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
SA Recycling LLC's Violations of General Industrial Permit

Dear Mr.Perez:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding SA Recycling LLC's ("SA Recycling") violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (Industrial Permit).[1] This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and Industrial Permit for SA Recycling's facility located at 3055 Commercial Street, San Diego, CA ("Facility"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of SA Recycling's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from SA Recycling's ongoing illegal activities are discharged, namely Chollas Creek, San Diego Bay, and ultimately the Pacific Ocean.

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[1] The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New Industrial Permit."

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The public and members of CERF use Chollas Creek, San Diego Bay, and the Pacific Ocean to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the SA Recycling Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by SA Recycling Owners and/or Operators' failure to comply with the Clean Water Act and the Industrial Permit.

II. Storm Water Pollution and the Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial Permit in order to lawfully discharge. SA Recycling enrolled as a discharger subject to the New Industrial Permit on January 28, 2015 with WDID No. 9 37I022545. SA Recycling originally enrolled under the Industrial Permit on March 3, 2010.

Pursuant to the Industrial Permit, a facility operator must comply with all conditions of the Industrial Permit. Failure to comply with the Industrial Permit is a Clean Water Act violation. (Industrial Permit, § C.1; New Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a Industrial Permit renewal application. (*Id.*). As an enrollee, SA Recycling has a duty to comply with the Industrial Permit and is subject to all of the provisions therein.

B. The SA Recycling Facility Discharges Contaminated Storm Water in Violation of the Industrial Permit

Discharge Prohibition A(2) of the Industrial Permit and Section III.C. of the New Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. (See New Industrial Permit, §III.D.; §VI.A.). "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(Industrial Permit, Fact Sheet p. viii; New Industrial Permit, §XX.B.1; 33 U.S.C. § 1311(b)(I)(C)). The SA Recycling Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the SA Recycling SWPPP pursuant to section New Industrial Permit Section

XX.B.

The monitoring data for the SA Recycling Facility indicates consistent, ongoing exceedances and violations of the Industrial Permit. The SA Recycling Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. SA Recycling's sampling data reflects numerous discharge violations. SA Recycling's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

As reflected below, the Facility has exceeded the CTR and benchmarks during every significant rain event.

No.	Date	Parameter	Units	Result	Benchmark/WQO	NAL
1	4/26/12	pH	units	6.2	6.5-8.5	6.0 - 9.0
2	4/26/12	Zinc	mg/L	.157	.12[2]	.26
3	4/26/12	Copper	mg/L	.065	.013[2]	.0332
4	12/12/12	Aluminum	mg/L	.869	.75[1]	.75
5	12/13/12	Conductance	umhos/cm	337	200	-
6	12/13/12	Iron	mg/L	1.53	1.0[1]	1.0
7	12/13/12	Copper	mg/L	.499	.013[2]	.0332
8	12/13/12	Zinc	mg/L	.437	.12[2]	.26
9	3/8/13	Conductance	umhos/cm	387	200	-
10	3/8/13	Copper	mg/L	.082	.013[2]	.0332
11	3/8/13	COD	mg/L	185	120[1]	120
12	10/10/13	Conductance	umhos/cm	852	200	-
13	10/10/13	Copper	mg/L	.086	.013[2]	.0332
14	10/10/13	Zinc	mg/L	.136	.12[2]	.26
15	2/27/14	Conductance	umhos/cm	761	200	-
16	2/27/14	Copper	mg/L	.020	.013[2]	.0332
17	11/21/14	Conductance	umhos/cm	884	200	-
18	11/21/14	Copper	mg/L	.028	.013[2]	.0332
19	11/21/14	COD	mg/L	136	120[1]	120
20	5/18/15	Conductance	umhos/cm	601	200	-
21	5/18/15	Copper	mg/L	.071	.013[2]	.0332
22	5/18/15	Zinc	mg/L	.133	.12[2]	.26
23	5/18/15	Iron	mg/L	1.63	1.0[1]	1.0
24	11/4/15	Zinc	mg/L	.126	.12[2]	.26
25	11/4/15	Iron	mg/L	2.12	1.0[1]	1.0
26	1/5/16	Zinc	mg/L	.133	.12[2]	.26
27	1/5/16	Iron	mg/L	2.11	1.0[1]	1.0
28	12/21/16	Zinc	mg/L	.854	.12[2]	.26

29	12/21/16	Iron	mg/L	1.72	1.0[1]	1.0
30	12/21/16	Copper	mg/L	.734	.013[2]	.0332
[1] EPA 2015 Multi Sector General Permit Benchmark, Table 8.N-1						
[2] California Toxics Rule Limit						

Every day the SA Recycling Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the New Industrial Permit is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).The SA Recycling Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since SA Recycling's enrollment. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the Permit.

C. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology

The New Industrial Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the Best Available Technology Economically Achievable (BAT) for toxic pollutants[2] and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.[3] Specifically, the Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (New Industrial Permit, §I.D.32; see also, §V.A.).

EPA Benchmarks are the pollutant concentrations which generally indicate whether a facility has successfully developed or implemented BMPs that meet the BAT/BCT. Discharges with pollutant concentration levels above EPA Benchmarks and/or the CTR demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants. The Facility's monitoring data demonstrates consistent exceedances of not only the CTR, but also EPA benchmarks. (See monitoring data above).

Thus, SA Recycling's storm water discharge sampling data demonstrates the Facility has not developed and/or implemented BMPs that meet the standards of BAT/BCT. (See *Baykeeper, supra*, 619 F.Supp. 2d at 925 ["Repeated and/or significant exceedances of the Benchmark limitations should be relevant" to the determination of meeting BAT/BCT]).

Further, information available to CERF indicates SA Recycling has failed to implement and/or develop BMPs that meet BAT and BCT. Notably, even since implementation of the revised BMPs noted in the Level 1 ERA Report, the Facility continues to discharge contaminated storm water that exceeds applicable water quality standards. (See, Appendix F, Level 1 ERA Report, p. 3). CERF's investigation also reveals extensive scrap metal and waste materials exposed (without implementation of BMPs). Both Regional Board staff and City of San Diego inspections reveal exposed sediment and metal shards, oil and hydraulic fluid leaks and stains, and uncovered scrap metal storage bins and rusty metals. (See, Exhibit A, Regional Board Site Visit Photos).

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[2] Toxic pollutants are found at 40 CFR § 401.15 and include, but are not limited to: lead, nickel, zinc, silver, selenium, copper, and chromium.

[3] Conventional pollutants are listed at 40 CFR § 401.16 and include biological oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease.

Notably, Permit Effluent Limitation V.A. is a separate requirement, independent of the iterative process triggered by exceedances of the Permit's NALs. "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives." (New Industrial Permit, §I.M.63). Thus, the NALs do not represent technology-based criteria relevant to determine whether an industrial facility has implemented BMPs that achieve BAT/BCT. Therefore, development of an Exceedance Response Action Plan pursuant to Permit Section XII neither addresses nor alleviates the aforementioned violations of Effluent Limitation V.A.

In summary, the SA Recycling Owners and/or Operators are seriously in violation of Section V.A. of the Industrial Permit. Every day SA Recycling operates with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements is a separate and distinct violation of the Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311 (a)). Therefore, SA Recycling has been in daily and continuous violation of the BAT/BCT requirements of the Industrial Permit every day since at least March 15, 2012, and is subject to penalties for all such violations.

These violations are ongoing and SA Recycling will continue to be in violation every day it fails to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Facility.

D. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements of the Industrial Permit (and New Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (Industrial Permit §A; New Industrial Permit, Finding I.54, §X). SA Recycling has not developed an adequate SWPPP as required by the New Industrial Permit.

The SA Recycling SWPPP dated August 2016 also fails to adequately assess the Facility's potential contribution of 303(d) listed pollutants to receiving waters. Per section X.G.2.a.ix of the New Industrial Permit, the SA Recycling Owners and/or Operators are required to assess the potential industrial pollutant sources to receiving waters with 303(d) listed impairments identified in Appendix 3. (New Industrial Permit, §X.G.2.a.ix). The SWPPP fails to identify all 303(d) listed constituents for Chollas Creek, including phosphorus and total nitrogen.

The SWPPP thus fails to assess the potential presence of any of these 303(d)-listed constituents at the Facility. This is completely inadequate, especially because the EPA Fact Sheet for Sector N specifically identifies numerous additional pollutants associated with scrap recycling facilities, including nitrogen.[4] (New Industrial Permit, §XI.B.6.c.). In addition, San Diego Bay is listed as impaired for Polychlorinated biphenyls (PCBs), which are identified as a potential pollutant at the Facility. (SWPPP, Appendix B, p. 2). Nonetheless, SA Recycling has failed to include PCBs among its monitored constituents. (New Industrial Permit, §XI.B.6.c.). Further, though the SWPPP identifies mercury switches and mercury bulbs as potential pollutants, the Facility fails to monitor for mercury in its discharge, as required by the Permit. (New Industrial Permit, §XI.B.6.c.).

Further, despite the numerous and egregious water quality violations established by SA Recycling's monitoring data, the SWPPP BMPs have not been adequately updated to address such exceedances.

Every day the SA Recycling Owners and/or Operators operate the Facility without an

[4] https://www.epa.gov/sites/production/files/2015-10/documents/sector_n_scraprecycling.pdf

adequate SWPPP constitutes a separate and distinct violation of the Industrial Permit, the New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The SA Recycling Owners and/or Operators have been in daily and continuous violation of the Industrial Permit since at least March 15, 2012. These violations are ongoing and the SA Recycling Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the SA Recycling Owners and/or Operators are liable for civil penalties of up to $37,500 per day for violations prior to November 2, 2015, and $51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

E. Failure to Monitor

The SA Recycling Owners and/or Operators have failed to sample as required. Sections B(5) and (7) of the Industrial Permit required dischargers to visually observe and collect samples of storm water discharged from all locations where storm water is discharged. Facility operators, including the SA Recycling Owners and/or Operators, were required to collect samples from at least two qualifying storm events each wet season, including one set of samples during the first storm event of the wet season. Required samples were to be collected by Facility operators from all discharge points and during the first hour of the storm water discharge from the Facility.

The New Industrial Permit requires dischargers to take two samples between July 1 and December 31 and two samples between January 1 and June 30. (New Industrial Permit, §XI.B.2). Nonetheless, SA Recycling failed to comply with these requirements. Specifically, for sampling events on 10/6/2015, 11/4/2015, and 1/5/2016, SA Recycling failed to sample for copper. SA Recycling has further failed to sample the requisite number of qualified storm events for the first half of the 2016-2017 year and failed to sample at all during the second half of the 2016-2017 year.

Every day the SA Recycling. Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the SA Recycling Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The SA Recycling Owners and/or Operators are thus subject to penalties in accordance with the Industrial Permit – punishable by a minimum of $37,500 per day of violations prior to November 2, 2015, and $51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1).

F. Inadequate Implementation of BMPs and Level 1 ERA Report

The SA Recycling Level 1 ERA Report attempts to address Facility's NAL exceedances for Iron at the Facility. However, despite the numerous, historical exceedances, the Level 1 ERA Report fails to include or incorporate any treatment control advanced BMPs. Further, it is obvious from the latest monitoring data (December 21, 2016) that the Level 1 ERA BMPs have failed to reduce the Facility's discharge of pollutants. Iron levels for this monitoring event continue to exceed MSGP benchmarks and NALs. Further, despite the Level 1 ERA Report recommendation to "test" the use of MetalLoxx at the sump inlet, no monitoring has been conducted since the purported testing of this BMP. (Level 1 ERA Report, p. 3).

Every day the SA Recycling Owners and/or Operators fail to submit and implement an adequate Level 1 ERA Report is a separate and distinct violation of the New Industrial Permit and Section 301(a) of the Clean Water Act. (33 U.S.C. § 1311(a)). These violations are ongoing and the SA Recycling Owners and/or Operators will continue to be in violation every day they fail to revise, submit and implement an appropriate Level 1 ERA Report.

G. Unauthorized Non-Storm Water Discharges

Except as authorized by Section IV of the New Industrial Permit, permittees are prohibited from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. (New Industrial Permit, §III.B.; IV.A-B).

Information available to CERF indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur from the Facility's washing and cleaning activities. The SA Recycling Owners and/or Operators conduct these activities without BMPs to prevent related non-storm water discharges. City of San Diego inspection reports detail the unauthorized discharge of non-storm water from dust control washing activities.

Non-storm water discharges resulting from washing and cleaning activities do not qualify as authorized non-storm water discharges in Section IV.A. of the Permit. Notably, the San Diego Regional Municipal Separate Storm Sewer System (MS4) Permit Section E.2.a. prohibits the discharge of unauthorized non-storm water as an illicit discharge. Wash water is not listed among the authorized non-storm water discharges. (MS4 Permit, Section E.2.a.(3),(4)).

These discharge violations are ongoing and will continue until the SA Recycling Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the SA Recycling Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition III.B. of the Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). CERF will update the number and dates of violations when additional information becomes available. The SA Recycling Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since March 15, 2012.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

SA Recycling must develop and implement a SWPPP which complies with all elements required in the New Industrial Permit, including the requisite monitoring, and address the consistent, numerous, and ongoing water quality violations at the Facility. Should the SA Recycling Owners and/or Operators fail to do so, CERF will file an action against SA Recycling for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is $37,500 per day of violations prior to November 2, 2015, and $51,570 per day of violations occurring after November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; New Industrial Permit, §XXI.Q.1). CERF may further seek a court order to prevent SA Recycling from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

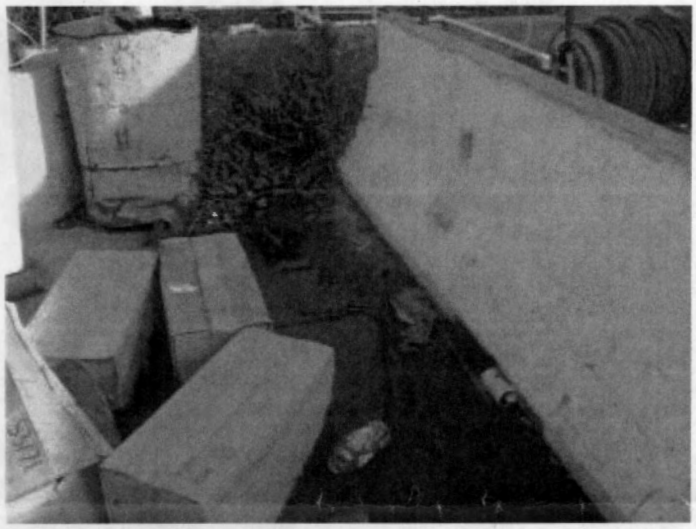
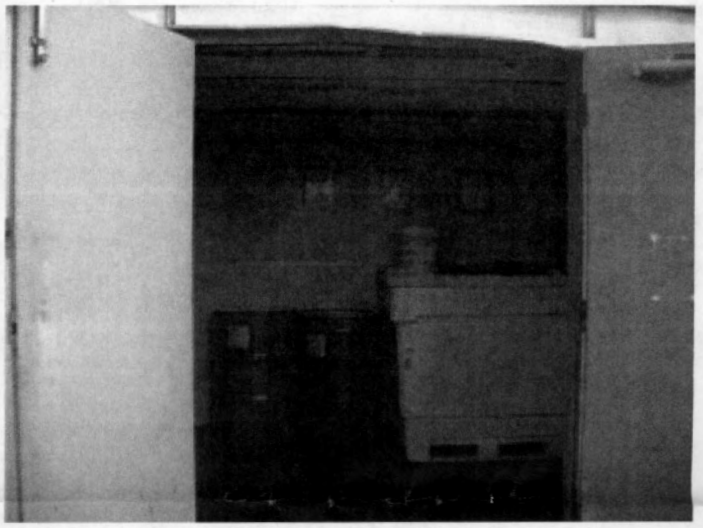
COAST LAW GROUP LLP

Marco A. Gonzalez

Livia Borak Beaudin
Attorneys for
Coastal Environmental Rights Foundation

cc:

Alexis Strauss **Acting Regional Administrator** **U.S. EPA, Region 9** **75 Hawthorne Street** **San Francisco, CA, 94105**	**Dave Gibson, Executive Officer** **Catherine Hagan, Staff Counsel** **San Diego Regional Water Quality Control Board** **2375 Northside Drive, Suite 100** **San Diego, CA 92108-2700**
Scott Pruitt **EPA Administrator** **William Jefferson Clinton Building** **1200 Pennsylvania Avenue N.W.** **Washington, DC 20004**	**Thomas Howard** **Executive Director** **State Water Resources Control Board** **P.O. Box 100** **Sacramento, CA 95812–0110**

EXHIBIT A

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