LAW OFFICE OF
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Via Certified Mailing – Return Receipt

July 26, 2016

Mr. Mark Schipper, Owner, CEO, President
Registered Agent for Service
San Benito Supply
1060 Nash Road
Hollister, CA 95023

Watsonville Facility:

Mr. Roland Schipper, Managing Agent
Mr. Mark Schipper, Owner
San Benito Supply
33 Riverside Road
Watsonville, CA 95076

King City Facility:

Mr. Benjamin R. Schipper, Managing Agent
Mr. Mark Schipper, Owner
San Benito Supply
1091 Industrial Way
King City, CA 93930

Soledad Facility:

Mr. Cody Mellmuth, Managing Agent
Mr. Mark Schipper, Owner
San Benito Supply
32340 Silliman Road
Soledad, CA 93960

Hollister Facility:

Mr. Joel Otta, Managing Agent
Mr. Mark Schipper, Owner
San Benito Supply
1060 Nash Road
Hollister, CA 95023

Paso Robles Facility:

Mr. Sam Schipper, Managing Agent
Mr. Mark Schipper, Owner
San Benito Supply
275 Marquita Avenue
Paso Robles, CA 93466

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

Dear Mr. Schipper and Managing Agents:

NOTICE OF ALLEGED VIOLATIONS

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 five (5) San Benito Supply facilities owned and operated by San Benito Supply ("the Facilities") and located at 33 Riverside Road in Watsonville, California; 1091 Industrial Way in King City, California; 32340 Silliman Road in Soledad, California; 1060 Nash Road in Hollister, California; and 275 Marquita Avenue in Paso Robles, California. Notice is being sent to you as the responsible owners, operators, and managers of the Facilities and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Paso Robles, Soledad, and King City facilities to the Salinas River, a CWA §303(d) waterway impaired for pesticides, salinity, pathogens, nutrients, sediment, toxicity, and miscellaneous; from the Watsonville facility to Salsipuedes Creek, a CWA §303(d) waterway impaired for salinity, pathogens, nutrients, sediment, and miscellaneous; and from the Hollister facility to the San Benito River, a CWA §303(d) waterway impaired for metals/metalloids, salinity, pathogens, toxicity, and miscellaneous.

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 National Pollutant Discharge Elimination System ("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. Environmental Protection Agency ("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 it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), 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.

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 United States EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the similar violations that have occurred, and continue to occur at the Facilities. Consequently, San Benito Supply and each of its named and identified five (5) individual Facilities, and its named and identified owners and operators (collectively, the "Dischargers") are placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Dischargers for continuing violations of an effluent standard or limitation, 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 Central Coast Region, Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan."

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The specific standard, limitation, or order alleged to have been violated.

To comply with this requirement, River Watch notices the Dischargers of ongoing violations of the substantive and procedural requirements of CWA §402(p) and violations of NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the "General Permit") relating to the production of "ready mix products for commercial, residential or homeowner products" at the Facilities *(see each Facility SWPPP, Section 2.1.2)*.

The Dischargers, rather than seeking coverage under individual NPDES permits, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board originally approved the NOI for all the Facilities on or about May 8, 2015, and the Dischargers were assigned Waste Discharger Identification ("WDID") numbers: Watsonville (3 44I025449), King City (3 27I025450),

Soledad (3 27I025451), Hollister (3 35I025453), and Paso Robles (345I025454). River Watch, on the basis of eye-witness reports and records publicly available and/or records in the possession and control of the Dischargers, contends that in the continuing operation of the Facilities, the Dischargers have failed and are failing to comply with the terms and conditions of the General Permit – specifically the requirements governing sampling and analysis, requiring the preparation and implementation of effective Best Management Practices ("BMPs") in their Storm Water Pollution Prevention Plan ("SWPPP"), and ensuring the elimination of all non-authorized storm water discharges from the Facilities.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch contends the Dischargers have failed and are failing to comply with the following specific General Permit requirements as detailed in the on-line SMARTs database for Annual Reporting Year 2015-2016.

The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ), imposes new sampling and reporting requirements. Under Section XI.B. ("Sampling and Analysis"), the Dischargers must collect and analyze storm water samples from two (2) qualifying storm events within the first half of each reporting year (July 1 to December 31), and from two (2) qualifying storm events within the second half of each reporting year (January 1 to June 30). The sampling and analytical results must be reported via SMARTs within thirty (30) days of obtaining the results. This General Permit requirement is specifically noted in Section 5.6.1 of each of the Dischargers' near-identical five May 5, 2015 SWPPPs.

A review of SMARTs database on July 25, 2016 revealed that the Dischargers have failed to provide any of the mandated samples from qualifying storm events to date during the 2015-2016 Annual Reporting year. The failure to do so by the five Facilities is in each case a violation of the General Permit.

2. *The activity alleged to constitute a violation.*

The Dischargers' operations, classified under SIC Code 3273 ("Ready-Mixed Concrete") in the five NOIs, include "Loading and unloading materials; Truck washout areas; Ready mix truck loading area; Fueling and auto/truck repair operations; and Mix batch plant" *(see each facility SWPPP, Section 2.1.2)*. The range of "Potential Pollutant Sources" from these activities include "dissolved solids, suspended solids, calcium sulfate, tricalcium aluminate, tetracalcium aluminoferrite, wastewater, nutrients, synthetic organics, gross pollutants, metals, and oil and grease" *(see each facility SWPPP, Section 2.3.1, including Table 2.1)*.

The work at the Facilities is conducted outdoors where it is subject to rain events. Because there is no State Water Resources Control Board or RWQCB exemption from the collecting and analyzing of the range of pollutants identified above, and without implementing effective BMPs, there are unlawful discharge(s) of the pollutants identified above from the Facilities to the Salinas River, Salsipuedes Creek, and the San Benito River – all waters of the United States.

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 Dischargers obtained coverage under the General Permit for the Facilities, but fail to comply with its environmentally protective requirements, in particular sampling/monitoring and the implementation of effective BMPs.

Note that in addition to the pollution controls in the General Permit, the RWQCB has established water quality standards applicable to facilities such as those operated by the Dischargers. The RWQCB Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing 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.

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

The persons and entities responsible for the alleged violations are San Benito Supply, Mr. Mark Schipper, owner and President of San Benito Supply, and the managing agents, referred to collectively in this Notice as the Dischargers.

4. The location of the alleged violation.

The location or locations of the various violations is/are the permanent addresses of the Facilities at 1060 Nash Road in Hollister, California (Hollister Facility), 33 Riverside Road in Watsonville, California (Watsonville Facility), 1091 Industrial Way in King City, California (King City Facility), 32340 Silliman Road in Soledad, California (Soledad Facility), and 275 Marquita Avenue in Paso Robles, California (Paso Robles Facility), including the waters of Salinas River, Salsipuedes Creek, and the San Benito River – all waters 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 May 8, 2015 to July 25, 2016. River Watch will from time to time further update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit Corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including

rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

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 directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

REMEDIAL MEASURES REQUESTED

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

1. Prohibition of the discharges of pollutants including, but not limited to, pH, total suspended solids, total organic carbon or oil & grease (the standard pollutants); the additional prohibition for iron under General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled for from facilities identified under SIC code 3273; and the prohibition of "Potential Pollutant Sources" identified in each of the Facilities' SWPPPs.

2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series: "Sector E: Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities" (EPA Office of Water, EPA-833-F-06-020, December 2006, https://www.epa.gov/sites/production/files/2015-10/documents/sector_e_glass.pdf);

3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit.

4. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Facilities and their operations.

5. Preparation of further updates to the Facilities' 2015 SWPPP that includes, but is not limited to, additional BMPs that address the violations alleged in this Notice Letter (with a copy provided to River Watch).

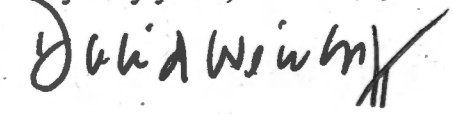
CONCLUSION

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 may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, and/or nature walks. Their health, use, and enjoyment of this natural resource is specifically impaired by the Dischargers' alleged violations of the CWA as set forth in this Notice.

CWA §§505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§1319(d), 1365. See also 40 C.F.R. §§19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Dischargers to contact River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to each facility. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Dischargers are in compliance with the strict terms and conditions of the General Permit, River Watch intends to file a citizen's suit under CWA §505(a) when the 60-day notice period ends.

Very truly yours,



David Weinsoff

DW:lhm

Service List

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