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***Via Certified Mailing – Return Receipt***

June 15, 2016

Mr. Mark A. Schleich, Deputy Director
County of Santa Barbara
Department of Public Works
Resource Recovery and Waste Management Division
130 East Victoria Street
Santa Barbara, CA 93101

Operations Manager/ Head of Agency
Santa Ynez Valley Recycling and Transfer Facility
4004 Foxen Canyon Road
Los Olivos, CA 93441

Clerk of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101

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

Dear Mr. Schleich, Operations Manager, Head of Agency and Clerk of the Board:

## 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 the Santa Ynez Valley Recycling and Transfer facility owned and operated by the County of Santa Barbara ("the Facility") located at 4004 Foxen Canyon Road in Los Olivos, California. Notice is being sent to you as the responsible owners, operators, and managers of the Facility and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Facility to an unnamed tributary of the Santa Ynez River, a CWA § 303(d) waterway impaired at various sections for sediment, salinity, nutrients, and pathogens.

Comprehensive regulation of storm water discharges is essential to ensuring the environmental protection of our waterways – particularly when the discharge is into impaired waters as those identified above. Storm water pollution from industrial sources conservatively accounts for more than half of the pollution impacting our local, state, and national surface waters, a central concern that prompted Congress to include storm water controls in the CWA. 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 United States 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 violations that have occurred, and continue to occur at the Facility. Consequently, the County of Santa Barbara (the "Discharger") is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, 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 Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan."

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

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

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of

NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the "General Permit") relating to the recycling services and operations at the Facility.

The Discharger, rather than seeking coverage under an individual NPDES permit, 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 on or about June 7, 2013, and the Discharger was assigned Waste Discharger Identification ("WDID") number 3 42I024287. River Watch, on the basis of eye-witness reports and records publicly available and/or records in the possession and control of the Discharger, contends that in the continuing operation of the Facility, the Discharger has failed and is 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 its Storm Water Pollution Prevention Plan ("SWPPP"), and ensuring the elimination of all non-authorized storm water discharges from the Facility.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch contends the Discharger has failed and is failing to comply with the following specific General Permit requirements as detailed in the Annual Reports it submitted or failed to submit for reporting years 2013-2014 through 2014-2015, and in the four (4) sampling results submitted through the State Water Resources Control Board SMARTs database for Annual Reporting year 2015-2016 as follows:

a. Alleged Violations during the 2013-2014 through 2014-2015 Annual Reporting Years

The General Permit in effect prior to July 1, 2015 (Order No. 97-03-DWQ) required all non-exempt facilities to collect and accurately analyze samples from two annual storm events, and implement effective BMPs detailed in the facility's SWPPP that are "adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges."[1]

2013-2014 Annual Reporting Year

The Facility states in its Annual Report that it provides two (2) samples from one (1) sampling location (Monitoring and Reporting Program, Sampling and Analysis Results, Sections E.1 and E.3). The Facility states in its NOI that its operations are identified under SIC Codes 5093 and 4212. SIC Code 5093 requires the sampling of additional "Table D" parameters lead, iron, zinc, aluminum, and COD (copper was removed in the revised General Permit effective July 1, 2015) in addition to TSS, pH, specific conductance (also removed in the revised General Permit), and oil and grease or TOC.

- *November 21, 2013 Sampling Results*. The Report identifies a sampling result for iron measured at 1.5 mg/L, aluminum measured at .94 mg/L, and COD measured at 460

[1] *See* the Annual Report Form, in the Section titled *Specific Information*, "Annual Comprehensive Site Compliance Evaluation (ACSCE)," H. ACSCE Checklist, Subparagraph 6.

mg/L. These sampling results are in excess of the Annual NAL, EPA Benchmark, and California Toxics Rule ("CTR") limits for these pollutants.

- *February 6, 2014 Sampling Results*. The Report identifies a sampling result for iron measured at 6.2 mg/L, aluminum measured at 4.5 mg/L, and COD measured at 220 mg/L. These sampling results are in excess of the Annual NAL, EPA Benchmark, and CTR limits for these pollutants.

2014-2015 Annual Reporting Year

The Facility states in its Annual Report that it provides two (2) samples from one (1) sampling location (Monitoring and Reporting Program, Sampling and Analysis Results, Sections E.1 and E.3). The Facility states in its NOI that its operations are identified under SIC Codes 5093 and 4212. SIC Code 5093 requires the sampling of additional "Table D" parameters lead, iron, zinc, aluminum, and COD (copper was removed in the revised General Permit effective July 1, 2015) in addition to TSS, pH, specific conductance (also removed in the revised General Permit), and oil and grease or TOC.

- *December 2, 2014 Sampling Results*. The Report identifies a sampling result for iron measured at 6.9 mg/L, aluminum measured at 5.6 mg/L, COD measured at 490 mg/L, and TSS measured at 350 mg/L. These sampling results are in excess of the Annual NAL, EPA Benchmark, and CTR limits for these pollutants.

- *April 7, 2015 Sampling Results*. The Report identifies a sampling result for zinc measured at 0.28 mg/L, iron measured at 6.2 mg/L, aluminum measured at 5.5 mg/L, COD measured at 310 mg/L, and TSS measured at 180 mg/L. These sampling results are in excess of the Annual NAL, EPA Benchmark, and CTR limits for these pollutants.

b. Sampling Provided for 2015-2016 Annual Reporting Year Identifies Storm Water Violations

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 Discharger 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.

The Discharger's samples from four (4) qualifying storm events during the current annual reporting year identify continuing violations – sampling results of discharges that exceed EPA "Benchmarks," Parameter NAL Values, and/or applicable CTR limitations for the following pollutants:

- ***December 11, 2015 Sample***

Discharge Location – "SWMP1"

Iron – 5.7 mg/L
Aluminum – 4.2 mg/L
COD – 500 mg/L
TSS – 660 mg/L

- ***December 19, 2015 Sample***

Discharge Location – "TS3"

Iron – 4.6 mg/L
Aluminum – 3.9 mg/L
TSS – 300 mg/L
Zinc – 0.36 mg/L

Discharge Location – "SWMP1"

Iron – 4.0 mg/L
Aluminum – 3.2 mg/L
TSS – 400 mg/L

- ***January 5, 2016 Sample***

Discharge Location – "TS3"

Iron – 4.9 mg/L
Aluminum – 3.2 mg/L
TSS – 780 mg/L
Zinc – 0.48 mg/L

Discharge Location – "SWMP1"

Iron – 8.7 mg/L
Aluminum – 6.6 mg/L
TSS – 550 mg/L

Discharge Location – "BIOSWALE"

Iron – 1.9 mg/L
Aluminum – 1.4 mg/L
TSS – 280 mg/L

Discharge Location – "DET-BASIN"

Iron – 2.5 mg/L
Aluminum – 1.9 mg/L
TSS – 180 mg/L

***April 8, 2016 Sample***

Discharge Location – "SWMP1"

COD – 210 mg/L

The continuing discharge of unauthorized non-storm water pollutants identified above confirms that the Discharger is violating General Permit Section X.C. ("SWPPP Performance Standards"). Under this section of the Permit, the "Discharger shall ensure a SWPPP is prepared to … [i]dentify and describe the minimum BMPs [Best Management Practices] (Section X.H.1) and any advanced BMPs (Section X.H.2) implemented to reduce and prevent pollutants in industrial storm water discharges and authorized NSWDs. BMPs shall be selected to achieve compliance with this General Permit" (General Permit Section X.C.1.b.).

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

The Discharger's operations, classified under SIC Code 5093 ("Scrap and Waste Materials") in the NOI, and SIC Code 4212 ("Local Trucking Without Storage") in the Facility SWPPP, include a range of "Potential Pollutant Sources" from its receipt of municipal solid waste, recyclables and green/wood waste, as well as hazardous materials, waste oil, pesticides, paints, batteries, antifreeze and solvents, and e-waste (2015 Facility SWPPP, Sections 4.1, 4.2, 4.3). The Facility SWPPP lists the Potential Pollutant sources and quantities in Section 5.1.

The work at the Facility is conducted indoors and 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 Facility to an unnamed tributary to the Santa Ynez River – a water 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 Discharger obtained coverage under the General Permit for the Facility, but fails to comply with its environmentally protective requirements, in particular 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 that operated by the Discharger. 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 entity responsible for the alleged violations identified and described in this Notice is the County of Santa Barbara, referred to herein as the Discharger.

*4. The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Facility at 4004 Foxen Canyon Road in Los Olivos, California, including the waters of the Santa Ynez River – a water of the United States.

*5. The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from June 15, 2011 to June 15, 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 Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance with the CWA upon public health and the environment surrounding the Facility:

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); with additional prohibitions for iron, lead, aluminum, zinc, and COD, all of which are specific General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled for facilities identified under SIC Code 5093.

2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series: "Sector N: Scrap Recycling and Waste Recycling Facilities" (EPA Office of Water, EPA-833-F-06-029, December 2006 (www.epa.gov/npdes/pubs/sector_n_scraprecycling.pdf));

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

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

5. Preparation of further updates to the Facility's 2015 SWPPP that includes, but is not limited to, additional BMPs that address the violations alleged in this Notice (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 may be specifically impaired by the Discharger's 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 Discharger to contact River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Facility. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the Discharger is 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

David Weinsoff

DW:lhm

**Service List**

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Executive Director
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