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August 29, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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P.O. Box 808044
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Eugene B. Ceccotti
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Shamrock Materials, Inc.
181 Lynch Creek Way, Suite 200
Petaluma, CA 94954

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Sirs:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against Shamrock Materials, Inc. ("Shamrock") for violations of the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* ("CWA") at Shamrock's facility located at 548 Du Bois Street, San Rafael, California 94901 (the "Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in San Francisco, California. Baykeeper's purpose is to preserve, protect, and defend the environment, wildlife, and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of local communities. Baykeeper has over two thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by Shamrock's operations.

This letter addresses Shamrock's unlawful discharge of pollutants from the Facility via stormwater into the San Rafael Creek and/or San Francisco Bay. Specifically, Baykeeper's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources

B. The Affected Waters.

San Rafael Creek and San Francisco Bay are waters of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the ecosystem of this watershed, which includes significant habitat for listed rare and endangered species.

II. THE ACTIVITIES AT THE FACILITY CONSTITUTE VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

In 1997, Shamrock submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit. However, information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit, thereby violating the CWA. *Id.* Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels.

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants[2] and best conventional pollutant control technology ("BCT") for conventional pollutants.[3] Industrial Stormwater Permit, Order Part B(3). The EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.[4]

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[2] BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

[3] BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

[4] The Benchmark values are part of EPA's Multi-Sector General Permit ("MSGP") and can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf. *See* 73 Fed. Reg. 56,572 (Sept. 29, 2008)

Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS"). *Id.* at Order Part C(2). Applicable WQSs are set forth in the California Toxics Rule ("CTR")[6] and Chapter 3 of the San Francisco Bay Basin (Region 2) Water Quality Control Plan ("Basin Plan").[7] See Attachment 1. Exceedances of WQSs are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQSs for San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. The Basin Plan, Table 3-3, identifies specific marine water q2uality objectives for toxic pollutants,[8] and Table 3-4 identifies specific fresh water quality objectives for toxic pollutants.[9] *See* Attachment 4.

Baykeeper alleges that Shamrock's stormwater discharges have caused or contributed to exceedances of the WQS set forth in the Basin Plan and California Toxics Rule. These allegations are based on information available to Baykeeper, including Shamrock's self-reported data submitted to the San Francisco Bay Regional Water Quality Control Board and Baykeeper's samples, both indicating exceedances of

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[6] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31,682 (May 18, 2000).
[7] The Basin Plan is published by the San Francisco Bay Regional Water Quality Control Board at: http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan (Last accessed on 8/18/14).
[8] Basin Plan, Table 3-3 is available at: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-03.pdf (Last accessed on 8/18/14).
[9] Basin Plan, Table 3-4 is available at: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-04.pdf (Last accessed on 8/18/14).

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations.

The Industrial Stormwater Permit requires facility operators to develop and implement a Monitoring and Reporting Program ("MRP"). Industrial Stormwater Permit, Section B(1) and Order Part E(3). The Industrial Stormwater Permit requires that the MRP ensure that each facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* at Section B(2). Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by Section A of the Industrial Stormwater Permit. The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *Id.* at Section B(2). The Industrial Stormwater Permit requires facility operators to visually observe and collect samples of stormwater discharges from all drainage areas. *Id.* at Section B(7). Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.* at Section B(10).

Shamrock has been operating the Facility with an inadequately developed and/or inadequately implemented MRP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial Stormwater Permit. For example, the data in Attachment 2 indicates that Shamrock's monitoring program has not ensured that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by Section B(2). The monitoring program has not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Section B(2). Similarly, the data in Attachment 2 indicate that Shamrock's MRP has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Section B(2).

In addition, Shamrock's MRP is inadequate because Shamrock has been collecting stormwater samples that do not adequately reflect pollution coming from its industrial activities. Section B(7)(a) of the Industrial Stormwater Permit requires Shamrock to "collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges." Baykeeper's investigation has found evidence of pollution discharges from the Facility's driveway, which Shamrock does not sample for pollutants. Shamrock has also failed to measure its samples for aluminum and zinc, which Baykeeper has found to be present in discharges from the Facility.

VI. COUNSEL

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

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VII. REMEDIES

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Shamrock for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Shamrock in this action. The CWA imposes civil penalty liability of up to $37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper is willing during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact Nicole or George to initiate these discussions.

Sincerely,

George Torgun
Managing Attorney
San Francisco Baykeeper

Attachment 1: EPA Benchmarks and Water Quality Standards

A. EPA Benchmarks (MSGP)

Parameter	Units	Benchmark value	Source
Total Suspended Solids	mg/L	100	MSGP
Aluminum Total	mg/L	0.75	MSGP
Iron Total	mg/L	1.0	MSGP
Zinc Total	mg/L	0.09	MSGP
pH	SU	6.0-9.0	MSGP

B. Marine Water Quality Standards (Basin Plan)

Parameter	Units	Water Quality Standard	Source
pH	SU	6.5 – 8.5	Basin Plan
Zinc Total	mg/L	0.09*	Basin Plan

* 1-hour average

31	#3	10/6/2011	Iron Total	=	4	mg/L	2011-2012	√	
32	#2	2/14/2011	Total Suspended Solids	=	180	mg/L	2010-2011	√	
33	#3	2/14/2011	Total Suspended Solids	=	420	mg/L	2010-2011	√	
34	#3	2/14/2011	pH	=	9.9	SU	2010-2011	√	√
35	#1	2/14/2011	Iron Total	=	3.1	mg/L	2010-2011	√	
36	#2	2/14/2011	Iron Total	=	7.6	mg/L	2010-2011	√	
37	#3	2/14/2011	Iron Total	=	12	mg/L	2010-2011	√	
38	#1	12/14/2010	Total Suspended Solids	=	390	mg/L	2010-2011	√	
39	#2	12/14/2010	Total Suspended Solids	=	1200	mg/L	2010-2011	√	
40	#3	12/14/2010	Total Suspended Solids	=	120	mg/L	2010-2011	√	
41	#3	12/14/2010	pH	=	9.61	SU	2010-2011	√	√
42	#1	12/14/2010	Iron Total	=	12	mg/L	2010-2011	√	
43	#2	12/14/2010	Iron Total	=	35	mg/L	2010-2011	√	
44	#3	12/14/2010	Iron Total	=	5.3	mg/L	2010-2011	√	
45	#1	3/2/2010	pH	=	9.21	SU	2009-2010	√	√
46	#3	3/2/2010	pH	=	9.27	SU	2009-2010	√	√
47	#1	3/2/2010	Iron Total	=	2	mg/L	2009-2010	√	
48	#3	3/2/2010	Iron Total	=	2.2	mg/L	2009-2010	√	
49	#1	10/13/2009	Iron Total	=	2	mg/L	2009-2010	√	
50	#2	10/13/2009	Iron Total	=	2.7	mg/L	2009-2010	√	

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