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JUN 15 2016

Via Certified Mailing – Return Receipt

June 10, 2016

Martin Reyes, Operations Manager
Owner or Managing Agent
Sun-Land Garden Products, Inc.
90 Pioneer Road
Watsonville, CA 95076

Owner or Managing Agent
Berger - California Office
90 Pioneer Road
Watsonville, CA 95076

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

Dear Mr. Reyes, Owners or 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 the Sun-Land Garden Products facility owned and operated by Berger ("the Facility") and located at 90 Pioneer Road in Watsonville, 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 Pinto Lake, a CWA § 303(d) waterway impaired for nutrients and pH.

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. 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 U.S. Environmental Protection Agency ("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, Sun-Land Garden Products, Inc. and Berger (collectively, 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, National Pollutant Discharge Elimination System ("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 "growing mix" products services and operations covered under SIC Codes 2875 and 2879 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 July 31, 2002, and the Discharger was assigned Waste Discharger Identification ("WDID") number 3 44I017406. 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 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 sampling and monitoring provided on SMARTS for the 2015-2016 annual reporting year as follows:

a. <u>Sampling Provided for 2015-2016 Annual Reporting Year Identify Storm Water Violations</u>

The General Permit in effect beginning July 1, 2015 (Order No. 014-0057-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.

A review of four (4) reported samples on SMARTS for the current annual reporting year (three qualifying storm events from the first half of the reporting year, but only one qualifying storm event as of the date of this Notice) identifies significant continuing violations – sampling results of discharges that exceed EPA "Benchmarks," Parameter NAL Values, and/or applicable California Toxics Rule ("CTR") limitations for the following pollutants:

- ***November 2, 2015 Sample***

Iron –	94 mg/L
Zinc –	0.43 mg/L
Total Phosphorus -	7.8 mg/L
TSS –	3900 mg/L
Nitrate as N	2.1 mg/L

- ***November 9, 2015 Sample***

Iron -	240 mg/L
Zinc -	0.71 mg/L
Total Phosphorus	13 mg/L
TSS -	6000 mg/L
Nitrate as N	4.2 mg/L
TOC -	270 mg/L

- ***December 22, 2015 Sample***

Iron -	25 mg/L
Total Phosphorus -	3.3 mg/L
TSS -	140 mg/L
Nitrate as N	0.90 mg/L
TOC -	160 mg/L

- ***March 7, 2016 Sample***

Iron -	2.4 mg/L
Total Phosphorus	3.1 mg/L
TSS -	330 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 are classified in the NOI under SIC Codes 2875 ("Fertilizers, Mixing Only") and 2879 ("Pesticides and Agricultural Chemicals, Not Elsewhere Classified"), and described in Section 1.2 of the Facility's SWPPP as "the business of processing and marketing soil mixes, compost, and mulch." Operations at the Facility create a range of "Potential Pollutant Sources," including those for which sampling and monitoring is specifically required under the General Permit, and those identified in Section 3.2 of the SWPPP ("List of Significant Materials") - perlite, vermiculite, dolomite, ferrous sulfate, gypsum, potassium sulfate, calcium carbonate, magnesium sulfate, potassium nitrate, lime, sulfur, fertilizer. The SWPPP for the Facility is formally dated September 2003 (with what appears to be hand-written amendments in 2011 and 2015).

The work at the Facility 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 Facility to Pinto Lake– 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 in Watsonville. 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 Sun-Land Garden Products, Inc., Berger, and the owners or managing agents, referred to in this Notice 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 90 Pioneer Road in Watsonville, California, including the waters of Pinto Lake – 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 10, 2011 to June 10, 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. 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
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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 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, N+N, lead, zinc, and phosphorus, all of which are specific General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled for facilities identified under SIC codes 2875 and 2879.

2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series: "Sector C: Chemical and Allied Products Manufacturing and Refining" (EPA Office of Water, EPA-833-F-06-018, December 2006; https://www.epa.gov/sites/production/files/2015-10/documents/sector_c_chemical.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 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 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 Letter 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

DW:lhm

Service List

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Executive Director
State Water Resources Control Board
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Executive Officer
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