

LAW OFFICE OF  
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**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

October 27, 2015

Recology Organics,  
A Division of Recology, Inc. – an employee owned Corporation  
235 North First Street  
Dixon, CA 95620

Chris Taylor, General Manager  
Recology Hay Road  
6426 Hay Road  
Vacaville, CA 95687

Michael J. Sangiacomo, President and CEO  
Recology, Inc.  
50 California Street, 24<sup>th</sup> Floor  
San Francisco, CA 94111

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

Dear Messrs. Taylor and Sangiacomo, Owners and Operators:

**NOTICE**

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 Jepson Prairie Organics composting facility, owned and operated by Recology Hay Road, a division of Recology, Inc. (“Hay Road Facility”) located at 6426 Hay Road in Vacaville, California. Notice is being sent to you as the responsible owners, operators, and managers of the Hay Road 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 Hay Road Facility into Ulatis Creek.

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 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. As discussed further below, the State Water Resources Control Board elected to issue a statewide general permit for industrial stormwater discharges. 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 (based on eye-witness reports and records publicly available or in the possession and control of the Discharger) that have occurred, and continue to occur at the Hay Road Facility. Consequently, Recology Organics, Recology Hay Road and Recology, Inc. (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 Valley (5S) 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:

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 Hay Road Facility.

The Discharger filed a Notice of Intent ("NOI") agreeing to comply with the terms and

conditions of the General Permit. The State Water Resources Control Board approved the NOI on or about August 24, 1993, and the Discharger was assigned Waste Dischargers Identification (“WDID”) number 5S48I010514. River Watch contends that in the operation of the Hay Road Facility, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit requiring the preparation and implementation of Best Management Practices (“BMPs”) including, but not limited to, those detailed in the Hay Road Facility’s updated June, 2015 “Storm Water Pollution Prevention Plan” (“SWPPP”), and ensuring the elimination of all non-authorized storm water discharges from the Hay Road Facility. River Watch further contends that the Discharger is failing to operate its composting operations at the Hay Road Facility in compliance with federal and state law, as detailed in RWQCB Order No. R5-2014-0117, incorporated herein by reference and made part of this Notice.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch contends the Discharger, however, has failed and is failing to comply with the following General Permit requirements as detailed in the Annual Report submitted in reporting years 2013-2014 and 2014-2015:

a. SWPPP and Monitoring Program Requirements Were Not Properly Prepared and Implemented in the 2013-2014 and 2014-2015 Annual Reporting Years

The Annual Report form, in the Section titled *Specific Information*, “Annual Comprehensive Site Compliance Evaluation (ACSCE),” H. ACSCE Checklist, Subparagraph 6, questions “Have you reviewed your SWPPP to assure that a) the BMPs are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges, and b) the BMPs are being implemented?” The continuing discharge of unauthorized non-storm pollutants as alleged in paragraph “b” below confirms that the Hay Road Facility BMPs are not “adequate” and/or not being “implemented” as required under the General Permit.

b. Noncompliance with General Permit Storm Water Controls in the 2013-2014 and 2014-2015 Annual Reporting Years

The Annual Report form, in the Section titled *Specific Information*, “Annual Comprehensive Site Compliance Evaluation (ACSCE),” I. ACSCE Evaluation Report, requires “[t]he facility operator ... to provide an evaluation report that includes ... any incidents of non-compliance and the corrective actions taken” (emphasis added). The Discharger allegedly failed and is failing to eliminate the reported ongoing discharges from the Hay Road Facility that exceed EPA “Benchmarks,” Parameter NAL Values, and/or applicable California Toxics Rule (“CTR”) limitations for the following pollutants and provides no statement of “corrective actions taken”:

**2014-2015 Reporting Year**

· *December 11, 2014 Sample*

Discharge Location – “SW-1”

Iron – 3.4 mg/L  
Aluminum – 3.3 mg/L  
Specific Conductance – 1230 µmhos/cm

*December 1, 2014 Sample*

Discharge Location – “SW-1”

Aluminum – 1.3 mg/L  
Iron – 1.6 mg/L  
Specific Conductance – 1410 µmhos/cm

### **2013-2014 Reporting Year**

*February 28, 2014 Sample*

Discharge Location – “SW-1”

Iron – 3.4 mg/L  
Aluminum – \* no sample reported  
Specific Conductance – 963 µmhos/cm

*February 10, 2014 Sample*

Discharge Location – “SW-1”

Aluminum – 1.5 mg/L  
Iron – 1.8 mg/L  
Nitrite Plus Nitrate (as N) – 1.1 mg/L  
Specific Conductance – 1110 µmhos/cm

c. Certification of Compliance with General Permit in the 2013-2014 and 2014-2015 Annual Reporting Years

The Annual Report form, in the Section titled *Specific Information*, “Annual Comprehensive Site Compliance Evaluation (ACSCE),” J. ACSCE Certification requires facilities covered under the General Permit to state “[b]ased on your ACSCE, do you certify compliance with the Industrial Activities Storm Water General Permit?” The alleged failures to fully and accurately ensure compliance with the requirements of the General Permit as detailed above contradicts both the ACSME Certification” and the signed “Annual Report Certification,” which provides that the signer of the Annual Report attests that the “information submitted is, to the best of my knowledge and belief, true, accurate and complete.”

2. The activity alleged to constitute a violation.

The Discharger's operations, classified under SIC Code 5093 ("Scrap and Waste Materials"), SIC Code 4953 ("Refuse Systems"), and SIC Code 2875 ("Fertilizers, Mixing Only"), include a range of "Potential Pollutant Sources" including, but not limited to, "material storage and handling" (solid wastes, dewatered biosolids, compost, appliances and scrap metal, petroleum products, hazardous materials, and contaminated soil), and "industrial processes" (landfill operations, dewatered biosolids processing, compost operations, appliance and scrap metal processing, vehicle fueling, and vehicle maintenance) – see *Recology Hay Road Storm Water Pollution Prevention Plan* (June, 2015 update), Section 4.0. The work at the Hay Road Facility is conducted both indoors and outdoors. Because the real property on which the Hay Road Facility is located is subject to rain events, and because there is no State Water Resources Control Board or RWQCB exemption from the collecting and analyzing of the range of pollutants identified above, there are unlawful discharge(s) of the pollutants identified above from the Hay Road Facility to Ulatis Creek – 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 Hay Road Facility but fails to comply with its environmentally protective requirements, in particular the requirement to capture "first flush" samples, to sample from all outfalls at the Hay Road Facility, and critically to implement effective BMPs that ensure that storm and non-storm water discharges are properly contained, controlled, and/or monitored.

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's 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, persons or discharger responsible for the alleged violation.

The persons and entities responsible for the alleged violations are Recology Organics, Recology Hay Road and Recology, Inc., referred to collectively 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 Hay Road Facility at 6426 Hay Road in Vacaville, California, including the waters of Ulatis Creek – a water of the United States.

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

River Watch contends that between October 27, 2010 and October 27, 2015 the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants from the Hay Road Facility to waters of the United States without an individual NPDES permit, or in violation of the General Permit. 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 and offices in Los Angeles, California. River Watch's northern California mailing address is 290 South Main Street, #817, Sebastopol, California 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd., #422, Los Angeles, California 90043. 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 has retained legal counsel with respect to its concerns and the issues presented in this Notice. All communications regarding the same 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 upon public health and the environment surrounding the Hay Road 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); and for iron, lead, aluminum, zinc, nitrate + nitrite nitrogen, total phosphorus, and COD, all of which are specific "Table 1" (formerly "Table D") "parameters" required to be sampled by the Hay Road

Facility covered under SIC codes 5093, 4953, and 2875.

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](http://www.epa.gov/npdes/pubs/sector_n_scraprecycling.pdf)));

“Sector L: Landfills, Land Application Sites, and Open Dumps” (EPA Office of Water, EPA-833-F-06-027, December 2006 ([http://water.epa.gov/polwaste/npdes/stormwater/upload/sector\\_l\\_landfills.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_l_landfills.pdf))); and

“Sector C: Chemical and Allied Products Manufacturing and Refining Facilities” (EPA Office of Water, EPA-833-F-06-018, December 2006 ([http://water.epa.gov/polwaste/npdes/stormwater/upload/sector\\_c\\_chemical.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_c_chemical.pdf))).

3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit, and all requirements set forth in RWQCB Order No. R5-2014-0117.

4. Sampling of storm water that includes the first significant rain after “first flush.”

5. Discharges from the Hay Road Facility must be sampled at location(s) selected to avoid background contamination of iron and aluminum.

6. Preparation and submittal to the RWQCB of a “Reasonable Potential Analysis” for the Hay Road Facility and its operations.

7. Preparation of further updates to the SWPPP that includes, but is not limited to, additional BMPs that will ensure compliance with the recently adopted General Permit (with a copy provided to River Watch).

## CONCLUSION

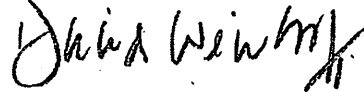
The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, 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 Hay Road 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:lhbm



**Service List**

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State Water Resources Control Board  
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