



PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

MONDAY, JULY 24, 2023

3:00 P.M.

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION - 1404 LE ROY AVE, BERKELEY, CA 94708

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

*Remote participation by the public is available through Zoom. To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL: <https://cityofberkeley-info.zoomgov.com/j/1616042048>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 604 2048**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@berkeleyca.gov.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda.

Preliminary Matters

Roll Call

Public Comment - Limited to items on this agenda only

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2):

a. Workers Compensation Appeals Board Case Number: ADJ10187918

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTIONS 54956.9(a) and 54956.9(d)(2)

a. California River Watch – Notice of Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act), attached as required by Fowler v. City of Lafayette (2020) 46 Cal. App. 5th 360

3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8

a. Property Address:	1900 Addison, Suite 300-350, Berkeley, California
Agency Negotiators:	Hansel Aguilar, Director of Police Accountability, Dionne Early, Public Works Real Property
Negotiating Parties:	City of Berkeley and SG Real Estate, Inc. on behalf of the Shamszad Family Living Trust
Property Owner:	Sasha and Merideth Shamszad
Under negotiation:	Price and terms

4. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, Anne Cardwell, Deputy City Manager, LaTanya Bellow, Deputy City Manager, Aram Kouyoumdjian, Human Resources Director, Dawud Brewer, Employee Relations Manager, Jonathan Holtzman, Renne Public Law Group.

Employee Organizations: Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Fire Fighters Association, Local 1227 I.A.F.F. / Berkeley Chief Fire Officers Association; Berkeley Police Association; SEIU 1021 Community Services and Part-time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, Unrepresented Employees

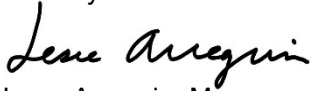
OPEN SESSION:

Public Reports of actions taken pursuant to Government Code section 54957.1.

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 20th day of July, 2023.


Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Mark Numainville, City Clerk

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable emergency Executive Orders issued by the Governor. Any member of the public may participate in the public comment portion of this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street.



COMMUNICATION ACCESS INFORMATION: This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

Law Office of Jack Silver

708 Gravenstein Hwy North, Suite 407 Sebastopol, CA 95472-2808
Phone 707-528-8175 Email JSilverEnvironmental@gmail.com



***Via Certified Mail -
Return Receipt Requested***

October 24, 2022

Mark Numainville, City Clerk
Members of the City Council
City of Berkeley
2180 Milvia St.
Berkeley CA 94704

Greg Apa, Zero Waste Manager
Managing Agent
City of Berkeley Transfer Station
1201 2nd St.
Berkeley, CA 94710

Dave Johnson, Manager
Community Conservation Centers, Inc.
1569 Solano Ave. # 106
Berkeley, CA 94707

Pamela Belchamber, Registered Agent
Community Conservation Centers, Inc.
1633 Grant St.
Berkeley, CA 94703

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

Dear Mr. Numainville, Mr. Apa, Mr. Johnson, Ms. Belchamber, and Members of the City Council:

NOTICE

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (“CWA” or “the Act”) that River Watch alleges are occurring at City of Berkeley Transfer Station located at 1201 2nd Street in Berkeley, California (the “Facility”). Notice is being sent to you as the responsible owners, operators, and/or managers of the Facility. This Notice addresses the violations of the CWA including violations of the terms of the California General Permit for Storm Water Discharges, and the unlawful discharge of pollutants from the Facility directly, and indirectly via hydrologically connected ground water, to San Francisco Bay, a water of the United States.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharges are in compliance with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit. States with approved NPDES permitting programs are authorized under the CWA to regulate stormwater discharges through permits issued to dischargers and/or through the issuance of a single, statewide industrial 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 ("SWRCB") to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide industrial general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ *General Permit for Storm Water Discharges Associated With Industrial Activities* ("IGP") and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). To discharge stormwater lawfully in California, industrial dischargers must comply with the terms of the IGP or have obtained an individual NPDES permit and be in compliance 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 CWA § 505(a). Notice must be given to the alleged violator, the 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 City of Berkeley, Berkeley Transfer Station, and Community Conservation Centers, 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, 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 water quality objectives established in the San Francisco Bay, Regional Water Quality Control Board ("RWQCB-SF") 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 the IGP relating to industrial operations taking place at the Facility including storm water disposal.

The Discharger rather than seeking coverage under an individual NPDES permit for the Facility, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the IGP. The SWRCB approved the NOI on or about November 10, 1992, and the Facility was assigned Waste Discharge Identification ("WDID") number 2 011009237.

River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Discharger, contends that in performing the industrial activities as detailed in Section C.2 *Facility Description* of the May, 2022 Storm Water Pollution Prevention Plan ("SWPPP") for the Berkeley Transfer Station, the Discharger has failed and is failing to comply with the strict conditions of the IGP governing storm water discharges.

In addition to the alleged violations of the terms and conditions of the IGP, River Watch alleges violations of discharge prohibitions contained in the RWQCB-SF's Basin Plan which are incorporated by reference as part of the compliance obligations imposed on the Facility under the IGP.

2. The Activity Alleged to Constitute a Violation.

Having agreed to its terms, the Discharger has a continuing burden to demonstrate compliance with each applicable provision of the IGP. River Watch alleges the following actions and inactions in violation of the IGP, and contends these violations are continuing:

A. Failure to Collect and Analyze the Required Number of Storm Water Samples

Section XI.B.2 of the IGP requires that all dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30). Section XI.B.11.a requires dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via the SWRCB's Stormwater Multiple Application and Report Tracking System ("SMARTS") within 30 days of obtaining all results for each sampling event. Section XI.C.6.b. provides that if samples are not collected pursuant to the IGP, a proper and accurate explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload onto the SMARTS online database the required number of storm water run-off sample analysis for Annual Reporting Year 2021-2022 and Annual Reporting Year 2020-2021, and has not provided an adequate explanation for its failure to do so. A review of the SMARTS database demonstrates the following:

2021-2022 Annual Report:

For question "3. Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?"
Answer: The Discharger responded, "No.," "Drought year and no QSEs."

2020-2021 Annual Report:

For question "3. Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?"
Answer: The Discharger responded "No.," "Only one qualifying storm event during July 1 - December 2020, and only one qualifying storm event during January 1 - June 30 2021."

The IGP provides, "The 2008 MSGP sets a "measurable storm event" as one that produces at least 0.1 inches of precipitation and results in an actual discharge after 72 hours (three days) of dry weather." (IGP, *Fact Sheet*, Section II.J.3.a.iii.)

A review of rainfall data, collected in Oakland Museum, CA, reported by the National Oceanic and Atmospheric Administration for the current 2021-2022 reporting period provides that there was more than sufficient rainfall during that period to qualify for QSEs. Additionally, sampling reports submitted to SMARTS from nearby facilities indicate sufficient rainfall to create QSEs at the Berkeley Transfer Station during the relevant periods.

River Watch alleges the Discharger has failed to submit the minimum number of annual documented results for facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of the IGP, and is not conducting sampling at the Facility during QSEs.

B. Failure to Provide Sampling Results for Discharges Resulting from Transportation-related Activities

The IGP requires dischargers to ensure that industrial storm water discharges do not: (a) cause or contribute to an exceedance of any applicable water quality standards in San Francisco Bay (IGP Section I.E., 37, VI.A.), (b) adversely affect human health or the environment (IGP Section VI.B.) and, (c) do not contain pollutants in quantities that threaten to cause pollution or a public nuisance (IGP Sections III.C., VI.C.). The Discharger provides no evidence of complete compliance with these requirements for the transportation-related activities taking place at the Facility.

The SWPPP, Section F.1 *Industrial Processes*, pg. 14-19 provides a lengthy listing of those activities/materials which are potential pollutant sources. Section F.2 *Material Handling and Storage* details numerous situations, processes and equipment wherein “spills or leaks” can occur:

“Spills or leaks from equipment such as end loaders and ancillary mobile equipment may occur during material handling... Used waste oil, solvents, antifreeze, and greases are accumulated until they are transported for proper recycling and/or disposal... Spills and leaks can occur during the fueling process... Spills or leaks from equipment such as end loaders and ancillary mobile equipment may occur during material handling... Spills or leaks may occur during material handling... there could be leaks from trucks delivering the bins and roll off containers and parking and residual liquid in the bins/containers... recycling trucks deliver loads of mixed containers daily to the recycling center container storage area where they are loaded and sorted on conveyor belts...Spills or leaks may occur during material handling.”

Although identifying these transportation-related activities and associated materials as present and taking place at the Facility, the Discharger fails to test for TPHG or TPHd. The current practice of testing for Oil & Grease does not include petroleum hydrocarbons even though the Discharger acknowledges petroleum products (oil, grease, gasoline, motor oil, and diesel) as potential sources of pollutants at the Facility. To test for the presence of petroleum hydrocarbons in the Facility’s storm water runoff, the Discharger must test for TPHg or TPHd. The Discharger should also test for 6ppd quinone, a tire preservative recently discovered to be lethal for Coho Salmon.

C. Failure to Sample from Representative Sampling Locations

IGP Section XI.B.4.a provides:

“Except as provided in Section XI.C.4 (Representative Sampling Reduction), samples shall be collected from each drainage area at all discharge locations. The samples shall be: (a) Representative of storm water associated with industrial activities and any commingled authorized NSWDS...”

The SWPPP identifies 10 discharge/sampling locations. (SWPPP, Section M.2 *Discharge Locations*, Table.) The Facility, "...directly discharges to Central San Francisco Bay via the City's MS4..." (SWPPP, Section F.9 *Assessment of Potential Pollutant Sources*, Table.) Of the 10 sampling locations identified, the Discharger only samples at 8, sampling at DP-5 and DP-7 having been discontinued.

Despite the installation of the berm in the area of DP-5, given the direction of flow described in the Facility's map, "Figure 2," River Watch alleges DP-5 continues to be affected by runoff generated from Catchment Area F, including the Truck Parking area immediately adjacent. The new sampling location (DP-5A) does not capture the flow west towards 2nd Street.

It appears the Discharger is not conducting sampling at DP-7 located at the employee parking area, despite the recycling and customer buy-back area being immediately adjacent, such that runoff from the employee parking and recycling areas comingle. Of concern is the fact that DP-7 discharges onto 2nd Street. (SWPPP, C.3. *Site Storm Water Drainage*).

The SWPPP provides: "Filtrex Siltsoxx and oil absorbent socks will be installed along the fence line along 2nd Street and associated discharge points DP-5A, DP-6, DP-7, and DP-9." This, however, does not fully address concerns regarding discharges onto 2nd Street, as the "Equipment and Tools for BMP Implementation" are not identified. (SWPPP, Section L. *BMP Summary Table*, pg. 55.) Further, despite the weekly and annual inspections of BMPs for DP-7 and facility perimeter along 2nd Street, without conducting sampling, it is impossible to determine the impact to San Francisco Bay.

River Watch alleges DP-6 is not a representable sample location of discharges at DP-7 given that the direction of the flow, as shown by the Facility's map, "Figure 2," provides the direction of the flow as running southwest whereas the direction of the flow at DP-6, where the Customer Recyclable Area is located, runs west.

The description of surface runoff stormwater channels and conveyances is not sufficiently detailed in the SWPPP to provide assurance that all surface runoff is channeled to the appropriate discharge locations identified on the Site Map. There is no record of a request for Representative Sampling Reduction as required under IGP Section XI.C.4.

River Watch contends the Discharger fails to sample at all discharge locations during rain events greater than one inch, in violation of IGP Section XI.B.4.a.

D. Failure to Prepare and Implement an Adequate SWPPP

The IGP requires the preparation, implementation, review, and update of an adequate SWPPP which must comply with the standards of Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT"). Dischargers are required to implement BMPs, when necessary, to support attainment of water quality standards. The use of BMPs to control or abate the discharge of pollutants is authorized by 40 C.F.R. §122.44(k)(3) because numeric effluent limitations are infeasible, and implementation of BMPs is reasonably necessary to achieve effluent limitations and water quality standards, and to carry out the purposes and intent of the Act. 40 C.F.R. §122.44(k)(4).

Compliance with the monitoring and reporting program and the requirement to implement effective BMPs is central to an efficacious IGP program. The IGP requires that all non-exempt facilities collect and accurately analyze samples from storm events, and implement effective BMPs detailed in the facilities' SWPPPs that are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

Discharges from the Facility contain documented levels of Copper, Lead, Zinc, Iron, Aluminum, COD, and TSS which adversely affect the water of the United States identified in this Notice. River Watch, following review of documents on file with the SWRCB's SMARTS online reporting database, contends the Discharger has not fully developed and/or adequately implemented a SWPPP for operations at the Facility as evidenced by the fact that the Discharger has failed to reduce pollutants in storm water to below water quality objectives or standards. A review of the Discharger's Self-Monitoring Reports demonstrates continuing discharges from the Facility to San Francisco Bay via the City of Berkeley's MS4. San Francisco Bay is mostly impacted primarily by sampling locations DP-3A, DP-4, DP-5A, DP-6, and DP-9 which exceed California Toxic Rule limits for Copper, Lead, and Zinc, and EPA benchmarks and Numeric Action Levels ("NALs") for Copper, Lead, Zinc, Iron, Aluminum, COD, and TSS. Despite the BMPs identified in Table 1 of the Discharger's 2019 Exceedance Response Action Level 2 Technical Status Report, as well as those identified in the May 2022, Exceedance Response Action Level 2 Technical Report, pollutants continue to be discharged from the Facility exceeding EPA Benchmarks and NALs, and California Toxic Rule limits, indicating a failure to implement adequate BMPs.

A review of the Discharger's reports on the SWRCB's SMARTS online database for reporting years 2020-2021 and 2019-2020 identifies numerous following exceedances of NAL limits for Copper, Lead, Zinc, Iron, Aluminum, COD, and TSS as detailed in **Attachment A**.

River Watch contend the Discharger will continue to be in violation of the CWA every day it discharges storm water containing pollutants as identified in this Notice from the Facility without adequately implementing its SWPPP and the BMPs required to be incorporated in that SWPPP.

River Watch, following review of the SMARTS online reporting database, contends the Discharger has failed, and continues to fail to eliminate the ongoing discharges of polluted storm water in exceedance of EPA Benchmarks and NALs, and California Toxic Rule limits in violation of the terms of the IGP.

River Watch contends the Discharger has discharged storm water containing pollutants and non-storm water pollutants from the Facility to San Francisco Bay in violation of the IGP during at least every rain event over 0.1 inches as measured by the National Oceanographic and Atmospheric Administration. The Discharger will continue to be in violation of the IGP each day it so discharges non-storm water pollutants and contaminated storm water from the Facility.

River Watch alleges the Discharger has no individual NPDES permit allowing the discharge of pollutants from a point source within the Facility to any water of the United States. Industrial activities taking place at the Facility result in the discharge of industrial wastewater. The sampling results detailed in **Attachment A** demonstrate polluted storm water continues to be discharged from the Facility to San Francisco Bay.

E. Failure to Implement Proper Erosion Controls

The IGP, section X.H.1.e. *Erosion and Sediment Controls*, provides:

“For each erodible surface facility location identified in the SWPPP (Section X.G.1.f.), the Discharger shall:

- i. Implement effective wind erosion controls;
- ii. Provide effective stabilization for inactive areas, finished slopes, and other erodible areas prior to a forecasted storm event;
- iii. Maintain effective perimeter controls and stabilize all site entrances and exits to sufficiently control discharges of erodible materials from discharging or being tracked off the site;
- iv. Divert run-on and storm water generated from within the facility away from all erodible materials...”

The Discharger’s May 2022, Exceedance Response Action Level 2 Technical Report: Section 4.1.1. *Item iv*, states:

“Catchment Area A predominantly stores empty bin containers ranging from plastic residential garbage bins to large roll-off bins, wood waste, cement cores and occasionally garbage truck parking. This area receives tracked sediment and fugitive dust from outdoor construction debris storage area activities adjacent to the transfer station/tipping floor in Catchment Area B. The transfer station/tipping floor and outdoor construction debris area is the most active area of the TS. It receives, garbage, trash, green waste, soil and construction debris. All materials are processed and handled under cover except the construction debris which is handled outdoors and processed indoors at the tipping floor where the trucks are loaded for offsite disposal. Sediment tracking within the facility and dust control in this area is of main concern and difficult to control due to the ongoing moving of heavy equipment, depositing material by customers, sorting and loading of trucks for final disposal offsite.”

Section Table 2, *Berkeley Transfer Station Best Management Practices Implementation Status 2018*, states:

At location “TS,” “Heavy sediment load continues at DP-3 are and equipment spills at northern side of maintenance building from heavy equipment maintenance/parking.” The implemented BMP for DP-3 is “Relocate Garbage Truck Parking Area.” Berkeley Transfer Station further provides, “due to sediment tracking at the TS, mechanical sweeping is performed twice a day during operation hours. Spill cleanup is performed as soon as discovered. These ongoing BMPs are relatively inexpensive.” However, “the basis for selecting BMPs implemented in lieu of additional BMPs evaluated but not implemented.”

“At location “TS,” “Sediment tracking continues to be problematic... Construction Debris Operations were performed in the construction debris receiving area; dust suppression was implemented using hoses and the dust suppression was implemented using hoses and the dust suppression system is still under contract for replacement.”

The Table provides “TS swept twice a day to minimize sediment tracking.” However, this BMP is under column, “the basis for selecting BMPs implemented in lieu of additional BMPs evaluated but not implemented.”

Sediment tracking has been prevalent in the Facility since October 14, 2016 at DP-1A, Catchment Area A. (May 2022, Exceedance Response Action Level 2 Technical Report, Table 1. *July 2015 – June 2018 Compliance Year Sampling Results Analysis*.) In Catchment Area B, “Sediment tracking from the TS and construction debris area is continuous. Sweeping is performed twice a day at the facility to control sediment tracking throughout the facility.” The “Industrial Pollutant Related to average and or Maximum NAL Exceedance... is TSS, COD, iron, copper, aluminum, zinc, OG (at DP-3A).” In Catchment Area C, “Sediment tracking within the Facility” was prevalent since January 28, 2017 at DP-2A.

The SWPPP’s description of sediment tracking BMPs insufficiently detailed to provide a reasonable likelihood of their effectiveness. River Watch alleges the sediment tracking generated from Catchment Area A, Catchment Area B, DP-3, and location TS of the Facility are not sufficiently implemented or detailed, such that significant amounts of sediment may be entering the City of Berkeley’s MS4 via the catch basins, or escaping the Facility via vehicle tracking.

3. The Person or Persons Responsible for the Alleged Violation

The entities responsible for the alleged violations identified in this Notice are the City of Berkeley as owner, and Community Conservation Centers, Inc. as operator, of the Berkeley Transfer Station, and well as those of their employees responsible for compliance with the IGP.

4. The Location of the Alleged Violation

The location of the various violations of the CWA is the permanent address of the Facility at 1201 2nd Street in Berkeley, California and including the waters of the San Francisco Bay, a water of the United States.

San Francisco Bay is home to over 1,000 species of animals including endemic, threatened and endangered species. It is also a critical stopover for hundreds of thousands of birds on the Pacific Flyway, and hosts more wintering shorebirds than any other estuary on the west coast outside of Alaska. San Francisco Bay supports over 130 species of fish including salmon and sea bass.

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 October 24, 2019 through the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature; and 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 groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email at 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 the undersigned.

REMEDIAL MEASURES REQUESTED

River Watch believes that at a minimum, implementing the requirements of the IGP as outlined in this Notice is necessary in order to bring the Facility into compliance with the CWA and reduce the biological impacts from the Discharger's non-compliance upon public health and the environment.

CONCLUSION

The violations set forth in this Notice affect 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, fishing, hiking, photography, nature walks and/or 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.

The IGP, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (IGP Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (IGP Section XXI.L).

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 unpermitted 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 \$59,973.00 per day/per violation 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 encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to discuss the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the IGP, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Sincerely,



Jack Silver

Service List

Michael S. Regan – Administrator
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1200 Pennsylvania Avenue, N. W.
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ATTACHMENT A

2020-2021 Reporting Period	EVENT ID# / SMARTS ID#
Copper, Total	
03/18/21 – 0.062 mg/L – DP-1A	1147416 / 2929086
03/18/21 – 0.053 mg/L – DP-2A	1147416 / 2929086
03/18/21 – 0.12 mg/L – DP-3A	1147416 / 2929086
03/18/21 – 0.096 mg/L – DP-4	1147416 / 2929086
03/18/21 – 0.074 mg/L – DP-5A	1147416 / 2929086
03/18/21 – 0.04 mg/L – DP-6	1147416 / 2929086
03/18/21 – 0.087 mg/L – DP-8A	1147416 / 2929086
03/18/21 – 0.044 mg/L – DP-9	1147416 / 2929086
11/17/20 – 0.066 mg/L – DP-1A	1136959 / 2929084
11/17/20 – 0.077 mg/L – DP-2A	1136959 / 2929084
11/17/20 – 0.18 mg/L – DP-3A	1136959 / 2929084
11/17/20 – .12 mg/L – DP-4	1136959 / 2929084
11/17/20 – .18 mg/L – DP-5A	1136959 / 2929084
11/17/20 – .11 mg/L – DP-6	1136959 / 2929084
11/17/20 – .2 mg/L – DP-8A	1136959 / 2929084
11/17/20 – .093 mg/L – DP-9	1136959 / 2929084
Lead, Total	
03/18/21 – 0.19 mg/L – DP-1A	1147416 / 2929086
03/18/21 – 0.083 mg/L – DP-2A	1147416 / 2929086
03/18/21 – 0.35 mg/L – DP-3A	1147416 / 2929086
03/18/21 – 5 mg/L – DP-4	1147416 / 2929086
03/18/21 – 0.058 mg/L – DP-5A	1147416 / 2929086
03/18/21 – 0.016 mg/L – DP-6	1147416 / 2929086
03/18/21 – 0.039 mg/L – DP-8A	1147416 / 2929086
03/18/21 – 0.023 mg/L – DP-9	1147416 / 2929086
11/17/20 – 0.074 mg/L – DP-1A	1136959 / 2929084
11/17/20 – ND mg/L – DP-2A	1136959 / 2929084
11/17/20 – 0.19 mg/L – DP-3A	1136959 / 2929084
11/17/20 – .037 mg/L – DP-4	1136959 / 2929084
11/17/20 – .051 mg/L – DP-5A	1136959 / 2929084
11/17/20 – .052 mg/L – DP-6	1136959 / 2929084
11/17/20 – .12 mg/L – DP-8A	1136959 / 2929084
11/17/20 – .022 mg/L – DP-9	1136959 / 2929084

Zinc, Total

03/18/21 – 0.65 mg/L – DP-1A	1147416 / 2929086
03/18/21 – 0.65 mg/L – DP-2A	1147416 / 2929086
03/18/21 – 1.4 mg/L – DP-3A	1147416 / 2929086
03/18/21 – 0.3 mg/L – DP-4	1147416 / 2929086
03/18/21 – 1.3 mg/L – DP-5A	1147416 / 2929086
03/18/21 – 0.59 mg/L – DP-6	1147416 / 2929086
03/18/21 – 0.88 mg/L – DP-8A	1147416 / 2929086
03/18/21 – 0.78 mg/L – DP-9	1147416 / 2929086
11/17/20 – 0.46 mg/L – DP-1A	1136959 / 2929084
11/17/20 – ND mg/L – DP-2A	1136959 / 2929084
11/17/20 – 1.3 mg/L – DP-3A	1136959 / 2929084
11/17/20 – 1.3 mg/L – DP-4	1136959 / 2929084
11/17/20 – 2.3 mg/L – DP-5A	1136959 / 2929084
11/17/20 – 1 mg/L – DP-6	1136959 / 2929084
11/17/20 – 1.7 mg/L – DP-8A	1136959 / 2929084
11/17/20 – .94 mg/L – DP-9	1136959 / 2929084

Iron, Total

03/18/21 – 12 mg/L – DP-1A	1147416 / 2929086
03/18/21 – 10 mg/L – DP-2A	1147416 / 2929086
03/18/21 – 20 mg/L – DP-3A	1147416 / 2929086
03/18/21 – 0.5 mg/L – DP-4	1147416 / 2929086
03/18/21 – 22 mg/L – DP-5A	1147416 / 2929086
03/18/21 – 6.5 mg/L – DP-6	1147416 / 2929086
03/18/21 – 12 mg/L – DP-8A	1147416 / 2929086
03/18/21 – 7.3 mg/L – DP-9	1147416 / 2929086
11/17/20 – 5.3 mg/L – DP-1A	1136959 / 2929084
11/17/20 – 1.7 mg/L – DP-2A	1136959 / 2929084
11/17/20 – 11 mg/L – DP-3A	1136959 / 2929084
11/17/20 – 4.7 mg/L – DP-4	1136959 / 2929084
11/17/20 – 11 mg/L – DP-5A	1136959 / 2929084
11/17/20 – 15 mg/L – DP-6	1136959 / 2929084
11/17/20 – 23 mg/L – DP-8A	1136959 / 2929084
11/17/20 – 6.2 mg/L – DP-9	1136959 / 2929084

Aluminum, Total

03/18/21 – 5.2 mg/L – DP-1A	1147416 / 2929086
03/18/21 – 5.2 mg/L – DP-2A	1147416 / 2929086
03/18/21 – 8.3 mg/L – DP-3A	1147416 / 2929086
03/18/21 – 0.2 mg/L – DP-4	1147416 / 2929086

03/18/21 – 6.5 mg/L – DP-5A	1147416 / 2929086
03/18/21 – 2.4 mg/L – DP-6	1147416 / 2929086
03/18/21 – 3.7 mg/L – DP-8A	1147416 / 2929086
03/18/21 – 2.7 mg/L – DP-9	1147416 / 2929086
11/17/20 – 1.3 mg/L – DP-1A	1136959 / 2929084
11/17/20 – 0.59 mg/L – DP-2A	1136959 / 2929084
11/17/20 – 2.6 mg/L – DP-3A	1136959 / 2929084
11/17/20 – 1.1 mg/L – DP-4	1136959 / 2929084
11/17/20 – 2.5 mg/L – DP-5A	1136959 / 2929084
11/17/20 – 3.4 mg/L – DP-6	1136959 / 2929084
11/17/20 – 5 mg/L – DP-8A	1136959 / 2929084
11/17/20 – 1.6 mg/L – DP-9	1136959 / 2929084

COD

03/18/21 – 420 mg/L – DP-1A	1147416 / 2929086
03/18/21 – 170 mg/L – DP-2A	1147416 / 2929086
03/18/21 – 1100 mg/L – DP-3A	1147416 / 2929086
03/18/21 – 4 mg/L – DP-4	1147416 / 2929086
03/18/21 – 590 mg/L – DP-5A	1147416 / 2929086
03/18/21 – 240 mg/L – DP-6	1147416 / 2929086
03/18/21 – 840 mg/L – DP-8A	1147416 / 2929086
03/18/21 – 300 mg/L – DP-9	1147416 / 2929086
11/17/20 – 270 mg/L – DP-1A	1136959 / 2929084
11/17/20 – 1000 mg/L – DP-2A	1136959 / 2929084
11/17/20 – 2500 mg/L – DP-3A	1136959 / 2929084
11/17/20 – 650 mg/L – DP-4	1136959 / 2929084
11/17/20 – 920 mg/L – DP-5A	1136959 / 2929084
11/17/20 – 870 mg/L – DP-6	1136959 / 2929084
11/17/20 – 2600 mg/L – DP-8A	1136959 / 2929084
11/17/20 – 480 mg/L – DP-9	1136959 / 2929084

TSS

03/18/21 – 350 mg/L – DP-1A	1147416 / 2929086
03/18/21 – 210 mg/L – DP-2A	1147416 / 2929086
03/18/21 – 620 mg/L – DP-3A	1147416 / 2929086
03/18/21 – 13 mg/L – DP-4	1147416 / 2929086
03/18/21 – 510 mg/L – DP-5A	1147416 / 2929086
03/18/21 – 130 mg/L – DP-6	1147416 / 2929086
03/18/21 – 280 mg/L – DP-8A	1147416 / 2929086
03/18/21 – 150 mg/L – DP-9	1147416 / 2929086
11/17/20 – 92 mg/L – DP-1A	1136959 / 2929084

11/17/20 – 32 mg/L – DP-2A	1136959 / 2929084
11/17/20 – 360 mg/L – DP-3A	1136959 / 2929084
11/17/20 – 230 mg/L – DP-4	1136959 / 2929084
11/17/20 – 130 mg/L – DP-5A	1136959 / 2929084
11/17/20 – 320 mg/L – DP-6	1136959 / 2929084
11/17/20 – 390 mg/L – DP-8A	1136959 / 2929084
11/17/20 – 130 mg/L – DP-9	1136959 / 2929084

2019-2020 Reporting Period**Lab Job ID# / SMARTS ID#****Iron, Total**

01/16/20 – 14 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – 32 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – 55 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – .85 mg/L – DP-4	Lab Job # 317490 / 2593534
01/16/20 – 9.1 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – 2.5 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – 14 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – 11 mg/L – DP-9	Lab Job # 317490 / 2593534

Aluminum, Total

01/16/20 – 11 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – 27 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – 38 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – .15 mg/L – DP-4	Lab Job # 317490 / 2593534
01/16/20 – 3.1 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – .82 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – 2.8 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – 2.5 mg/L – DP-9	Lab Job # 317490 / 2593534

Copper, Total

01/16/20 – .065 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – .11 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – .35 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – .011 mg/L – DP-4	Lab Job # 317490 / 2593534
01/16/20 – .034 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – .043 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – .048 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – .047 mg/L – DP-9	Lab Job # 317490 / 2593534

Lead, Total

01/16/20 – .34 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – .25 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – 1 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – .0068 mg/L – DP-4	Lab Job # 317490 / 2593534
01/16/20 – .021 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – .019 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – .038 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – .04 mg/L – DP-9	Lab Job # 317490 / 2593534

Zinc, Total

01/16/20 – .75 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – 1.4 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – 3.4 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – .74 mg/L – DP-4	Lab Job # 317490 / 2593534
01/16/20 – .81 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – .29 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – .59 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – 1 mg/L – DP-9	Lab Job # 317490 / 2593534

Oil and Grease, Total

01/16/20 – 6.13 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – 8.58 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – 64.2 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – Not sampled – DP-4	Lab Job # 317490 / 2593534
01/16/20 – 8.87 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – 3.30 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – 13.2 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – 8.11 mg/L – DP-9	Lab Job # 317490 / 2593534

COD, Total

01/16/20 – 410 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – 440 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – 2,200 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – 200 mg/L – DP-4	Lab Job # 317490 / 2593534
01/16/20 – 520 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – 80 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – 540 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – 340 mg/L – DP-9	Lab Job # 317490 / 2593534

TSS, Total

01/16/20 – 480 mg/L – DP-1A	Lab Job # 317490 / 2593534
01/16/20 – 1940 mg/L – DP-2A	Lab Job # 317490 / 2593534
01/16/20 – 2,280 mg/L – DP-3A	Lab Job # 317490 / 2593534
01/16/20 – 34 mg/L – DP-4	Lab Job # 317490 / 2593534
01/16/20 – 230 mg/L – DP-5A	Lab Job # 317490 / 2593534
01/16/20 – 150 mg/L – DP-6	Lab Job # 317490 / 2593534
01/16/20 – 220 mg/L – DP-8A	Lab Job # 317490 / 2593534
01/16/20 – 670 mg/L – DP-9	Lab Job # 317490 / 2593534

NAL limits applicable to Berkeley Transfer Station:

Copper

- Annual NAL is 0.0332 mg/L
- CTR Maximum limit is 0.013 mg/L (CTR Continuous Maximum Limit is .009 mg/L)

Lead

- Annual NAL is .262 mg/L
- CTR Maximum limit is 0.065 mg/L (CTR Continuous Maximum Limit is .0025 mg/L)

Zinc

- Annual NAL is .26 mg/L
- CTR Maximum limit is 0.12 mg/L (CTR Continuous Maximum Limit is .12 mg/L)

Iron

- Annual NAL is 1.0 mg/L

Aluminum

- Annual NAL is .75 mg/L

COD

- Annual NAL is 120 mg/L

TSS

- Annual NAL is 100 mg/L;

