



July 21, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Roxanne Frye
Agent for Service of Process
Recology Pacheco Pass
50 California St., 24th Floor
San Francisco, CA 94111

Mr. Freddie Lewis, General Manager
Recology Pacheco Pass
3675 Pacheco Pass Hwy
Gilroy, CA 95020

Ms. Roxanne Frye,
Agent for Service of Process
Recology, Inc.
50 California St., 24th Floor
San Francisco, CA 94111

Mr. Freddie Lewis, General Manager
Recology Pacheco Pass
235 North First Street
Dixon, CA 95620

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

Dear Ms. Frye and Mr. Lewis:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“the Act”) occurring at Recology, Inc.’s (“Recology”) landfill facility located at 3675 Pacheco Pass Highway, in Gilroy, California (“the Facility”). The WDID number for the Facility is 343I000136. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Llagas Creek, the Pajaro River, and the Monterey Bay. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted Recology Pacheco Pass, Recology, Inc., and Freddie Lewis shall hereinafter be collectively referred to as “Recology.”

This letter addresses Recology’s unlawful discharges of pollutants from the Facility to natural and constructed channels, which convey that storm water to Llagas Creek, which then conveys that storm water into the Pajaro River, which ultimately flows

into Monterey Bay. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ (“General Permit” or “General Industrial Storm Water Permit”).

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Pacheco Pass Recology, Recology, Inc., and Freddie Lewis are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Pacheco Pass Recology, Recology, Inc., and Freddie Lewis under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

The Facility is located at 3675 Pacheco Pass Highway in the city of Gilroy. The Facility falls under Standard Industrial Classification (“SIC”) Code 4953 (“Hazardous Waste treatment storage or disposal/ Landfills”). The Facility is primarily used as a landfill and composting facility. CSPA’s investigation into the industrial activities at Recology’s 136-acre Facility establishes that the Facility is primarily used to receive, store, handle and transport green waste. Other activities at the Facility include: (1) the receipt, handling and storage of solvents, pesticides, paints, petroleum products, hazardous wastes, scrap metals, electronics and household appliances; and, (2) the use, maintenance and storage of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility.

Recology collects and discharges storm water from the Facility through at least three (3) discharge points into unnamed natural channels, which convey that storm water to Llagas Creek, which then conveys that storm water into the Pajaro River, which ultimately flows into Monterey Bay. Llagas Creek, the Pajaro River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board (“Regional Board”) has established water quality standards for Llagas Creek, the Pajaro River, and Monterey Bay in the “Water Quality Control Plan for the Central Coast Basin” (“Basin Plan”). The Basin Plan incorporates in its entirety the State Board’s “Water Quality Control Plan for Ocean Waters of California” (“Ocean Plan”). The Ocean Plan “sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of

beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives.” *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels (“MCLs”) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: aluminum – 1.0 mg/L; arsenic - 0.05 mg/L; lead - 0.05 mg/L; and mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for mercury - 0.002 mg/L; lead – 0.015 mg/L; chromium – 0.1 mg/L; and, copper – 1.3 mg/L. The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for aluminum - 0.05 mg/L to 0.2 mg/L, and for zinc - 5.0 mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 mg/L (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.¹ Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to an exceedance of the CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg.*,

¹ *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

Inc., 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead[sic]” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by Recology: Total Suspended Solids – 100 mg/L; Chemical Oxygen Demand – 120 mg/L; Iron - 1 mg/L; Aluminum - 0.75 mg/L; Copper – 15 mg/L; Zinc - 0.117 mg/L; Lead - 0.0816 mg/L; pH – 6.0 – 9.0 s.u.; Phosphorous – 2.0 mg/L; and Nitrate – 0.68 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: oil & grease – 15 mg/L; mercury – 0.0024 mg/L; nickel – 1.417 mg/L; magnesium – 0.0636 mg/L; cadmium – 0.0159 mg/L.

II. Recology Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States.

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

Llagas Creek, the Pajaro River, and Monterey Bay are waters of the United States. Accordingly, Recology's discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Recology has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day that there has been or will be any measurable discharge of storm water from the Facility since July 21, 2009. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Recology is subject to penalties for violations of the Act since July 21, 2009.

III. Pollutant Discharges in Violation of the NPDES Permit.

Recology has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, Oil & Grease ("O&G"), pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Based on its review of available public documents, CSPA is informed and believes: (1) that Recology continues to discharge pollutants in excess of benchmarks and (2) that Recology has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. Recology’s ongoing violations are discussed further below.

A. Recology Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

Recology has discharged and continues to discharge storm water with unacceptable levels of Total Suspended Solids, Chemical Oxygen Demand, Iron, Aluminum, Copper, Zinc, Lead, Phosphorous, Nitrate, and Specific Conductance in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Recology’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 2	TSS	26000 mg/L	100 mg/L
10/13/09	Sample Point 3	TSS	3200 mg/L	100 mg/L
1/26/10	Sample Point 3	TSS	140 mg/L	100 mg/L
2/18/11	Sample Point 2	TSS	760 mg/L	100 mg/L
1/23/12	Sample Point 2	TSS	1000 mg/L	100 mg/L
4/12/12	Sample Point 3	TSS	430 mg/L	100 mg/L
11/30/12	Sample Point 2	TSS	1200 mg/L	100 mg/L

11/30/12	Sample Point 3	TSS	540 mg/L	100 mg/L
----------	-------------------	-----	----------	----------

2. Discharge of Storm Water Containing Chemical Oxygen Demand (COD) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 3	COD	330 mg/L	120 mg/L
1/26/10	Sample Point 3	COD	400 mg/L	120 mg/L
/23/12	Sample Point 3	COD	150 mg/L	120 mg/L
1/23/12	Sample Point 3	COD	150 mg/L	120 mg/L
4/12/12	Sample Point 3	COD	170 mg/L	120 mg/L
11/30/12	Sample Point 3	COD	330 mg/L	120 mg/L

3. Discharge of Storm Water Containing Iron (Fe) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 2	Fe	1400 mg/L	1 mg/L
10/13/09	Sample Point 3	Fe	170 mg/L	1 mg/L
1/26/10	Sample Point 3	Fe	6.8 mg/L	1 mg/L
12/20/10	Sample Point 3	Fe	4.4 mg/L	1 mg/L
2/18/11	Sample Point 2	Fe	37 mg/L	1 mg/L
2/18/11	Sample Point 3	Fe	5.2 mg/L	1 mg/L

1/23/12	Sample Point 2	Fe	59 mg/L	1 mg/L
1/23/12	Sample Point 3	Fe	8.3 mg/L	1 mg/L
4/12/12	Sample Point 2	Fe	23 mg/L	1 mg/L
4/12/12	Sample Point 3	Fe	63 mg/L	1 mg/L
11/30/12	Sample Point 2	Fe	35 mg/L	1 mg/L
11/30/12	Sample Point 3	Fe	88 mg/L	1 mg/L

4. Discharge of Storm Water Containing Aluminum (Al) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 3	Al	130 mg/L	0.75 mg/L
1/26/10	Sample Point 3	Al	4.4 mg/L	0.75 mg/L
12/20/10	Sample Point 3	Al	3 mg/L	0.75 mg/L
22/18/11	Sample Point 3	Al	3.1 mg/L	0.75 mg/L
1/23/12	Sample Point 3	Al	4.4 mg/L	0.75 mg/L
4/12/12	Sample Point 3	Al	37 mg/L	0.75 mg/L
11/30/12	Sample Point 3	Al	55 mg/L	0.75 mg/L

5. Discharge of Storm Water Containing Copper (Cu) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 3	Cu	0.23 mg/L	0.0636 mg/L
11/30/12	Sample Point 3	Cu	0.14 mg/L	0.0636 mg/L

6. Discharge of Storm Water Containing Zinc (Zn) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 3	Zn	0.68 mg/L	0.117 mg/L
1/26/10	Sample Point 3	Zn	0.14 mg/L	0.117 mg/L
12/20/10	Sample Point 3	Zn	0.12 mg/L	0.117 mg/L
1/23/12	Sample Point 2	Zn	0.19 mg/L	0.117 mg/L
4/12/12	Sample Point 3	Zn	0.29 mg/L	0.117 mg/L
11/30/12	Sample Point 3	Zn	0.44 mg/L	0.117 mg/L

7. Discharge of Storm Water Containing Lead (Pb) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 3	Pb	0.082 mg/L	0.0816 mg/L

8. Discharge of Storm Water Containing Phosphorous (P) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
11/30/12	Sample Point 3	P	2.7 mg/L	2.0 mg/L

9. Discharge of Storm Water Containing Nitrate (N) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
1/23/12	Sample Point 2	N	3.6 mg/L	0.68 mg/L
1/23/12	Sample Point 3	N	1.4 mg/L	0.68 mg/L
11/30/12	Sample Point 2	N	1.4 mg/L	0.68 mg/L
11/30/12	Sample Point 3	N	1.8 mg/L	0.68 mg/L

10. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
10/13/09	Sample Point 2	SC	542 µmhos/cm	200 µmhos/cm
10/13/09	Sample Point 3	SC	469 µmhos/cm	200 µmhos/cm
1/26/10	Sample Point 2	SC	1050 µmhos/cm	200 µmhos/cm

CSPA's investigation, including its review of Recology's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicates that Recology has not implemented BAT and BCT at the Facility

for its discharges of Total Suspended Solids, Chemical Oxygen Demand, Iron, Aluminum, Copper, Zinc, Lead, Phosphorous, Nitrate, and Specific Conductance in violation of Effluent Limitation B(3) of the General Permit. Recology was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Recology is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Recology has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least July 21, 2009. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since July 21, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Recology has discharged storm water containing impermissible levels of Total Suspended Solids, Chemical Oxygen Demand, Iron, Aluminum, Copper, Zinc, Lead, Phosphorous, Nitrate, and Specific Conductance in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Recology is subject to penalties for violations of the General Permit and the Act since July 21, 2009.

B. Recology Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Section B(10) of the General Permit provides that “Facility operators shall explain how the Facility’s monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2.”

Based on its investigation, CSPA is informed and believes that Recology has failed to develop and implement an adequate Monitoring & Reporting Plan. As an initial matter, based on its review of publicly available documents, CSPA is informed and believes that for at least three of the past five Wet Seasons Recology has failed to collect storm water samples during two qualifying storms events, as defined by the General Permit. Second, based on its review of publicly available documents, CSPA is informed and believes that during each of the past five Wet Seasons, Recology has failed to analyze samples for all likely to be present in significant quantities in the storm water discharged from the Facility, including pH – 6.0 – 9.0 s.u.; oil & grease – 15 mg/L; mercury – 0.0024 mg/L; nickel – 1.417 mg/L; magnesium – 0.0636 mg/L; selenium – 0.2385 mg/L; silver – 0.0318 mg/L cadmium – 0.0159 mg/L. Moreover, based on its review of publicly available documents, CSPA is informed and believes that Recology has failed, for at least three of the past five Wet Seasons, to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, Recology is subject to penalties for violations of the General Permit and the Act since July 21, 2009. These violations are set forth in greater detail below.

1. Recology Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events In Three of The Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that Recology has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during three of the past four Wet Seasons. For example, CSPA notes that the Annual Reports filed by Recology for each of the 2010-2011, 2011-2012, and 2012-2013 Wet Seasons reported that Recology failed to sample from two qualifying storm events within the meaning of the General Permit, even though there were many qualifying storm events from which to sample (discussed further below).

Recology reported in three of the past five Wet Seasons (i.e., the 2010-2011, 2011-2012 and 2012-2013 Wet Seasons) that the Facility sampled the first qualifying storm event of the season, when in fact it did not. For example, Recology reported in its 2010-2011 Annual Report that it sampled the first qualifying storm event of the Wet Season, but Recology's first sample is from December 20, 2010. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2010-2011 Wet Season occurred as early as Friday, October 22, 2010, when 0.12" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

Further, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at all three identified discharge points, and that Recology has consistently failed to obtain samples all discharge points.

These failures to adequately monitor storm water discharges constitute separate and ongoing violations of the General Permit and the Act.

2. Recology Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30).” General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in Recology’s annual reports for four of the last five Wet Seasons, CSPA is informed and believes that Recology has failed to comply with this requirement of the General Permit.

Specifically, Recology failed to conduct monthly visual observations of discharges from qualifying storm events for all months during four of the past five Wet Seasons as required by the General Permit. Instead, Recology either completely failed to document visual observations at all or documented its visual observations of storm water that discharged during non-qualifying storm events during four of the past five Wet Seasons (discussed further below). However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that Recology could have observed.

For example, Recology reported in its 2009-2010, 2010-2011, 2011-2012, and 2012-2013 Annual Reports that it could not observe a discharge from one of its discharge points for the entire wet season. Based on its investigation of publicly available rainfall data, CSPA is informed and believes that this could not be possible because there were numerous significant rainfall events in the past five years such that there was undoubtedly an opportunity to conduct visual observations from this discharge point. Recology’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least July 21, 2009. Recology’s failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. Recology Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since July 21, 2009.

CSPA is informed and believes that publicly available documents demonstrate Recology’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, Recology

has consistently failed to collect samples of storm water discharged during two qualifying storm events for three of the past five wet seasons. For example, Recology reported in its 2012-2013 Annual report that it only sampled from one qualifying storm event, even though there were numerous opportunities to sample from such an event. Further, in that same 2012-2013 Annual Report the storm event that Recology did sample, was not a qualifying storm event. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on January 23, 2012 was not a qualifying storm event because two days earlier 0.42" of rain fell at the Facility. Thus, the January 21, 2012 storm event rendered any storm occurring for three days afterwards non-qualifying. Therefore, Recology failed to implement an adequate Monitoring Reporting Plan.

Additionally, Recology is in violation of the General Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit Section B.10.a.iii. The Regional Board has determined the appropriate laboratory test methods to employ when analyzing storm water samples for the presence and concentration of various pollutants, as well as the appropriate detection limits for those testing methods.

However, in every single annual report filed by Recology, in four of the past five years the test methods and detection limits employed by the laboratory utilized by Recology to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with the Regional Board requirements. For example, the testing method Recology was required to apply for lead, zinc, and aluminum was EPA 200.8 with a detection limit of 0.0005. However, in the annual report filed by Recology in 2010-2011 the laboratory utilized test method EPA 200.7 with detection limits of 0.005, 0.0029, and 0.026 respectively. Further, in the annual report filed by Recology in 2012-2013, the detection limits for aluminum and chemical oxygen demand were above the required detection limits by at least an order of magnitude. These are just a few of many examples of Recology's failure to adequately test the presence and concentration of pollutants at their storm water discharge points

Recology is in violation of the General Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." General Permit, Section B.2.a. ("Monitoring Program Objectives"). Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Recology is subject to penalties for these violations of the General Permit and the Act since July 21, 2009.

C. Recology Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Recology has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Chemical Oxygen Demand, Iron, Aluminum, Copper, Zinc, Lead, Phosphorus, Nitrate, and Specific Conductance and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, Recology must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Recology must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Recology has failed to adequately implement such measures.

Recology was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Recology has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. Recology is subject to penalties for violations of the General Permit and the Act occurring since July 21, 2009.

D. Recology Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT

(Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of publicly available documents regarding conditions at the Facility indicate that Recology has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Recology has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Recology has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Recology is subject to penalties for violations of the General Permit and the Act occurring since July 21, 2009.

E. Recology Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Recology is discharging elevated levels of Total Suspended Solids, Chemical Oxygen Demand, Iron, Aluminum, Copper, Zinc, Lead, Phosphorous, Nitrate, and Specific Conductance and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Recology was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Recology was aware of high levels of these pollutants prior to July 21, 2009. Likewise, Recology has generally failed to file reports describing its non-compliance with the General Permit in violation of Section C(11)(d). Recology has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since July 21, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Recology is subject to penalties for violations of the General Permit and the Act occurring since July 21, 2009.

F. Recology Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that Recology has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, Recology reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2009-2010, 2010-2011, 2011-2012, and 2012-2013) that it did not observe storm water discharges occurring during the first storm of those Wet Seasons.

Further, Recology failed to sample from qualifying storm events in four out of the seven storm water samples collected during the last four Wet Seasons. For example, in the 2010-2011 Annual Report, Recology sampled from a storm event on December 20, 2010 that was not a qualifying storm event. Further, in the 2012-2013 Annual Report, Recology only provided sampling data from one storm event, and that storm event was not a qualifying storm event.

Recology also failed to comply with the monthly visual observations of storm water discharges requirement for two of the past three Annual Reports filed for the Facility. Recology has not completed observations for all discharge points for the past four wet seasons.

These are only a few examples of how Recology has failed to file completely true and accurate reports. As indicated above, Recology has failed to comply with the Permit and the Act consistently for the past four years; therefore, Recology has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Recology submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past four years. Recology's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Recology is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since July 21, 2009.

IV. Persons Responsible for the Violations.

CSPA puts Recology Pacheco Pass, Recology, Inc., and Freddie Lewis on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Recology Pacheco Pass, Recology, Inc., and Freddie Lewis on formal notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

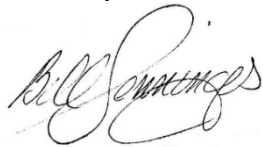
Andrew L. Packard
Megan Truxillo
John J. Prager
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Email: Andrew@PackardLawOffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects each of Recology Pacheco Pass, Recology, Inc., and Freddie Lewis to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Recology Pacheco Pass, Recology, Inc., and Freddie Lewis and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

ATTACHMENT A
Notice of Intent to File Suit, Recology Inc.
Significant Rain Events,* July 21, 2009 – July 21, 2014

Oct 13 2009	Oct 24 2010	Jun 4 2011	Dec 5 2012
Oct 14 2009	Oct 30 2010	Jun 28 2011	Dec 15 2012
Dec 10 2009	Nov 17 2010	Oct 5 2011	Dec 17 2012
Dec 11 2009	Nov 22 2010	Nov 4 2011	Dec 22 2012
Dec 12 2009	Nov 23 2010	Nov 5 2011	Dec 23 2012
Dec 13 2009	Nov 27 2010	Nov 11 2011	Dec 25 2012
Dec 26 2009	Dec 5 2010	Nov 18 2011	Dec 26 2012
Dec 27 2009	Dec 14 2010	Nov 19 2011	Dec 29 2012
Dec 28 2009	Dec 15 2010	Nov 20 2011	Jan 5 2013
Jan 12 2010	Dec 16 2010	Jan 19 2012	Jan 6 2013
Jan 13 2010	Dec 17 2010	Jan 20 2012	Jan 24 2013
Jan 17 2010	Dec 18 2010	Jan 21 2012	Feb 19 2013
Jan 18 2010	Dec 19 2010	Jan 22 2012	Mar 6 2013
Jan 19 2010	Dec 21 2010	Jan 23 2012	Mar 7 2013
Jan 20 2010	Dec 22 2010	Feb 7 2012	Apr 1 2013
Jan 21 2010	Dec 25 2010	Feb 13 2012	Apr 4 2013
Jan 22 2010	Dec 28 2010	Feb 15 2012	Oct 29 2013
Jan 26 2010	Dec 29 2010	Feb 29 2012	Nov 19 2013
Jan 29 2010	Jan 1 2011	Mar 1 2012	Nov 20 2013
Feb 4 2010	Jan 2 2011	Mar 16 2012	Dec 6 2013
Feb 6 2010	Jan 30 2011	Mar 17 2012	Dec 7 2013
Feb 9 2010	Feb 14 2011	Mar 18 2012	Jan 30 2013
Feb 21 2010	Feb 16 2011	Mar 24 2012	Feb 2 2014
Feb 23 2010	Feb 17 2011	Mar 25 2012	Feb 6 2014
Feb 24 2010	Feb 18 2011	Mar 27 2012	Feb 7 2014
Feb 26 2010	Feb 19 2011	Mar 28 2012	Feb 8 2014
Feb 27 2010	Feb 24 2011	Mar 31 2012	Feb 9 2014
Mar 2 2010	Feb 25 2011	Apr 10 2012	Feb 26 2014
Mar 3 2010	Feb 26 2011	Apr 11 2012	Feb 27 2014
Mar 12 2010	Mar 13 2011	Apr 12 2012	Feb 28 2014
Mar 30 2010	Mar 16 2011	Apr 13 2012	Mar 1 2014
Apr 4 2010	Mar 18 2011	Apr 25 2012	Mar 3 2014
Apr 5 2010	Mar 19 2011	Jun 4 2012	Mar 26 2014
Apr 11 2010	Mar 20 2011	Oct 22 2012	Mar 29 2014
Apr 12 2010	Mar 21 2011	Oct 23 2012	Mar 31 2014
Apr 20 2010	Mar 23 2011	Nov 16 2012	Apr 1 2014
Apr 21 2010	Mar 24 2011	Nov 17 2012	Apr 4 2014
Apr 27 2010	Mar 25 2011	Nov 18 2012	
Apr 28 2010	Mar 26 2011	Nov 28 2012	
May 10 2010	Apr 8 2011	Nov 29 2012	
May 27 2010	May 15 2011	Nov 30 2012	
Oct 17 2010	May 16 2011	Dec 1 2012	
Oct 23 2010	May 17 2011	Dec 2 2012	

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.