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***VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED***

February 13, 2013

Xin Mian (Henry) Pan
Owner, Operator and Site Manager
Uni-Tile & Marble, Inc.
21105-B Cabot Boulevard
Hayward, CA 94545

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Owner, Operator and Manager:

INTRODUCTION

The Clean Water Act (“CWA” or “Act”) § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency (“EPA”) and the State in which the violations occur.

California River Watch (“River Watch”) hereby places Uni Tile & Marble, Inc., hereinafter referred to as “the Discharger,” on notice, that following the expiration of sixty (60) days from the date of this Notice River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board Basin Plan as exemplified by as exemplified by the Discharger’s unlawful discharge of pollutants into waters of the United States without a National Pollution Discharge Elimination System (“NPDES”) permit for point source as opposed to non-point source discharges (*see* CWA §§ 402(a) and (b)).

This Notice addresses the Discharger’s failure to comply with the terms and conditions of California’s General Industrial Storm Water Permit for Industrial Storm Water Discharges - State Water Resources Control Board (State Water Board) Water Quality Order

No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (as amended by Water Quality Order 92-12-DWQ) (“General Permit”) issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p), its un-permitted discharges of contaminated stormwater, and its discharges of non-stormwater pollutants in violation of effluent limitations mandated in the General Permit.

NOTICE

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 has identified several General Permit violations and discharges from the Cabot Boulevard warehouse facility to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit. CWA §301(a), 33 U.S.C. §1311(a).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing violations of the General Permit and of the discharges from points sources within the Cabot Boulevard warehouse facility to waters of the United States, describing with particularity specific incidents referenced in the California State Water Resources Control Board’s Public Reports and other public documents available to the Discharger and incorporates by reference records cited above from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is Uni-Tile & Marble, Inc., identified as the Discharger, and those of its employees responsible for compliance with the General Permit.

4. *The location of the alleged violation.*

The location of the alleged violations is the Uni-Tile & Marble facility located at 21105 Cabot Boulevard in Hayward, California.

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

River Watch has examined both RWQCB and the Discharger's records from the period from February 8, 2008 through February 8, 2013. The range of dates covered by this Notice is from February 8, 2008 through February 8, 2013. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered by this Notice. Some of the violations are continuous 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, a non-profit corporation organized under the laws of the State of California, located at 290 S. Main Street, #817, Sebastopol, CA, 95472. River Watch is dedicated to the protection, enhancement and restoration of the surface and groundwaters of the State of California including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys.

River Watch has retained legal counsel with respect to the violations set forth in this Notice. All communications relating to this Notice should be addressed to:

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REGULATIONS

The CWA regulates the discharge of pollutants into navigable waters, including the discharge of pollutants through stormwater. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA §402, 33 U.S.C. §1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards and limitations specified in a NPDES Permit define the scope of the authorized exception to the 33 U.S.C. §1311(a) prohibition, such that the violation of a permit limit places a polluter in violation of 33 U.S.C. §1311(a), and thus

in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. §1365 to enforce effluent standards or limitations, including violations of 33 U.S.C. §1311(a), 33 U.S.C. §1342(p), and 33 U.S.C. §1365(f)(1).

Clean Water Act § 402(p)(4)(A) required the EPA to establish regulations for permits for discharges of stormwater associated with industrial activity. The EPA's stormwater discharge regulations provide that, "Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit." 40 C.F.R. § 122.26(c)(1). The Ninth Circuit has observed that "the language 'discharges associated with industrial activity' is very broad. The operative word is 'associated.' It is not necessary that stormwater be contaminated or come into direct contact with pollutants; only association with any type of industrial activity is necessary." *See Natural Resources Defense Council, Inc. v. EPA*, 966 F.2d 1292, 1304 (9th Cir. 1992).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the agency operates satisfies certain criteria. *See* 33 U.S.C. §1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary Regional Water Quality Control Boards to issue NPDES permits. The entity responsible for issuing NPDES permits, including municipal stormwater permits, and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The General Permit prohibits the discharge of material other than stormwater to waters of the United States, unless such discharges are regulated under a NPDES permit; and prohibits the discharge of stormwater which causes or *threatens to cause* pollution, contamination, or nuisance.

The General Permit requires stormwater dischargers to comply with its terms, including the filing of a Notice of Intent ("NOI") to be covered under the General Permit; the development and implementation of a Storm Water Pollution and Prevention Plan ("SWPPP"); and, the development and implementation of a Monitoring and Reporting Program. Dischargers are required to develop Best Management Practices ("BMP") using Best Available Technology ("BAT") and best conventional technology ("BCT") to control and/or eliminate pollution. Dischargers must either prevent unauthorized non-stormwater discharges or apply for a separate NPDES stormwater permit for any of facility or operation.

BACKGROUND

The Discharger owns and/or operates the warehouse facility located at 21105 Cabot Boulevard, in the City of Hayward, Alameda County, California. The 175,000 ft² facility processes tile and marble as well as kitchen cabinetry. In addition, the Discharger sells and installs these products. There are large quantities of raw materials and final products stored throughout the site. The majority of the site is impermeable asphalt, concrete and roofing material. Stormwater on the site flows toward six (6) storm drain inlets which flow into an on-site drainage ditch which then flows through a series of channels into San Francisco Bay, a water of the United States. A portion of the Discharger's operations occur in the open air. Stormwater therefore comes into contact with these operations.

In 2006, the City of Hayward notified the Discharger of its obligation to comply with federal and state industrial stormwater discharge requirements, and provided a copy of the notification to the RWQCB. In 2007, the RWQCB sent a notice of violation to the Discharger based on the Discharger's continuing failure to comply with industrial stormwater discharge requirements. In July 2008, the RWQCB inspected the Cabot Boulevard site. Dust and slurry were found accumulating in the stone cutting area. Plastic sheeting was in various stages of disintegration. All of these materials could be mobilized into the storm drain inlets located at the site. In August 2009, the RWQCB received a Notice of Intent from the Discharger to comply with the terms of the General Permit. The NOI was approved and the Discharger was issued Waste Discharger Identification ("WDID") number 2011022285.

The RWQCB issued more than one notice of violations to the Discharger in 2010 for failure to file Annual Reports. The RWQCB inspected the facility again that year, finding accumulations of debris and dust throughout the site, improperly maintained storm drain inlets, equipment maintenance that failed to meet minimum requirements, and improper employee and contractor training – all violations of the terms of the General Permit. Also, the Discharger failed to prepare and submit a SWPPP. In its 2010-2011 Annual Report (filed several months late) the Discharger claimed it was unaware of this obligation, and finally prepared a SWPPP in late 2011.

The RWQCB notified the Discharger by way of formal inspection reports, that the Discharger's current practices at the warehouse facility were allowing unauthorized non-stormwater discharges to reach the storm drain and eventually San Francisco Bay. The RWQCB inspector reported that plastic debris, dust, slurry, and particulates were reaching the storm drain and would therefore be washed away in the case of a rain event.

The RWQCB's inspection report of 2011 includes the below identified failures by the Discharger to implement BMPs on the Cabot Boulevard facility:

- Accumulation of debris, dust, particulates, trash, and styrofoam on the storm drain inlets and in the storm drains themselves;
- Equipment repair performed in the open air; spills were neither contained nor cleaned up;
- Accumulation of dust and particulates from the outdoor stone cutting area in areas near two (2) of the storm drains;
- Disposal of empty containers and other wastes in heaps and piles, rather than bins or other appropriate containers;
- Absence of a centralized storage area for chemical wastes.

VIOLATIONS

River Watch contends that for the period February 1, 2008 to February 1, 2013, the Discharger has been in violation of the General Permit and thereby in violation of the CWA by:

- 1) Allowing materials other than storm water (non-storm water discharges) to discharge either directly or indirectly to waters of the United States;
- 2) Failing to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants; and
- 3) Failing to develop and implement a SWPPP that complies with the requirements in Section A of the General Permit, and that includes BMPs that achieve BAT/BCT which constitute compliance with this requirement.

One of the major elements of the SWPPP is the elimination of unauthorized non-storm water discharges to a facility's storm drain system. Unauthorized non-storm water discharges at the Discharger's warehouse facility are generated from a wide variety of pollutant sources including dust and particulates from stone cutting operations, improperly disposing of plastic and other debris, and maintaining equipment in a way that allows pollutants to enter the storm drain system. Unauthorized non-storm water discharges can contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping must be

addressed through BMPs. The Discharger has inadequately identified and inadequately assessed all potential sources of pollutants and has failed to describe the appropriate BMPs necessary to reduce or prevent these potential pollutants in its SWPPP.

The Discharger's SWPPP does not evaluate all potential pollution conveyances to determine whether they convey unauthorized non-storm water discharges to the storm drain system. The Discharger has failed to sample a stormwater event in the two (2) years during which it has submitted Annual Reports. The Discharger claims that no samples were taken because there was no runoff because of light rain; that the rain that did fall occurred outside of business hours; and, that three working days had not passed between rain events.¹ The failure to sample stormwater events is a violation of the General Permit.

The Discharger will continue to be in violation of the SWPPP requirements every day it discharges non-storm water and storm water containing pollutants without developing and implementing an adequate SWPPP for the Cabot Boulevard warehouse facility.

In addition, River Watch contends the Discharger has violated CWA §402(a) which prohibits the discharge of a pollutant from a point source without a NPDES permit. 33 U.S.C. §1342(a). As discussed above, the Discharger has discharged pollutants, including plastic waste, dust and other wastes from point sources on the Cabot Boulevard warehouse facility, which point sources include equipment, stored materials, and the storm drain system and outfall to the drainage ditch. These discharges are reaching the San Francisco Bay, a water of the United States. River Watch contends these violations will continue until such time as the discharges cease, or the Discharger acquires an individual NPDES Permit for the point source discharges.

Inadequate BMPs with respect to the Cabot Boulevard warehouse facility include the following activities or omissions:

- Dust and other particulates are allowed to accumulate in significant quantities throughout the site.
- Storm drain inlets are improperly maintained and do not have adequate screens to prevent unauthorized discharges from reaching nearby surface waters.
- Equipment is improperly stored and repaired on the site in non-contained maintenance and storage areas.

¹ Other industrial dischargers throughout the San Francisco Bay Area were able to sample at least two rain events both in the years 2010-2011 and 2011-2012.

- No centralized storage areas exist for the containment of chemical wastes.
- Failure to train employees or improper training of employees with respect to preventing unauthorized stormwater discharges.

REMEDIAL MEASURES REQUESTED

1. Updating of the SWPPP to include:
 - a. Identification of all potential pollutants and sources of those pollutants;
 - b. Current BMPS and new BMPS to prevent unauthorized non-stormwater discharges.
 - c. Updating of the Site Map to include all sources of potential pollutants, sheet flow direction and groundwater flow direction, and locations of all industrial activities on site.
2. Updating of BMPs to include:
 - a. Proper installation and securing of storm drain inlet screens and a regular maintenance schedule;
 - b. Covering of material piles and other sources of pollutants to prevent unauthorized storm water discharges;
 - c. Proper training of all employees and contractors to ensure compliance with the General Permit;
 - d. Ensuring proper housekeeping and regular sweeping of the site; and,
 - e. Provision of proper containers and storage for hazardous wastes and other debris.
3. Compliance with CWA §402(a) by either eliminating discharges of pollutants from a point source to water of the United States without a NPDES permit; or applying for and receiving an individual NPDES pollutant discharge permit.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. The members' health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as identified in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for these violations. If the Discharger wishes to pursue such discussions, it is suggested that a dialog be initiated soon so that discussions may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,



Jerry Bernhaut

JB:lhbm

cc: Administrator
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