



290 South Main Street, #817 • Sebastopol, CA 95472 • US@ncriverwatch.org

***VIA REGISTERED MAIL -  
RETURN RECEIPT REQUESTED***

July 1, 2013

Mike Leggins, General Manager  
Recology Humboldt County  
949 West Hawthorne St.  
Eureka, CA 95501

Mark Lovelace, Chair  
Board of Directors  
Humboldt Waste Management Authority  
A Joint Powers Authority  
1059 West Hawthorne Street  
Eureka, CA 95501

**Re: Notice of Violations and Intent to File Suit Under the Resource  
Conservation and Recovery Act**

Dear Mr. Leggins and Mr. Lovelace:

**NOTICE**

On behalf of California River Watch (“River Watch”), this letter provides statutory notification (“Notice”) to Recology Humboldt County and Humboldt Waste Management Authority (hereafter collectively referred to as “Polluters,”) of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. § 6901 *et seq.* in conjunction with continuing pollution on the Cummings Road Burn Ash Site, located at the end of Cummings Road in Eureka, California (the “Site”) which violations are further described in the BACKGROUND section of this Notice.

The RCRA requires that sixty (60) days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the Environmental Protection Agency (“EPA”) and the State in which the violation is alleged to have occurred.

RCRA also requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the EPA and the State in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment.

However, such an action may be brought immediately after such notification when a violation of Subtitle C of RCRA is alleged (subchapter III, 42 U.S.C. § 6921 *et seq.*) Subtitle C of the RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment.

As discussed herein, Polluters operate a non-permitted, hazardous waste treatment, storage and disposal site. River Watch contends that Polluters' mishandling of wastes in violation of Subtitle C of the RCRA violates a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, as well as creating an imminent and substantial endangerment to human health or the environment.

River Watch hereby notifies Polluters that at the expiration of the appropriate notice periods under the RCRA, River Watch intends to commence a civil action against Polluters on the following grounds:

1. Polluters' use and storage of solid and hazardous wastes as described in the BACKGROUND section of this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to the RCRA regarding storage of pollutants – 42 U.S.C. § 6972(a)(1)(A).
2. Polluters' operations at the Site as identified in the BACKGROUND section of this Notice have caused contamination of soil and groundwater which presents an imminent and substantial endangerment to human health and the environment – 42 U.S.C. § 6972(a)(1)(B).

Under RCRA, 42 U.S.C. § 6972(a)(1)(A), Notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under the RCRA, shall include sufficient information to permit the recipient to identify the following specific information:

1. *Specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated*

RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. RCRA's goals are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly

stored wastes. RCRA specifically protects groundwater. The EPA's waste management regulations are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to the RCRA, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations.

River Watch contends that Polluters have no hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste at the Site; and, that Polluters' use, handling, disposal and storage of waste at the Site as described in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to 42 U.S.C. § 6972(a)(1)(A) regarding hazardous waste. Contamination of soil and groundwater at the Site as described further in this Notice presents an imminent and substantial endangerment to human health and the environment, (42 U.S.C. § 6972(a)(1)(B)).

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

River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary, the RCRA requires that the environment and public be protected from hazardous wastes including those generated by Polluters at the Site. The pollutants found at the Site constitute hazardous waste under the RCRA, and are required to be managed such that potential and actual harm to the environment and public is eliminated.

The liability of Polluters stems from either ownership of the Site or from activities conducted on the Site by Polluters which violated the RCRA and have contributed to the past or present handling, storage, treatment, transportation, or disposal of a hazardous waste which may present an imminent and substantial endangerment to health or the environment.

River Watch alleges Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA, by reason of allowing pollutants on the Site to discharge to soils and ground water in and around the Site as well as threaten waters of the United States.

Polluters have operational control over the Site with regard to characterization and remediation. Polluters caused pollutants to be discharged from the Site to aquifers, surface and groundwaters by contributing to the past or present handling, storage, treatment, transportation, or disposal of a hazardous waste which may present an imminent and substantial endangerment to health or the environment.

River Watch alleges Polluters have caused contamination of soil, surface and ground waters. Polluters are past and present owners and/or operators of a treatment, storage, or disposal facility, who have contributed or are contributing to the past or present handling,

storage, treatment, transportation, or disposal of solid or hazardous waste which presents an imminent and substantial endangerment to health or the environment. Due to the contamination of soils, ground and surface waters at and surrounding the Site, the beneficial uses of those waters have been impaired. Groundwater in the area of the Site is hydrologically connected to the Ryan Creek Watershed, which is already affected or at imminent risk of contamination from the hazardous and solid waste found at the Site.

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

The entities responsible for the violations alleged in this Notice are Recology Humboldt County and Humboldt Waste Management Authority, collectively referred to as “Polluters” throughout this Notice.

4. *The date or dates of violations or a reasonable range of dates during which the alleged activities occurred.*

Disposition, discharge and release of pollutants from the Site has been ongoing for several years. The RCRA is a strict liability statute with a 5-year statute of limitations; therefore, the range of dates covered by this Notice is June 28, 2008 through June 28, 2013. River Watch will from time to time supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to surface and ground waters and failure to implement the requirements of the RCRA are continuous, and therefore each day is a violation.

5. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472 – a non-profit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries. River Watch may be contacted via email: [US@ncriverwatch.org](mailto: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 addressed to:

Sarah Danley, Esquire  
California River Watch  
290 South Main Street, #817  
Sebastopol, CA 95472  
Tel. 707-528-8175  
Fax 707-528-8675.

## **BACKGROUND**

The Cummings Road Burn Ash Site (the “Site”) is located two miles southeast of Eureka, California at the end of Cummings Road, in the Ryan Creek Watershed. The Site consists of approximately 5.2 acres. This historic burn dump is comprised of approximately 60,000 cubic yards of burn ash residue, approximately 49,000 cubic yards of which are located on property owned by Recology Humboldt County. The remaining 11,000 cubic yards of burn ash residue are located on property owned by Humboldt Waste Management Authority.

Recology Humboldt County submitted an Environmental and Geotechnical Investigation Report in January of 2011 to the Regional Water Quality Control Board, North Coast Region (“RWQCB”) confirming that burn ash material at the Site exceeded California’s hazardous waste levels for various constituents including cadmium, copper, and lead. Leachate from the burn ash material is impacting both surface water and ground waters. Burn ash material is eroding from the Site and being deposited into surface waters, including the Ryan Creek watershed. Ryan Creek Watershed is a tributary to Fresh Creek which flows into Humboldt Bay and the Pacific Ocean.

The RWQCB has determined that the beneficial uses of surface waters and ground waters are impaired and threatened by the Dischargers’ violations of the RCRA as alleged in this Notice. The discharges of cadmium, copper and lead from the Site contribute to violations of applicable water quality standards. The Site has not been fully characterized and no remediation with respect to the contaminants of concern has been commenced. River Watch does not believe Polluters have made any attempt to determine the mass of any pollutants, making a determination as to mass balance clean-up impossible. Aquifer studies have been inadequate. River Watch is concerned that the Ryan Creek Watershed has already been compromised by the contaminants identified in this Notice.

## **LIABILITY/VIOLATIONS**

The RWQCB has adopted a Water Quality Control Plan or “Basin Plan” for the North Coast Region which designates all surface and groundwater at or near the Site as capable of supporting domestic water supply. Maximum contaminant levels (“MCLs”) and water quality objectives (“WQOs”) exist in the Basin Plan ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent WQOs for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater at the Site include domestic, agricultural, industrial and municipal water supply.

The pollutants at the Site, including cadmium, copper and lead, have been characterized as “hazardous waste” and “solid waste” within the meaning of the RCRA. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of these pollutants.

River Watch alleges Polluters’ use and storage of wastes at the Site between June 28, 2008 and June 28, 2013 have allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California’s hazardous waste regulatory programs. Contaminant levels of toxic metals such as cadmium, lead, and copper in soil and groundwater at the Site are significantly greater than the allowable MCLs, WQOs, or public health goals for said constituents. These pollutants are known carcinogens and toxins. All are known to harm both plants, animals and aquatic organisms. In their concentrations at the Site and proximity to sensitive receptors such as ground water, surface water, plants, insects, animals, aquatic organisms and humans, these pollutants create an imminent and substantial endangerment to public health and the environment.

River Watch alleges that for the period June 28, 2008 to June 28, 2013, Polluters were and are the past or present owners or operators of a treatment, storage, or disposal facility which contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of a solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch alleges Polluters have no RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically found at the Site.

River Watch alleges that for the period June 28, 2008 to June 28, 2013, Polluters have caused or permitted, cause or permit, or threaten to cause or permit hazardous waste to be discharged or deposited at the Site where it is, or probably will be, discharged into waters of the State and now creates, or threatens to create, a condition of pollution or nuisance. The discharge and threatened discharge of such waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated. Polluters have known of the contamination at the Site since at least 2008, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Site, and to continually contaminate and re-contaminate soil, ground and surface waters including the Ryan Creek Watershed, tributary to Freshwater Creek, which flows into Humboldt Bay and the Pacific Ocean.

Past or current violations of the RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged. Accordingly, under these

provisions, persons or entities violating the RCRA are subject to substantial liability to the United States on a per-day basis.

River Watch believes the violations set forth in this Notice are continuing in nature. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the RWQCB and the State Water Resources Control Board GeoTracker related to the Site.

Violations of the RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

The violations of Polluters as set forth in this Notice affect the health and enjoyment of River Watch members who reside, work and recreate in the affected area. These members use this watershed for domestic water supply, agricultural water supply, recreation, sports, residing, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this area is specifically impaired by Polluters' violations of RCRA as alleged in this Notice.

### **REQUESTED RELIEF**

River Watch requests full investigation of the Site including the following:

1. Comprehensive Sensitive Receptor Survey – To include an aquifer profile, surface water study, and habitat survey;
2. Aquifer Profile Study – Profiles identifying all water bearing strata and communication with the other aquifers. Testing of all aquifers determined to be in communication with the surface unconfined aquifer and contaminated zones for all known pollutants at the Site;
3. Surface Water Survey – To determine if any surface waters have been or have the potential of being contaminated by pollutants at the Site. Testing of all surface waters and drainage within 1,500 feet of the site; and,
4. Determination of Mass of Constituents – Masses of the various pollutants at the Site, such as cadmium, copper and lead.

## CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of RCRA. At the close of the notice periods or shortly thereafter, River Watch intends to file suit against Polluters under the provisions of RCRA for each of the violations alleged in this Notice and with respect to the existing conditions at the Site. During the notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Polluters wish to pursue such discussions in the absence of litigation, they are encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues set forth in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the notice period ends.

Very truly yours,



Sarah Danley

SD:lhlm

cc: Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Executive Director  
Calif. Integrated Waste Mgmt. Board  
1001 "I" Street  
Sacramento, CA 95814

Recology Humboldt County c/o Roxanne L. Frye, Registered Agent  
50 California Street, 24<sup>th</sup> Floor  
San Francisco, CA 94111