



Wishtoyo Foundation and its Ventura Coastkeeper Program
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January 13, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

E.J. Harrison & Sons, INC.
Managing Agent
5275 Colt St.
Ventura, CA 93003

Harrison Brothers Enterprises, LLC
Managing Agent
5275 Colt St.
Ventura, CA 93003

Newbury Disposal Company, INC.
Managing Agent
5275 Colt St.
Ventura, CA 93003

American Resource Recovery, INC.
Managing Agent
5275 Colt St.
Ventura, CA 93003

Santa Clara Valley Disposal, INC.
Managing Agent
5275 Colt St.
Ventura, CA 93003

E. J. Harrison & Sons Rentals, INC.
Managing Agent
5275 Colt St.
Ventura, CA 93003

RJM Collection Service
Managing Agent
5275 Colt St.
Ventura, CA 93003

E.J. Harrison & Sons Rentals
A California General Partnership
Managing Agent
5275 Colt St.
Ventura, CA 93003

VIA U.S. MAIL

Registered Agent for
E.J. Harrison & Sons, INC.
Harrison Brothers Enterprises, LLC
E. J. Harrison & Sons Rentals, INC.
American Resource Recovery, INC.

Newbury Disposal Company, INC.
RJM Collection Service
Santa Clara Valley Disposal, INC.
E. J. Harrison & Sons Rentals

Myron G Harrison
5275 Colt St.
Ventura, CA 93003

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

To Whom It May Concern:

In our notice letter dated October 26, 2010 (“October 26 Notice”), Wishtoyo Foundation and its Ventura Coastkeeper program (“Ventura Coastkeeper” or “Coastkeeper”) notified E.J. Harrison & Sons, INC.; E. J. Harrison & Sons Rentals, INC.; Newbury Disposal Company, INC.; Santa Clara Valley Disposal, INC.; RJM Collection Service; Harrison Brothers Enterprises, LLC; Harrison & Sons Rentals, a California General Partnership; American Resource Recovery, INC.; Myra Harrison; Myron Harrison; Jim Harrison; and Ralph Harrison (the “E.J. Harrison & Sons Owners and/or Operators”), the registered agent(s), responsible owners, officers, and/or operators of E.J. Harrison & Sons facility located at 1589 Lirio Avenue, Ventura, California, 93004 (hereinafter “Facility”), regarding violations of the Clean Water Act (“CWA”)¹ and the State of California’s General Industrial Storm Water Permit (“Storm Water Permit”)² occurring at the Facility. This letter supplements the October 26 Notice with respect to CWA and Storm Water Permit violations committed by the E.J. Harrison & Sons Owners and/or Operators at the Facility pursuant to section 505 of the Clean Water Act, 33 U.S.C. § 1365 by providing notice of supplemental violations based on information obtained by Ventura Coastkeeper after October 26, 2010.

As stated in the October 26 Notice, based information available to Ventura Coastkeeper on October 26, 2010, E.J. Harrison & Sons Owners and/or Operators are not complying with the substantive and procedural requirements of the CWA and the Storm Water Permit. Specifically, E.J. Harrison & Sons Owners and/or Operators 1.) have discharged and continue to discharge storm water containing pollutants, including Total Suspended Solids (“TSS”), at levels in violation of Receiving Water Limitations (C)(1) and C(2) of the Storm Water Permit during every significant rain event occurring since at least October 2005; 2.) have discharged or continue to discharge polluted storm water with elevated levels of TSS, pH, and oil and grease from the Facility in violation of Effluent Limitation (B)(3) of the Storm Water Permit; 3.) have operated and are operating the Facility with an inadequately developed and/or implemented Storm Water Pollution Prevention Plan (“SWPPP”) in violation of Sections A(3) through A(10) of the Storm Water Permit; 4.) have operated and are operating the Facility with an inadequately developed and/or implemented Monitoring and Reporting Program (“MRP”) in violation of Sections B(3) through B(16) of the Storm Water Permit.

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4, each separate

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

² National Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“Storm Water Permit”).

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violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to October 26, 2010, the date upon which Ventura Coastkeeper mailed its October 26 Notice. For violations based on information obtained by Ventura Coastkeeper after October 26, 2010, each additional separate violation of the CWA subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of this letter. These provisions of law authorize civil penalties of up to \$32,500 per day per violation for all Clean Water Act violations between October 26, 2005 and January 12, 2009, and \$37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, Ventura Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties or substantially prevailing parties to recover costs, including attorneys' and experts' fees.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to sue. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation, all copied on this letter. *See* 40 C.F.R. § 135.2. You, as E.J. Harrison & Sons Owners and/or Operators of the Facility are formally placed on notice that following sixty (60) days from the date of this supplemental notice letter, Ventura Coastkeeper intends to file an enforcement action in Federal Court against the owners and/or operators of the Facility for violating the Storm Water Permit and the Clean Water Act based on the information obtained by Ventura Coastkeeper after October 26, 2010.

Under Section 505 of the CWA, "any citizen may commence a civil action on his own behalf" against any person who is "alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or State with respect to such a standard or limitation." 33 U.S.C. § 1365(a) and (a)(1). The CWA gives the federal district courts the authority to enforce such a standard or limitation, or order with respect to such standard and limitation, and to apply appropriate civil penalties under 33 U.S.C. § 1319(d). *See* 33 U.S.C. § 1365(a).

The October 26 Notice includes sections discussing the factual background, Ventura Coastkeeper's interest in this matter, the operation of the Facility by the E.J. Harrison & Sons Owners and/or Operators, the impact of storm water pollution on the Santa Clara River, the impact of E.J. Harrison & Sons Owners and/or Operators activities at the Facility on the beneficial uses and aquatic life of the Santa Clara River, the statutory background, and E.J. Harrison & Sons Owners and/or Operators violations of the CWA and Storm Water Permit at the Facility. These sections are incorporated by reference are

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not repeated in this supplemental notice letter. The October 26 Notice provides more than adequate information to allow E.J. Harrison & Sons Owners and/or Operators to identify violations of CWA and Storm Water Permit at the Facility set forth in the October 26 Notice, and to come into compliance with the CWA and Storm Water Permit at the Facility via curing these violations. This January, 13, 2011 notice of supplemental violations under the Federal Clean Water Act (“January 13 Notice”) provides additional information on violations from 2005 to present. Some of the claims set forth below provide further examples of violations and are illustrative of the pattern and practice of E.J. Harrison & Sons Owners and/or Operators violations of the CWA and Storm Water Permit at the Facility, and do not constitute an exhaustive list of violations of the CWA and Storm Water Permit noticed by October 26 Notice. These examples of violations are closely related to and are of the same type of violations that have occurred since at least 2005. This January 13 Notice also sets forth additional violations of the CWA and Storm Water Permit committed, and that continue to be committed, by E.J. Harrison & Sons Owners and/or Operators at the Facility.

As stated in the October 26 Notice, information currently available to Ventura Coastkeeper indicates that E.J. Harrison & Sons Owners and/or Operators have not, and are not, complying with the substantive and procedural requirements of the CWA and the Storm Water Permit. Specifically, according to information available to Ventura Coastkeeper, and as stated in the October 26 Notice, E.J. Harrison & Sons Owners and/or Operators 1.) have discharged and continue to discharge storm water containing pollutants, including Total Suspended Solids (“TSS”), at levels in violation of Receiving Water Limitations (C)(1) and C(2) of the Storm Water Permit during every significant rain event occurring since at least October 2005; 2.) have discharged or continue to discharge polluted storm water with elevated levels of TSS, pH, and oil and grease from the Facility in violation of Effluent Limitation (B)(3) of the Storm Water Permit; 3.) have operated and are operating the Facility with an inadequately developed and/or implemented Storm Water Pollution Prevention Plan (“SWPPP”) in violation of Sections A(3) through A(10) of the Storm Water Permit; 4.) have operated and are operating the Facility with an inadequately developed and/or implemented Monitoring and Reporting Program (“MRP”) in violation of Sections B(3) through B(16) of the Storm Water Permit.

In addition to the claims in the October 26 Notice, according to additional information obtained by Ventura Coastkeeper after October 26, 2010, E.J. Harrison & Sons Owners and/or Operators 1.) have discharged and continue to discharge storm water containing additional pollutants, including e-coli, fecal coliform, and total coliform, at levels in violation of Receiving Water Limitations (C)(1) and C(2) of the Storm Water Permit during every significant rain event occurring since at least October 2005; 2.) have discharged or continue to discharge polluted storm water with elevated levels of Chemical Oxygen Demand (“COD”) and Biochemical Oxygen Demand (“BOD”) from the Facility in violation of Effluent Limitation (B)(3) of the Storm Water Permit; 3.) have demonstrated additional reasons why the Facility has an inadequately developed and/or implemented Storm Water Pollution Prevention Plan (“SWPPP”) in violation of Sections A(3) through

A(10) of the Storm Water Permit; and 4.) have demonstrated additional reasons why they have operated and are operating the Facility with an inadequately developed and/or implemented Monitoring and Reporting Program (“MRP”) in violation of Sections B(3) through B(16) of the Storm Water Permit.

**I. SUPPLEMENTAL NOTICE OF VIOLATIONS OF CLEAN WATER ACT
AND STORM WATER PERMIT BASED ON ADDITIONAL INFORMATION
OBTAINED BY VENTURA COASTKEEPER AFTER OCTOBER 26, 2010.**

Documents submitted to the State Water Resources Control Board (“State Board”) by E.J. Harrison Owners and/or Operators indicate that storm water discharging from the Facility drains off the site from at least three discharge points identified on the site map attached to the Storm Water Pollution Prevention Plan (“SWPPP”) as Appendix A: 1) SW-1; 2) SW-2³; 3) SW-3⁴. In addition, E.J. Harrison Owners and/or Operators Annual Stormwater Monitoring Reports submitted to the State Board from 2005-2010 indicate that storm water discharges from the Facility at an additional discharge point: SW-4. Coastkeeper investigators have also discovered two more discharge points: 1.) a discharge point from a pipe at the south end of the Facility that discharges into a storm channel on Standard Industries adjacent property, which discharges directly into Brown Barranca (hereinafter “Discharge Point 5”), and 2.) a discharge point from a concrete channel at the along the northeast portion of the Facility that occupies the Facility’s frontage on Lirio Avenue north of the Facility’s Operations Area One identified in the SWPPP that discharges storm water directly into a storm channel along Lirio Avenue (“hereinafter Discharge Point 6”), which then conveys the polluted storm water into an earthen channel that discharges down a steep embankment directly into the Santa Clara River. Comparing the SWPPP site map to Ventura Coastkeeper investigators’ discovery, discharges from Discharge Point 5 and Discharge Point 6 appear to be previously unreported discharges.

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. *See* 33 U.S.C. §1311(a). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 126(c)(1); Storm Water Permit, Fact Sheet p. VII. A failure to comply with or obtain coverage under the Storm Water Permit is a violation of the Clean Water Act. Storm Water Permit, Section C(1).

³ From comparing the discharge location of SW-2, as identified and placed on the Facility’s SWPPP, to the location of Ventura Coastkeeper identified Discharge Point EJ-2 from which Ventura Coastkeeper investigators collected storm water samples, it appears that Ventura Coastkeeper Discharge Point EJ-2 is the same as discharge point SW-2, instead of an additional or unreported discharge from the Facility.

⁴ From comparing the discharge location of SW-3, as identified and placed on the Facility’s SWPPP, to the location of Ventura Coastkeeper identified Discharge Point EJ-3 from which Ventura Coastkeeper investigators collected storm water samples, it appears that Ventura Coastkeeper Discharge Point EJ-3 is the same as discharge point SW-3, instead of an additional or unreported discharge from the Facility.

The additional Clean Water Act and Storm Water Permit violations described below, not included in the October 26 Notice, are based on information obtained by Ventura Coastkeeper after October 26, 2010. In addition, the information provided below further demonstrates that E.J. Harrison & Sons Owners' and/or Operators' violations of the Clean Water Act and Storm Water Permit at the Facility that are included in the October 26 Notice are persistent and ongoing. As explained further below, information available to Ventura Coastkeeper indicates that the E.J. Harrison & Sons Owners and/or Operators have failed and continue to fail to comply with the substantive and procedural provisions of the Storm Water Permit. For the additional Clean Water Act and Storm Water Permit violations described below, not included in the October 26 Notice, Ventura Coastkeeper places the E.J. Harrison & Sons Owners and/or Operators on notice of their violations of the Storm Water Permit and the Clean Water Act for each day of violation occurring at the Facility from January 13, 2010 to the present.

A. Discharges of Contaminated Storm Water in Violation of the Storm Water Permit's Receiving Water Limitations

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges from adversely impacting human health or the environment. Storm Water Permit at 4. Pollutants in storm water such as TSS, debris, E. Coli, fecal coliform, total coliform, and Oil and Grease, which can negatively impact pH, COD, BOD, and water color are known to have adverse effects on human health, aquatic life, and the habitat of aquatic life in the Santa Clara River. Discharges containing concentrations of E. coli, fecal coliform, and total coliform in excess of the Water Quality Control Plan: Los Angeles Region Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties ("Basin Plan")⁵ Water Quality Standards, into the Santa Clara River and Pacific Ocean pose severe health threats and cause severe health impacts to humans recreating in or otherwise utilizing these waters. Discharges containing TSS can be acutely toxic and/or have sub-lethal impacts on the Southern California Steelhead and other aquatic life in the Santa Clara River. For example, the acute toxicity (lethal) effects of TSS on salmonids have been documented at concentrations measuring 488 milligrams per liter ("mg/L").⁶ Further, studies have shown that juveniles of several species of salmonids suffer multiple sub-lethal effects such as reduced survival, displacement, reduced feeding, and respiratory impacts at concentrations of 90 mg/L, 110 mg/L, 100mg/L, and 240 mg/L of TSS respectively.⁷ Other studies have shown that at TSS concentrations of 80 mg/L, the density of macroinvertebrate populations, a crucial food source for Southern California

⁵ Available at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/ (last visited January 12, 2011).

⁶ Effects of Turbidity and Suspended Solids on Salmonids, J. Bash; C. Berman, S. Bolton; Center for Streamside Studies, University of Washington (November 2001).

⁷ *Id.*

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Steelhead, decrease by sixty percent.⁸ In addition, storm water discharges impaired by dark coloration can obstruct sunlight penetration in the water column of receiving waterbodies, which impedes the aquatic plant growth needed so sustain functional habitats for Southern California Steelhead and other aquatic species, and impairs water column visibility needed for feeding and predatory avoidance by aquatic species like the Southern California Steelhead. Thus, storm water discharges that exceed levels known to adversely impact aquatic species, human health, and or the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the Clean Water Act.

Receiving Water Limitation C(2) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any Water Quality Standards, such as the applicable Basin Plan Water Quality Standards.⁹ Storm Water Permit at 4. The Basin Plan Water Quality Standards are Water Quality Standards for the purposes of Receiving Water Limitation C(2) of the Storm Water Permit. Thus, exceedances of Basin Plan Water Quality Standards are violations of Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act.

The storm water sampling data collected by Ventura Coastkeeper investigators after October 26, 2010 from the Facility's discharges, consistently documents discharges with pollutant concentrations at levels known to cause adverse health impacts to exposed humans, at levels known to have acute and sub-lethal effects on salmonids, and at levels violating water quality standards in violation of the Clean Water Act and the Storm Water Permit.

Storm water sampling data collected by Ventura Coastkeeper investigators from the Facility's discharge after the October 26 Notice indicate levels of E. coli, fecal coliform, and total coliform in the Facility's discharge that are significantly above Basin Plan Water Quality Standards¹⁰ and that can adversely impact human health. For instance, storm water

⁸ See The Gold Book: Quality Criteria for Water, U.S. Environmental Protection Agency, May 1986, available at <http://water.epa.gov/scitech/swguidance/waterquality/standards/current/index.cfm#gold> ; http://water.epa.gov/scitech/swguidance/waterquality/standards/criteria/aqlife/upload/2009_01_13_criteria_goldbook.pdf (last visited October, 20 2010).

⁹ Water Quality Standards are pollutant concentration levels determined by the State Water Resources Control Board and the EPA to be protective of the Beneficial Uses of the receiving waters. Discharges above Water Quality Standards contribute to the impairment of the receiving waters' Beneficial Uses. Applicable Water Quality Standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR").

¹⁰ The Basin Plan's designated beneficial uses, together with water quality objectives, form the Basin Plan Water Quality Standards (Basin Plan p. 2-1). The Basin Plan's designated Beneficial Uses for the Santa Clara River fresh waters and estuary that receive polluted storm water discharges from the Facility include: agriculture supply (AGR), municipal and domestic supply (MUN), groundwater recharge (GWR), water contact recreation (REC1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), estuarine habitat (EST), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), migration of aquatic organisms (MIGR) and spawning, reproduction and development (SPWN). See Basin Plan, pp. 2-1 - 2-5, Table 2.1. The Basin Plan's designated Beneficial Uses for the Ventura County Coastal beach, ocean, and estuary waters that receive polluted storm water

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discharge samples collected from the Facility on November 20, 2010 from what Ventura Coastkeeper identifies as Discharge Point EJ-2¹¹ evidence E. coli levels at \geq 1600 MPN/100 ml, at least 6.5 times over the Basin Plan limit for fresh water recreational Beneficial Uses, and fecal coliform at \geq 1600 MPN/100 ml, at least 4 times over the Basin Plan limit for marine recreational Beneficial Uses. Storm water discharge samples from the Facility on the same date from Discharge Point EJ-3¹² evidence E. coli levels at \geq 1600 MPN/100 ml, at least 6.5 times over the Basin Plain limit for fresh water recreational Beneficial Uses, and fecal coliform at \geq 1600 MPN/100 ml, at least 4 times over the Basin Plan limit for marine recreational Beneficial Uses. Further, storm water discharge samples on December 22, 2010 from what Ventura Coastkeeper identifies as Discharge Point EJ-2 evidence E. coli levels at $>$ 24192 MPN/100 ml, at least 102 times over the Basin Plan limit for fresh water recreational Beneficial Uses, fecal coliform levels at $>$ 24192 MPN/100 ml, at least 60 times over the Basin Plan limit for marine recreational Beneficial Uses, and total coliform levels at $>$ 24192 MPN/100 ml, at least 2 times over the Basin Plan limit for marine recreational Beneficial Uses. Storm water discharge samples on the same date from Discharge Point 6 evidence E. coli levels at 1722 MPN/100 ml, at least 7 times over the Basin Plan limit for fresh water recreational Beneficial Uses, fecal coliform levels at 1722 MPN/100 ml, at least 4 times over the Basin Plan limit for marine recreational Beneficial Uses, and total coliform levels at $>$ 24192 MPN/100 ml, at least 2 times over the Basin Plan limit for marine recreational Beneficial Uses. Further, according to the Facility's SWPPP and Coastkeeper's visual observations, there have been no BMPs implemented at the facility before and since 2005 to prevent the Facility's discharge from containing levels of E. coli, fecal coliform, and total coliform that are significantly above Basin Plan Water Quality Standards and to prevent the Facility's discharge from containing levels of these pollutants that can adversely impact the health of humans recreating downstream from the Facility's discharge in the Santa Clara River, the Pacific Ocean, and Ventura County Coastal Waters and Beaches. Therefore, discharges from the Facility containing equivalent concentrations of E. Coli, fecal coliform, and total coliform have occurred before and since 2005.

discharges from the Facility include: water contact recreation (REC1), non-contact water recreation (REC 2). See Basin Plan, pp. 2-1 - 2-5, Table 2.3.; The Basin Plan Water Quality Objectives provides: a.) in marine waters designated for Water Contact Recreation (REC-1), the single sample limits for bacteria are as follows: (1) total coliform density cannot exceed 10,000/100 ml; (2) fecal coliform density cannot exceed 400/100 ml; and b.) in fresh waters designated for Water Contact Recreation (REC-1), the single sample limits are the following: E. coli density cannot exceed 235/100 ml. Basin Plan Chapter 3; Chapter 3 p. 3-3; Los Angeles Regional Board Resolution No. 01-018, Attachment, available at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/wqs_list.shtml (last visited January 12, 2011).

¹¹ From comparing the discharge location of SW-2, as identified and placed on the Facility's SWPPP, to the location of Discharge Point EJ-2 as identified by Ventura Coastkeeper sample collectors and investigators, it appears that Ventura Coastkeeper Discharge Point EJ-2 is the same as discharge point SW-2, instead of an additional or unreported discharge from the Facility.

¹² From comparing the discharge location of SW-3, as identified and placed on the Facility's SWPPP, to the location of Discharge Point EJ-3 as identified by Ventura Coastkeeper sample collectors and investigators, it appears that Ventura Coastkeeper Discharge Point EJ-3 is the same as discharge point SW-3, instead of an additional or unreported discharge from the Facility.

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In addition, samples collected by Ventura Coastkeeper investigators from the Facility's discharges after October 26, 2010 confirm TSS exceedances contained in the October 26 Notice that were reported by the E.J. Harrison & Sons Owners and/or Operators from the Facility from 2005-2010. Further, samples collected by Ventura Coastkeeper investigators from the Facility's discharges after October 26, 2010 demonstrate ongoing exceedances of Basin Plan narrative water quality standards for TSS in the Facility's discharges and demonstrate the ongoing presence of TSS levels in the Facility's discharge known to harm aquatic species, such as salmonids, including juvenile and adult Southern California Steelhead. For instance, storm water discharge samples collected on November 20, 2010 from Discharge Point EJ-2, evidence TSS at 200 mg/l.

Information available to Coastkeeper indicates that E.J. Harrison & Sons Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of Receiving Water Limitations (C)(1) and C(2) during every significant rain event occurring since at least October 2005.¹³ These discharge violations are ongoing and Coastkeeper will update the number and dates of violation when additional information and data becomes available.

Every day the E.J. Harrison & Sons Owners and/or Operators discharged or continue to discharge polluted storm water from the Facility in violation of the Receiving Water Limitations of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).¹⁴ These violations are ongoing, and the E.J. Harrison & Sons Owners and/or Operators' violations will continue each day contaminated storm water is discharged in violation of the requirements of the Storm Water Permit and the Clean Water Act. Ventura Coastkeeper will include additional violations when information becomes available. For all violations of the Clean Water Act and Storm Water Permit described above not included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least January 13, 2006. For all violations of the Clean Water Act and Storm Water Permit described above also included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least October 26, 2005.

¹³ Exhibit A in the March 26 Notice, contains a table that sets forth significant rain events (defined by EPA as a rainfall event generating 0.1 inches or more) that have occurred at the Facility from October 2005 to October 26, 2010, resulting in storm water containing pollutants discharging to area receiving waters. Additional significant rain events have occurred at the Facility from October 26, 2010 through January 13, 2011, resulting in storm water containing pollutants discharging to area receiving waters. Exhibit A was created using daily and hourly rain data collected from the Oxnard Airport rain gauge (93110/OXR).

¹⁴ See Exhibit A in the March 26 Notice (listing days of significant rain events). Additional significant rain events have occurred at the Facility from October 26, 2010 through January 13, 2011, resulting in storm water containing pollutants discharging to area receiving waters.

**B. Failure to Achieve Compliance with Best Available Technology
Economically Achievable and Best Conventional Pollutant Control
Technology**

Effluent Limitation (B)(3) of the Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT for toxic pollutants¹⁵ and BCT for conventional pollutants.¹⁶ EPA Benchmarks are relevant standards to evaluate whether a permittee's BMPs achieve BAT/BCT as required by Effluent Limitation B(3) of the Storm Water Permit and the Clean Water Act.¹⁷

Data collected by Ventura Coastkeeper investigators after October 26, 2010 indicates levels of COD and BOD orders of magnitude above the EPA Benchmarks. For example, storm water discharge samples taken on December 22, 2010 from what Ventura Coastkeeper identifies as Discharge Point EJ-2, evidence COD at 310 mg/L, more than 2 times the EPA Benchmark, and BOD at 220 mg/L, more than 7 times the EPA Benchmark. In addition, samples collected by Ventura Coastkeeper investigators from the Facility's storm water discharges after October 26, 2010 confirm and demonstrate ongoing EPA Benchmark exceedances for TSS as reported by the E.J. Harrison & Sons Owners and/or Operators from 2005-2010 in the Facility's Annual Monitoring Report to the Regional Board. For instance, storm water discharge samples collected on November 20, 2010 from Discharge Point EJ-2, evidence TSS at 200 mg/L. Additional samples collected by Coastkeeper and E.J. Harrison & Sons Owners and/or Operators at additional discharge points and during additional storm events evidence similar and ongoing exceedances. These repeated and significant exceedances of EPA Benchmarks are evidence that E.J. Harrison & Sons Owners and/or Operators have not implemented BMPs at the Facility that achieve BAT/BCT.

As set forth and explained in Sections II and III of the October 26 Notice, and from Ventura Coastkeeper collected water quality data contained in the January 13 Notice, visual observations and sampling data demonstrate that the E.J. Harrison & Sons Owners and/or Operators have failed and continue to fail to develop and/or implement adequate BMPs to prevent the exposure of pollutants to storm water and to prevent the discharge of polluted storm water from the Facility. Moreover, this information indicates that these BMPs do not meet BCT for conventional pollutants based on industry-wide standards. The failure to develop and/or implement BMPs that meet BCT for conventional pollutants is a violation of Effluent Limitation B(3) of the Storm Water Permit.

¹⁵ Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, zinc, and polychlorinated biphenyls.

¹⁶ Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biological oxygen demand, total suspended solids, oil and grease, pH, and fecal coliform.

¹⁷ See Multi-Sector Permit (2008), Fact Sheet, p. 106; *see also*, Storm Multi-Sector Permit, 65 Federal Register 64839 (2000).

Every day the E.J. Harrison & Sons Owners and/or Operators discharged or continue to discharge polluted storm water from the Facility in violation of Effluent Limitation (B)(3) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).¹⁸ These violations are ongoing, and the E.J. Harrison & Sons Owners and/or Operators' violations will continue each day contaminated storm water is discharged in violation of the requirements of the Storm Water Permit and the Clean Water Act. Ventura Coastkeeper will include additional violations when information becomes available. For all violations of the Clean Water Act and Storm Water Permit described above not included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least January 13, 2006. For all violations of the Clean Water Act and Storm Water Permit described above also included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least October 26, 2005.

C. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan ("SWPPP")

In addition to the reasons listed in the October 26 Notice as to why the E.J. Harrison & Sons Owners and/or Operators have not developed and/or implemented a SWPPP for the Facility that meets the requirements of the Storm Water Permit, E.J. Harrison & Sons Owners and/or Operators have failed to specifically identify the presence of E. Coli, total coliform, and fecal coliform in, on, and adhering to their refuse/garbage residue on the refuse/garbage containers, equipment, and vehicles stored and placed in the Facility.

Because fecal mater, fecal coliform, E. Coli, and total coliform are likely pollutant sources to be found in, on, and adhering to garbage/refuse containers and vehicles stored, present, and maintained at the Facility, E.J. Harrison & Sons Owners and/or Operators have failed to identify, and thus failed to address and identify, all potential pollutant sources and necessary BMPs/Control Practices in the SWPPP as required by Section A(6) of the Storm Water Permit. In addition, E.J. Harrison & Sons Owners and/or Operators have failed to comply with Section A(5) of the Storm Water Permit, because the SWPPP does not contain a sufficiently complete and detailed list of all significant materials handled and stored at the site such as garbage/refuse residue and contaminants on, adhering to, or in garbage/refuse containers and vehicles stored, maintained, or otherwise present at the Facility. Without a reasonably specific identification of potential pollutants such as E. Coli, total coliform, and fecal coliform, the identification of BMPs in the Facilities SWPPP is rendered meaningless in that it is more difficult to assess whether they are effective. Specific types of pollutants may require different BMPs or have different BAT/BCT. Further, information available to Ventura Coastkeeper indicates that E.J. Harrison & Sons Owners and/or Operators failed to comply with Section A(4) and A(6) of the Storm Water Permit because Discharge Point 5

¹⁸ See Exhibit A in the March 26 Notice (listing days of significant rain events). Additional significant rain events have occurred at the Facility from October 26, 2010 through January 13, 2011, resulting in storm water containing pollutants discharging to area receiving waters.

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and Discharge Point 6 identified in this letter are not included in the SWPPP Map and nor are they described in the SWPPP. In addition, E.J. Harrison & Sons Owners and/or Operators have failed to comply with Section A(8)(b) of the Storm Water Permit because the Facility's history of storm water discharges with TSS concentrations that exceed EPA Benchmarks, as evidenced by the Facility's own storm water monitoring data,¹⁹ requires the SWPPP to consider effective structural BMPs because the non structural BMPs and other BMPs proposed or implemented as set forth in the Facility's SWPPP have not been effective.

Every day the E.J. Harrison & Sons Owners and/or Operators operate the Facility with an inadequately developed and/or implemented SWPPP is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).²⁰ The E.J. Harrison & Sons Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements every day since at least October 26, 2005. These violations are ongoing and the E.J. Harrison & Sons Owners and/or Operators will continue to be in violation every day that they fail to revise, develop, and/or implement an adequate SWPPP for the Facility. Ventura Coastkeeper will include additional violations when information becomes available. For all violations of the Clean Water Act and Storm Water Permit described above not included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least January 13, 2006. For all violations of the Clean Water Act and Storm Water Permit described above also included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least October 26, 2005.

D. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate MRP by October 1, 1992 or prior to the commencement of industrial activities at a facility. The objective of the MRP is to ensure that storm water discharges are in compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. Storm Water Permit, Section B(2). The MRP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and are evaluated and revised whenever appropriate. *Id.*

Additional observations of the conditions at the Facility since the October 26 Notice that demonstrate that the E.J. Harrison & Sons Owners and/or Operators have not developed and/or implemented an adequate MRP that meets the requirements of the Storm

¹⁹ See March 26 Notice.

²⁰ See Exhibit A in the March 26 Notice (listing days of significant rain events). Additional significant rain events have occurred at the Facility from October 26, 2010 through January 13, 2011, resulting in storm water containing pollutants discharging to area receiving waters.

Water Permit include the failure to include storm water sampling and storm water discharge monitoring requirements in the MRP from and for Discharge Point 5 and Discharge Point 6 identified in this letter. In addition, E.J. Harrison & Sons Owners and/or Operators have not developed and/or implemented an adequate MRP in violation of Section B(5)(c) of the Storm Water Permit because the E.J. Harrison & Sons Owners and/or Operators failed to analyze the storm water samples for the 2005-06, 2006-07, 2007-08, 2008-09, and 2009-10 wet season for all toxic chemicals and other pollutants likely to be present in significant quantities in the storm water discharges, such as E. coli, total coliform, and fecal coliform, and the MRP does not contain this mandatory Storm Water Permit requirement to sample the Facility's storm water discharges for these constituents.

Thus, the E.J. Harrison & Sons Owners and/or Operators have violated the Storm Water Permit and the Clean Water Act by failing to sample and report as required at the Facility. Every day that the E.J. Harrison & Sons Owners and Operators operate the Facility with an inadequately developed and/or implemented MRP is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).²¹ The E.J. Harrison & Sons Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's MRP requirements every day since at least October 26, 2005. These violations are ongoing and the E.J. Harrison & Sons Owners and/or Operators will continue to be in violation every day that it fails to revise, develop, and/or implement an adequate MRP for the Facility. Ventura Coastkeeper will include additional violations when information becomes available. For all violations of the Clean Water Act and Storm Water Permit described above not included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least January 13, 2006. For all violations of the Clean Water Act and Storm Water Permit described above also included in the October 26 Notice, the E.J. Harrison & Sons Owners and/or Operators are subject to civil penalties for the violations occurring since at least October 26, 2005.

II. CONCLUSION

Upon expiration of the 60-day notice period for the supplemental claims, Ventura Coastkeeper intends to file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations based on this information obtained by Ventura Coastkeeper after October 26, 2010. In addition to the violations set forth above and in the October 26 Notice, this notice covers all violations of the Clean Water Act and the Storm Water Permit by E.J. Harrison & Sons Owners and/or Operators at the Facility evidenced by information that becomes available to Ventura Coastkeeper after the date of this letter.

²¹ See Exhibit A in the March 26 Notice (listing days of significant rain events). Additional significant rain events have occurred at the Facility from October 26, 2010 through January 13, 2011, resulting in storm water containing pollutants discharging to area receiving waters.

As stated in the October 26 Notice, Ventura Coastkeeper's Staff Attorney is representing it in this matter. Please direct all communications to Ventura Coastkeeper's Staff Attorney at:

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Staff Attorney
Wishtoyo Foundation's Ventura Coastkeeper Program
3875-A Telegraph Rd., #423
Ventura, CA 93003
(805) 823-3301

During the 60-day notice period, Ventura Coastkeeper is interested in discussing effective remedies for the violations described in this supplemental notice letter and the October 26 Notice. Although Ventura Coastkeeper is always interested in avoiding unnecessary litigation, Ventura Coastkeeper does not intend to delay the filing of a complaint in federal court beyond the requisite notice period.

Sincerely,



Mati Waiya
Wishtoyo Foundation &
Ventura Coastkeeper Executive
Director

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