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August 11, 2017

**VIA U.S. MAIL & EMAIL:**

[waterqualitypetitions@waterboards.ca.gov](mailto:waterqualitypetitions@waterboards.ca.gov)

State Water Resources Control Board  
Office of Chief Counsel  
Adrianna M. Crowl  
P.O. Box 100  
Sacramento, CA 95812-0100

*Re: Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122*

Dear Ms. Crowl:

Following is our client Organic AG, Inc.'s Petition for Review.

**PETITION FOR REVIEW UNDER WATER CODE SECTION 13320(a)  
OF AN ACTION OR FAILURE TO ACT BY A REGIONAL BOARD  
(WATER CODE SECTION 2050)**

(1)

Petitioner:

Organic AG, Inc.  
c/o Leslie A. McAdam, Esq.  
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**(2) Specific Action of the regional board for which review is requested:**

Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 dated July 14, 2017 (copy enclosed) (hereafter "Addendum")

**(3) Date on which the regional board acted:**

July 14, 2017

**(4) Reasons the action was inappropriate or improper:**

The Addendum, among other things, inappropriately and improperly designated Organic Ag, Inc. as an additional responsible party for compliance with the requirements of the Cleanup and Abatement Order No. R9-2013-0122 (hereafter "CAO").

This action was inappropriate and improper because Organic Ag, Inc. is neither an owner nor operator of the properties at issue (see CAO Finding Nos. 1 and 2) and did not discharge waste into the surface waters of the state.

By way of background, Organic Ag, Inc. was hired by the purported landowner of one of the parcels (James Pike) to spread mulch provided by other entities (Burrtec Waste Industries, Inc. and Ecology Auto Parts, Inc.) and to monitor the cleanliness of the mulch and remove any excess trash as necessary. *See* Letter of Understanding dated October 24, 2011.

All activity conducted by Organic Ag, Inc. was at the express request of the landowner, who, as the owner or operator, was responsible for any permitting, if any was required. *See* Application Q and A. Any trash in the mulch beyond legal limits was the responsibility of the suppliers, Burrtec Waste Industries, Inc., Ecology Auto Parts, Inc., and CR&R Incorporated.

At one point in the operations in about 2013, a representative from the regional water quality control board informed the parties that the mulch was too close to a tributary to Wilson creek. Accordingly, Organic Ag, Inc. removed mulch a certain distance from the creek and was told by the water board representative that the actions mitigated the issue.

No further work was requested by the water board, and it was assumed that the matter was taken care of.

Organic Ag, Inc. in fact monitored the area until it was prevented from doing so by the landowner. It cannot be a responsible party for a property that the landowner prevents it from entering, for actions that it performed at the request of the landowner, and for activities that it was told by the water board were sufficient.

**(5) Manner in which the petitioning party is aggrieved:**

Organic Ag, Inc. is aggrieved because the Addendum names it incorrectly as a responsible party on property it does not own and cannot enter.

**(6) The specific action by the state or regional board which petitioner requests:**

Organic Ag, Inc. requests that it be removed as an additional responsible party in the Addendum. Organic Ag, Inc. requests a hearing or proceeding where it would be allowed to testify and present evidence insofar as there was no opportunity for a hearing before the regional board and no opportunity for cross-examination. Since Organic Ag, Inc. was not provided with the evidence the water board relied on for its decision, it is difficult to respond, but we note that there is contrary evidence about the existence of a contract with Burrtec, the cleanliness of the waste provided by Burrtec (and Organic Ag's ability to test such cleanliness), and the extent of activities, if any, in any tributary.

Organic Ag, Inc. is filing this appeal to protect its rights. It would be willing to hold this matter in abeyance under Water Code section 2050.5, if the other parties agree.

**(7) The legal issues raised are whether Organic Ag, Inc. is a responsible party:**

In the Regional Water Quality Control Board's Q and A's for a permit to discharge, it states that "The owner or operator (depending on who controls day-to-day operations) of the facility must sign and submit the [permit] form." *See* Application Q and As. Organic Ag, Inc. could not apply for any permit because is not an owner or operator of any property involved in the CAO or its Addendum. It was merely a contracting party, providing service at the request of the landowner. Because it could not apply for a permit, it cannot be a responsible party.

That isn't to say that Organic Ag, Inc. has done anything wrong. When informed that its activities were too close to a tributary, it immediately took measures to ensure that the mulch did not migrate into any potential surface waters, and was assured by a water board representative that no further action was required. Now, four years later, after being prevented from working on the property by the landowner, it is named as an additional responsible party, when the responsibility for the placement and cleanliness of the mulch lies squarely in the landowner, who kept requesting more and more free mulch to be delivered. Organic Ag, Inc. cannot be responsible for land it does not own and does not have permission to enter—and indeed has been prevented from entering for most of four years.

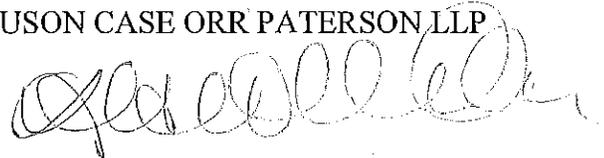
**(8)** This petition is being sent to the California Regional Water Quality Control Board San Diego Region, as well as the discharger (Jim Pike), via his attorneys, and other parties named in the CAO and Addendum. *See* proof of service.

(9) Organic Ag, Inc. previously provided a letter to the Regional Board on November 21, 2016 and December 14, 2016, objecting to being named as a responsible party.

Very truly yours,

FERGUSON CASE ORR PATERSON LLP

By



Leslie A. McAdam

LAM:bfq

Enclosures:

- Cleanup and Abatement Order No R9-2013-0122 for Hames V. Pike and Prairie Avenue Gospel Center, Inc. as Amended By Addendum No. 1 (and related correspondence)
- Letter dated November 21, 2016 to RWQCB
- Letter dated December 14, 2016 to RWQCB
- Application Q and A
- Letter of Understanding dated October 24, 2011

cc:

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Quality Control Board, San Diego Region  
Frank Melbourn, California Regional  
Water Quality Control Board, San Diego  
– Region 9

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Prairie Avenue Gospel Center, Inc.  
Attn: Daniel S. Pike  
5955 Waterfront Place  
Long Beach, California 90808-4839

Via U.S. Mail

Client

Via U.S. Mail

Petition For Review  
August 11, 2017  
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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**ADDENDUM NO. 1  
TO  
CLEANUP AND ABATEMENT ORDER NO. R9-2013-0122**

**AN ADDENDUM ADDING RESPONSIBLE PARTIES**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), finds that:

1. Except as contradicted or superseded by the findings and directives set forth in this Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 (CAO), all of the previous findings and directives of the CAO remain in full force and effect.
2. The CAO prescribes requirements to cleanup and abate the unauthorized discharge of waste resulting from waste spreading activities at Riverside County Assessor's Parcel Nos. 571-280-042 and 571-280-014. Addendum No. 1 adds three responsible parties to the CAO.
3. Changes made to the CAO through Addendum No. 1 are based upon the investigation of the San Diego Water Board and information in the San Diego Water Board administrative record including written comments submitted by interested parties and persons during the public comment period for tentative Addendum No. 1 to the CAO.
4. Finding Nos. 1 and 2 are to be replaced as follows:
  - 1.a. James V. Pike (hereinafter Mr. Pike), owns approximately 155 acres of land (Riverside County Assessor's Parcel No. 571-280-042) located at 39801 Reed Valley Road, Aguanga, California 92536 (Place ID 793882), hereinafter Pike property) in the Reed Valley Hydrologic Subarea (HSA) (902.63). See Attachment 1, Property Locations.
  - 1.b. Prairie Avenue Gospel Center, Inc. (hereinafter PAGC) owns approximately 39 acres of land (Riverside County Assessor's Parcel No. 571-280-014, Place ID 793885, hereinafter PAGC property) adjacent to and north of the Pike property. The PAGC property is located at the southeast corner of Reed Valley Road and Runsin Road, Aguanga, California 92536 in the Reed Valley HAS (902.63). The Pike property and the PAGC property are collectively referred to as the "properties." Daniel S. Pike is the President of PAGC and brother of James V. Pike.

1.c. Burrtec Waste Industries, Inc. (hereinafter Burrtec) collects grass, leaves, branches, dirt and other green plant material from curbside residential yard waste collection services, and independent landscapers and gardeners (sometimes referred to as "green waste," although the collected materials were contaminated by municipal waste). As it pertains to this CAO, Burrtec trucks delivered and deposited green waste to various locations on the properties.

1.d. As it pertains to this CAO, Ecology Auto Parts, Inc. (hereinafter Ecology) trucks delivered and deposited green waste to various locations on the properties.

1.e. Burrtec contracted with Organic Ag, Inc. (hereinafter Organic Ag) to supply green waste to Organic Ag. Ecology contracted with Organic Ag to supply green waste to Organic Ag. Mr. Pike contracted with Organic Ag for the delivery and spreading of green waste on the properties. Organic Ag spread the green waste piles deposited by Burrtec and Ecology on the properties.

2. The entities identified in Finding 1 are collectively referred to as the Dischargers. Each entity is responsible under Water Code Section 13304 for their roles in depositing and/or spreading the materials described in Findings 6 and 7 below, in violation of Water Code Section 13260 and deposited and/or spread where it is or probably will be discharged into the waters of the state in violation of Water Code Section 13304. The San Diego Water Board reserves the right to amend R9-2013-0122 if additional responsible parties, through action or contract, become known. In addition, the San Diego Water Board does not take a position regarding any contractual right to indemnity against any other named entity. All responsible parties must comply with the provisions of this Order and the Water Code.

5. Finding No. 6 is amended as follows: Discharge of Waste to Land: This information is based upon the April 29, 2013, and June 14, 2013, San Diego Water Board inspections of the properties, and based upon complaints received by the San Diego Water Board concerning activities at the properties. On or about August 2011, waste consisting mostly of plant clippings (i.e. landscaping waste) and to a lesser extent municipal solid waste (glass, plastics, metals, and construction debris) was spread on the properties by Organic Ag, Inc. Additional waste spreading by Organic Ag, Inc., was observed by the San Diego Water Board staff during an April 29, 2013, inspection of the properties. Approximately 45,275 acres of the Pike property and 10 acres of the PAGC property were covered with an estimated two foot thick layer of waste. Based upon these values, 522,720,274,267 cubic yards of waste were discharged to land at the properties.
6. Finding No. 8 is amended as follows: On June 3, 2013, the San Diego Water Board issued Notice of Violation (NOV) No. R9-2013-0089 to Mr. Pike and PAGC (hereinafter Dischargers). See Attachment 2, NOV. The NOV alleged that the

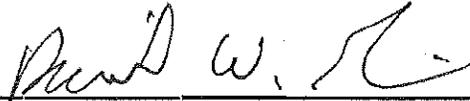
deposit of green waste and green waste spreading activities violated Water Code section 13260<sup>3</sup> because ~~the Dischargers~~ Mr. Pike and PAGC failed to file a report of waste discharge (ROWD) with the San Diego Water Board and receive Waste Discharge Requirements prior to the deposit of green waste and spreading of green waste at the properties; and furthermore violated Basin Plan Waste Discharge Prohibition No. 1 because ~~the Dischargers~~ Mr. Pike and PAGC are causing, or are threatening to cause a condition of pollution,<sup>4</sup> contamination or nuisance.<sup>5</sup> The NOV required the submittal of a ROWD (a complete Form 200 and application fee) by June 28, 2013, from ~~the Dischargers~~ Mr. Pike and PAGC. On August 27, 2013, the San Diego Water Board received the application fee and an incomplete Form 200 from Mr. Pike for his property. Mr. Pike's Form 200 failed to include information characterizing the discharge. The San Diego Water Board has not received a ROWD from PAGC.

7. Finding No. 16 is amended as follows: In accordance with Water Code section 13267(b) these findings provide ~~Mr. Pike and PAGC~~ the Dischargers with a written explanation of the need for remedial action and reports, and they identify the evidence that supports the requirements to implement cleanup and abatement activities and submit reports.
8. Directive No. 1 is amended as follows: ~~By September 19, 2013~~ No later than fourteen days after the adoption of Addendum No. 1 to CAO R9-2013-0122, the ~~Dischargers~~, individually or collectively, shall prepare and submit to the San Diego Water Board a Restoration Plan for the cleanup and abatement of waste discharges to the properties. The Restoration Plan shall be subject to the Executive Officer's approval (or his delegate's approval) and must detail the following activities and their timing:
  - a. Removal of waste from surface waters of the state, and restoration to pre-discharge conditions.
  - b. Installation of BMPs to minimize further discharges of waste to surface waters of the state; and
  - c. Removal, relocation, or amendment of waste discharged to land to ensure proper agronomic application rates protective to ground waters of the state.
  - d. Monitoring and waste characterization, including methodologies and sampling locations.
  - e. A schedule detailing the sequence of restoration activities and time frame for completing each activity.
9. Directive No. 4 is amended as follows: ~~Beginning October 7, 2013~~ Forty-five days after initiation of restoration activities, or a date approved by the Executive Officer

or his delegate, and monthly thereafter until all restoration activities are complete, the Dischargers, individually or collectively, shall submit technical reports that provide information to substantiate the restoration activities completed to date and to ultimately substantiate that all elements of the Restoration Plan have been fulfilled. Corrective actions shall be proposed and included in these technical reports when restoration activities fail to satisfy any interim or final success criteria.

10. Directive No. 5 is amended as follows: All restoration activities must be completed no later than December 4, 2013 ~~ninety days after adoption of Addendum No. 1 to CAO R9-2013-0122~~, unless approved otherwise by the Executive Officer or his delegate.

Ordered by:



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DAVID W. GIBSON  
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

CLEANUP AND ABATEMENT ORDER NO. R9-2013-0122

FOR  
JAMES V. PIKE  
AND

PRAIRIE AVENUE GOSPEL CENTER, INC.

AS AMENDED BY ADDENDUM NO. 1

The California Regional Water Quality Control Board, San Diego Region (hereafter San Diego Water Board), finds that:

1.
  - a. James V. Pike (hereinafter Mr. Pike), owns approximately 155 acres of land (Riverside County Assessor's Parcel No. 571-280-042) located at 39801 Reed Valley Road, Aguanga, California 92536 (Place ID 793882, hereinafter Pike property) in the Reed Valley Hydrologic Subarea (HSA) (902.63). See Attachment 1, Property Locations.
  - b. Prairie Avenue Gospel Center, Inc. (hereinafter PAGC) owns approximately 39 acres of land (Riverside County Assessor's Parcel No. 571-280-014, Place ID 793885, hereinafter PAGC property) adjacent to and north of the Pike property. The PAGC property is located at the southeast corner of Reed Valley Road and Runsin Road, Aguanga, California 92536 in the Reed Valley HSA (902.63). The Pike property and the PAGC property are collectively referred to as the "properties." Daniel S. Pike is the President of PAGC and brother of James V. Pike.
  - c. Burrtec Waste Industries, Inc. (hereinafter Burrtec) collects grass, leaves, branches, dirt and other green plant material from curbside residential yard waste collection services, and independent landscapers and gardeners (sometimes referred to as "green waste," although the collected materials were contaminated by municipal waste). As it pertains to this CAO, Burrtec trucks delivered and deposited green waste to various locations on the properties.
  - d. As it pertains to this CAO, Ecology Auto Parts, Inc. (hereinafter Ecology) trucks delivered and deposited green waste to various locations on the properties.

- e. Burrtec contracted with Organic Ag, Inc. (hereinafter Organic Ag) to supply green waste to Organic Ag. Ecology contracted with Organic Ag to supply green waste to Organic Ag. Mr. Pike contracted with Organic Ag for the delivery and spreading of green waste on the properties. Organic Ag spread the green waste piles deposited by Burrtec and Ecology on the properties.
2. The entities identified in Finding 1 are collectively referred to as the Dischargers. Each entity is responsible under Water Code Section 13304 for their roles in depositing and/or spreading the materials described in Findings 6 and 7 below, in violation of Water Code Section 13260 and deposited and/or spread where it is or probably will be discharged into the waters of the state in violation of Water Code Section 13304. The San Diego Water Board reserves the right to amend R9-2013-0122 if additional responsible parties, through action or contract, become known. In addition, the San Diego Water Board does not take a position regarding any contractual right to indemnity against any other named entity. All responsible parties must comply with the provisions of this Order and the Water Code. ~~Prairie Avenue Gospel Center, Inc. (hereinafter PAGC) owns approximately 39 acres of land (Riverside County Assessor's Parcel No. 571-280-014, Place ID 793885, hereinafter PAGC property) adjacent to and north of the Pike property. The PAGC property is located at the southeast corner of Reed Valley Road and Runcin Road, Aguanga, California 92536 in the Reed Valley HSA (902.63). The Pike property and the PAGC property are collectively referred to as the "properties." Daniel S. Pike is the President of PAGC and brother of James V. Pike.~~
3. Tributaries to Wilson Creek flow westward through the properties. The tributaries are "waters of the state"<sup>1</sup> and may be federal waters. The tributaries join Wilson Creek that lies a few hundred feet to the west of the properties. Wilson Creek ultimately flows into Vail Lake in Riverside County.
4. The *Water Quality Control Plan for the San Diego Basin (Basin Plan)* designates the following beneficial uses for the Reed Valley HSA: Agricultural Supply (AGR); Ground Water Recharge (GWR); Industrial Service (IND); Municipal and Domestic Supply (MUN); Industrial Process Supply (PROC); Contact Water Recreation (REC1); Non-Contact Water Recreation (REC2); Warm Freshwater Habitat (WARM); and Wildlife Habitat (WILD).
5. This Cleanup and Abatement Order is based upon: 1) Chapter 5, Enforcement and Implementation commencing with section 13300, of the Porter-Cologne Water Quality Control Act (Water Code Division 7, commencing with section 13000); 2) Water Code section 13267,<sup>2</sup> Investigations; inspections, Chapter 4,

<sup>1</sup> As defined in Water Code section 13050(e).

<sup>2</sup> Water Code section 13267, subdivision (b)(1) states: "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or

Regional Water Quality Control; 3) all applicable provisions of the Basin Plan including beneficial uses, water quality objectives, and implementation plans; 4) California State Water Resources Control Board (State Water Board) Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*); 5) State Water Board Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304*); 6) and all other applicable legal authority.

6. Discharge of Waste to Land: This information is based upon the April 29, 2013, and June 14, 2013, San Diego Water Board inspections of the properties, and based upon complaints received by the San Diego Water Board concerning activities at the properties. On or about August 2011, waste consisting mostly of plant clippings (i.e. landscaping waste) and to a lesser extent municipal solid waste (glass, plastics, metals, and construction debris) was spread on the properties by Organic Ag, Inc. Additional waste spreading by Organic Ag, Inc., was observed by the San Diego Water Board staff during an April 29, 2013, inspection of the properties. Approximately ~~452.75~~ acres of the Pike property and 10 acres of the PAGC property were covered with an estimated two foot thick layer of waste. Based upon these values, ~~522,720~~ 274,267 cubic yards of waste were discharged to land at the properties.
7. The "wastes" described in Finding 6 and discharged at the properties qualify for classification as "non-hazardous wastes" as defined in section 20220 of California Code of Regulations (CCR) Title 27. Discharges of nonhazardous wastes to land are regulated by the San Diego Water Board pursuant to authority under the Water Code and CCR Title 27.
8. On June 3, 2013, the San Diego Water Board issued Notice of Violation (NOV) No. R9-2013-0089 to Mr. Pike and PAGC (~~hereinafter Dischargers~~). See Attachment 2, NOV. The NOV alleged that the waste spreading activities violated Water Code section 13260<sup>3</sup> because ~~the Dischargers~~ Mr. Pike and PAGC failed to file a report of waste discharge (ROWD) with the San Diego Water Board and receive Waste Discharge Requirements prior to spreading waste at the properties; and furthermore violated Basin Plan Waste Discharge

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any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

<sup>3</sup> Pursuant to Water Code section 13260(a)(1) "[a]ny person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge. The Regional Board has not received a report of waste discharge for wastes discharged at the properties.

Prohibition No. 1 because the Dischargers Mr. Pike and PAGC are causing, or are threatening to cause a condition of pollution,<sup>4</sup> contamination or nuisance.<sup>5</sup> The NOV required the submittal of a ROWD (a complete Form 200 and application fee) by June 28, 2013 from the Dischargers Mr. Pike and PAGC. On August 27, 2013, the San Diego Water Board received the application fee and an incomplete Form 200 from Mr. Pike for his property. Mr. Pike's Form 200 failed to include information characterizing the discharge. The San Diego Water Board has not received a ROWD from PAGC.

9. Unauthorized Discharge of Waste Resulting from Waste Spreading Activities:

The discharge of waste during waste spreading activities into tributaries to Wilson Creek is a discharge of waste to waters of the state in violation of Water Code section 13260 and the following waste discharge prohibitions contained in the Basin Plan:

"(1) The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited."

"(7) The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board."

10. Section 13304(a) of the Water Code provides that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and

<sup>4</sup> "'Pollution' is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses; (B) Facilities which serve these beneficial uses." Water Code §13050(l).

<sup>5</sup> "'Nuisance'" means anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes." Water Code §13050(m).

abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

11. The unauthorized discharge of waste to the properties creates, or threatens to create a condition of pollution in surface and groundwater, and may result in the degradation of water quality as follows:
  - a. The discharge of waste directly into waters of the state can alter or obstruct flows, thereby causing flooding, unwarranted sediment discharges, and/or affecting existing riparian functions (WARM and WILD).
  - b. Surface water runoff from plant clippings contains nutrients, acting as biostimulatory substances that can cause excessive plant growth and decay in receiving waters, thereby increasing water turbidity and impairing aesthetic enjoyment (REC-2). The decaying process consumes large amounts of oxygen, causing a drop in water oxygen levels which is often lethal to fish and other water inhabitants (WARM and WILD). In some cases algal blooms can even result in the production of dangerous cyanotoxins, harmful to human health (REC-1 and MUN).
  - c. Excessive nutrients in plant clippings can also leach into groundwater, causing elevated levels of nitrates in drinking water supply (MUN), rendering it harmful to human health if ingested.
12. The unauthorized discharge of waste to the properties causes a condition of nuisance because waste decomposition has resulted in continuing offensive odors on and off the properties in the residential neighborhood, as evidenced by neighbor complaints.
13. Cleanup and abatement is necessary to ensure that the unauthorized discharge of waste ceases to cause a condition of pollution or nuisance. Because cleanup and abatement activity will occur within and adjacent to the tributaries to Wilson Creek, best management practices (BMPs) during remedial action are necessary to prevent further conditions that threaten the beneficial uses of Wilson Creek and its tributaries.

14. The following actions will reduce the threat of discharges to waters of the state as a result of waste spreading activities at the properties:
  - a. Removal of waste from surface waters of the state, and restoration to pre-discharge conditions.
  - b. Installation of temporary BMPs to minimize further discharges of waste to surface waters of the state; and
  - c. Removal, relocation, or amendment of waste discharged to land to ensure proper application methods (i.e., disking, tilling, etc.) and proper agronomic application rates protective of waters of the state.
15. The cleanup completion deadline of 90 days is reasonable given the proximity of the 2013/14 Wet Season (beginning October 1, 2013), the potential threat to groundwater and surface water quality from storm water runoff through the waste, and the amount of time necessary to characterize the waste and transport it to an appropriate waste handler.
16. In accordance with Water Code section 13267(b) these findings provide Mr. Pike and ~~PAGC~~ the Discharger with a written explanation of the need for remedial action and reports, and they identify the evidence that supports the requirements to implement cleanup and abatement activities and submit reports.
17. CCR Title 27 (section 20090(f)) allows that nonhazardous decomposable waste may be used as a soil amendment; however applicable BMPs shall be implemented and the San Diego Water Board may issue waste discharge or reclamation requirements.
18. Issuance of this Cleanup and Abatement Order is an enforcement action taken by a regulatory agency. The Cleanup and Abatement Order may require earth disturbing and revegetation activities. This Cleanup and Abatement Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 et seq.) pursuant to California Code of Regulations, Chapter 3, title 14, section 15308.

IT IS HEREBY ORDERED that, pursuant to section 13304 and section 13267 of Division 7 of the Water Code, the Dischargers shall cease the discharge of waste and clean up and abate the condition of unauthorized waste discharge in accordance with the schedule below:

1. ~~By September 19, 2013~~ No later than fourteen days after the adoption of Addendum No. 1 to CAO R9-2013-0122, the Dischargers, individually or collectively, shall prepare and submit to the San Diego Water Board a Restoration Plan for the cleanup and abatement of waste discharges to the properties. The Restoration Plan shall be subject to the Executive Officer's approval (or his delegate's approval) and must detail the following activities and their timing:
  - a. Removal of waste from surface waters of the state, and restoration to pre-discharge conditions.
  - b. Installation of BMPs to minimize further discharges of waste to surface waters of the state; and
  - c. Removal, relocation, or amendment of waste discharged to land to ensure proper agronomic application rates protective to ground waters of the state.
  - d. Monitoring and waste characterization, including methodologies and sampling locations.
  - e. A schedule detailing the sequence of restoration activities and time frame for completing each activity.
2. The Restoration Plan shall provide technical rationale and management practices that will allow the implementation of corrective actions to comply with one of the following requirements, either option a or b:<sup>6</sup>
  - a. Restoration Plan for complete removal and proper disposal of the waste at a properly permitted facility. Or
  - b. Restoration Plan for management and reapplication of the waste to comply with treatment and soil amendment requirements. A Restoration Plan for waste treatment and reapplication shall include the following minimum information:

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<sup>6</sup> From California Code of Regulations, Title 27, sections 20377 and 20250.

- i. Performance Standard: The Restoration Plan shall include the Discharger's proposed specific design, operation plan, waste application rates, and maintenance plans to maximize the degradation, transformation, and immobilization of waste constituents in the treatment zone. The Restoration Plan shall also include a plan for application of BMPs to prevent the erosion of wastes into surface waters and minimize the percolation of waste constituents into the local groundwater resources.
  - ii. Demonstration: The Restoration Plan shall include design and operation parameters that will ensure that the waste can be completely degraded, transformed, or immobilized in the treatment zone.<sup>7</sup> During the full-scale implementation of the Restoration Plan samples of wastes and degradation residuals shall be collected within the treatment zone to verify that complete degradation, transformation, or immobilization is taking place.
  - iii. The maximum depth of the treatment zone shall not exceed 5 feet from the initial soil surface.
3. Within two weeks of approval of the Restoration Plan by the Executive Officer or his delegate, the Dischargers, individually or collectively, shall implement the Restoration Plan in accordance with the restoration activities schedule.
4. ~~Beginning October 7, 2013~~ Forty-five days after initiation of restoration activities, or a date approved by the Executive Officer or his delegate, and monthly thereafter until all restoration activities are complete, the Dischargers, individually or collectively, shall submit technical reports that provide information to substantiate the restoration activities completed to date and to ultimately substantiate that all elements of the Restoration Plan have been fulfilled. Corrective actions shall be proposed and included in these technical reports when restoration activities fail to satisfy any interim or final success criteria.
5. ~~All restoration activities must be completed no later than December 4, 2013~~ ninety days after the adoption of Addendum No. 1 to CAO R9-2013-0122, unless approved otherwise by the Executive Officer or his delegate.
6. With each report required by this Cleanup and Abatement Order, the Dischargers shall provide under penalty of perjury under the laws of California a "Certification" statement to the San Diego Water Board. The "Certification" shall include the following signed statement:

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<sup>7</sup> The Restoration Plan must include a reasonable schedule of tasks (including sampling, analysis and reporting tasks) designed to demonstrate this, including the operation of a test plot for a sufficient period to give the San Diego Water Board a reasonable indication that degradation, transformation, or immobilization will take place in the treatment zone.

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Pursuant to Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.*

#### NOTIFICATIONS

1. **Applicability.** Requirements established pursuant to Water Code sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the San Diego Water Board.
2. **Enforcement Actions.** The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations, including but not limited to, violations of the terms and conditions of this Cleanup and Abatement Order (i.e., implementation and maintenance of BMPs, and mitigation for impacts).
3. **Inspection and Entry.** Dischargers shall allow the San Diego Water Board, State Water Board, United States Environmental Protection Agency (USEPA), the County of Riverside, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to at reasonable times do the following:
  - a. Enter upon the properties;
  - b. Access and copy any records related to this Cleanup and Abatement Order;
  - c. Inspect and photograph any facilities, equipment, practices, or operations regulated or required by this Cleanup and Abatement Order; and
  - d. Sample or monitor any substances or parameters onsite for the purposes of assuring Cleanup and Abatement Order compliance or as otherwise authorized by the federal Clean Water Act or the Porter-Cologne Water Quality Control Act.

4. **Potential Liability.** Pursuant to Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated. Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
5. **Cost Reimbursement.** Pursuant to Water Code section 13304, the San Diego Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order. Dischargers shall reimburse the State of California for all reasonable costs actually incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the State Water Board.
6. **Waste Management.** Dischargers shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050(m). Dischargers shall, obtain, or apply for coverage under waste discharge requirements or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.
7. **Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the San Diego Water Board that is subject to review as set forth in Water Code section 13320(a), may petition the State Water Board to review the action. Any petition must be made in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition within thirty (30) days of the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday, or state holiday, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the internet at [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

8. **Modifications.** Any modification to this Cleanup and Abatement Order shall be in writing and approved by the Executive Officer, including any potential extensions. Any written extension request by the Dischargers shall include justification for the delay.
9. **No Limitation of Water Board Authority.** This Cleanup and Abatement Order in no way limits the authority of the San Diego Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the properties consistent with the Water Code. This Cleanup and Abatement Order may be revised as additional information becomes available.

#### REPORTING REQUIREMENTS

1. **Duty to Use Qualified Professionals.** Dischargers shall provide documentation that plans, and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of licensed professionals. Dischargers shall include a statement of qualifications and license numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their license stamp, as applicable, to the report, plan, or document.
2. **Electronic and Paper Media Reporting Requirements.** The Dischargers shall submit both electronic and paper copies of all reports required under this Cleanup and Abatement Order including work plans, technical reports, and monitoring reports. Larger documents shall be divided into separate files at logical places in the report to keep file sizes under 150 megabytes. The Dischargers shall continue to provide a paper transmittal letter, a paper copy of all figures larger than 8.5 inches by 14 inches (legal size), and an electronic copy (on Compact Disc [CD] or other appropriate media) of all reports to the San Diego Water Board. All paper correspondence and documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: "GeoTracker Site ID: T10000004989" for the Pike property and "GeoTracker Site ID: T10000004990" for the PAGC property. The Dischargers shall comply with the following reporting requirements for all reports and plans (and amendments thereto) required by this Cleanup and Abatement Order:
  - a. **Reports and Plans Required by this Cleanup and Abatement Order.** The Dischargers shall submit one paper and one electronic, searchable Portable Document Format (PDF) copy of all technical reports, monitoring reports, progress reports, and plans required by this Cleanup and Abatement Order. The PDF copy of all the reports shall also be uploaded into the GeoTracker database, as required by Reporting Requirement G.2.(b)(iv) below.

- b. Electronic Data Submittals to the San Diego Water Board. In compliance with the Cleanup and Abatement Order data is required to be submitted electronically via the Internet into the GeoTracker database <http://geotracker.waterboards.ca.gov/>. The electronic data shall be uploaded on or prior to the regulatory due dates set forth in the Cleanup and Abatement Order or addenda thereto. To comply with these requirements, the Dischargers shall upload to the GeoTracker database the following minimum information:
- i. Laboratory Analytical Data: Analytical data (including geochemical data) for all waste, soil, and water samples in Electronic Data File (EDF) format. Waste, soil, and water include analytical results of samples collected from the following locations and devices: surface samples, equipment, monitoring wells, boreholes, gas and vapor wells or other collection devices, surface water, groundwater, piezometers, and stockpiles.
  - ii. Locational Data: The latitude and longitude of any permanent monitoring location (surface water or sediment sampling location) for which data is reported in EDF format, accurate to within one (1) meter and referenced to a minimum of two (2) reference points from the California Spatial Reference System (CSRS-H), if available.
  - iii. Site Map: Site map or maps which display discharge locations, streets bordering the facility, and sampling locations for all waste, soil, and water samples. The site map is a stand-alone document that may be submitted in various electronic formats. A site map must also be uploaded to show the maximum extent of any soil impact and water pollution. An update to the site map may be uploaded at any time.
  - iv. Electronic Report: A complete copy (in character searchable PDF) of all work plans, assessment, cleanup, and monitoring reports including the signed transmittal letters, professional certifications, and all data presented in the reports.
3. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Dischargers or by a duly authorized representative and submitted to the San Diego Water Board. A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.).

4. All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Executive Officer  
Attn: Roger Mitchell Place ID 793882 & 793885  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

After September 30, 2013, submit reports to the San Diego Water Board's new address:

2469 Northside Drive, Suite 100  
San Diego, CA 92108-2717

5. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CLEANUP AND ABATEMENT ORDER MAY SUBJECT YOU TO FURTHER ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO, ASSESSMENT OF CIVIL LIABILITY UNDER SECTIONS 13268 AND 13350 OF THE WATER CODE AND REFERRAL TO THE DISTRICT ATTORNEY OR ATTORNEY GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR CRIMINAL LIABILITY.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order originally adopted by the California Regional Water Quality Control Board, San Diego Region on September 5, 2013, and amended on July 14, 2017.

Ordered by:

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DAVID W. GIBSON  
Executive Officer

Attachments:

1. Property Locations
2. NOV

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**CLEANUP AND ABATEMENT ORDER NO. R9-2013-0122  
FOR  
JAMES V. PIKE  
AND  
PRAIRIE AVENUE GOSPEL CENTER, INC.**

**AS AMENDED BY ADDENDUM NO. 1**

The California Regional Water Quality Control Board, San Diego Region (hereafter San Diego Water Board), finds that:

1. a. James V. Pike (hereinafter Mr. Pike), owns approximately 155 acres of land (Riverside County Assessor's Parcel No. 571-280-042) located at 39801 Reed Valley Road, Aguanga, California 92536 (Place ID 793882, hereinafter Pike property) in the Reed Valley Hydrologic Subarea (HSA) (902.63). See Attachment 1, Property Locations.
- b. Prairie Avenue Gospel Center, Inc. (hereinafter PAGC) owns approximately 39 acres of land (Riverside County Assessor's Parcel No. 571-280-014, Place ID 793885, hereinafter PAGC property) adjacent to and north of the Pike property. The PAGC property is located at the southeast corner of Reed Valley Road and Runsin Road, Aguanga, California 92536 in the Reed Valley HSA (902.63). The Pike property and the PAGC property are collectively referred to as the "properties." Daniel S. Pike is the President of PAGC and brother of James V. Pike.
- c. Burrtec Waste Industries, Inc. (hereinafter Burrtec) collects grass, leaves, branches, dirt and other green plant material from curbside residential yard waste collection services, and independent landscapers and gardeners (sometimes referred to as "green waste," although the collected materials were contaminated by municipal waste). As it pertains to this CAO, Burrtec trucks delivered and deposited green waste to various locations on the properties.
- d. As it pertains to this CAO, Ecology Auto Parts, Inc. (hereinafter Ecology) trucks delivered and deposited green waste to various locations on the properties.

- e. Burrtec contracted with Organic Ag, Inc. (hereinafter Organic Ag) to supply green waste to Organic Ag. Ecology contracted with Organic Ag to supply green waste to Organic Ag. Mr. Pike contracted with Organic Ag for the delivery and spreading of green waste on the properties. Organic Ag spread the green waste piles deposited by Burrtec and Ecology on the properties.
2. The entities identified in Finding 1 are collectively referred to as the Dischargers. Each entity is responsible under Water Code Section 13304 for their roles in depositing and/or spreading the materials described in Findings 6 and 7 below, in violation of Water Code Section 13260 and deposited and/or spread where it is or probably will be discharged into the waters of the state in violation of Water Code Section 13304. The San Diego Water Board reserves the right to amend R9-2013-0122 if additional responsible parties, through action or contract, become known. In addition, the San Diego Water Board does not take a position regarding any contractual right to indemnity against any other named entity. All responsible parties must comply with the provisions of this Order and the Water Code.
3. Tributaries to Wilson Creek flow westward through the properties. The tributaries are "waters of the state"<sup>1</sup> and may be federal waters. The tributaries join Wilson Creek that lies a few hundred feet to the west of the properties. Wilson Creek ultimately flows into Vail Lake in Riverside County.
4. The *Water Quality Control Plan for the San Diego Basin (Basin Plan)* designates the following beneficial uses for the Reed Valley HSA: Agricultural Supply (AGR); Ground Water Recharge (GWR); Industrial Service (IND); Municipal and Domestic Supply (MUN); Industrial Process Supply (PROC); Contact Water Recreation (REC1); Non-Contact Water Recreation (REC2); Warm Freshwater Habitat (WARM); and Wildlife Habitat (WILD).
5. This Cleanup and Abatement Order is based upon: 1) Chapter 5, Enforcement and Implementation commencing with section 13300, of the Porter-Cologne Water Quality Control Act (Water Code Division 7, commencing with section 13000); 2) Water Code section 13267,<sup>2</sup> Investigations; inspections, Chapter 4,

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<sup>1</sup> As defined in Water Code section 13050(e).

<sup>2</sup> Water Code section 13267, subdivision (b)(1) states: "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

Regional Water Quality Control; 3) all applicable provisions of the Basin Plan including beneficial uses, water quality objectives, and implementation plans; 4) California State Water Resources Control Board (State Water Board) Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*); 5) State Water Board Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304*); 6) and all other applicable legal authority.

6. Discharge of Waste to Land: This information is based upon the April 29, 2013, and June 14, 2013, San Diego Water Board inspections of the properties, and based upon complaints received by the San Diego Water Board concerning activities at the properties. On or about August 2011, waste consisting mostly of plant clippings (i.e. landscaping waste) and to a lesser extent municipal solid waste (glass, plastics, metals, and construction debris) was spread on the properties by Organic Ag, Inc. Additional waste spreading by Organic Ag, Inc., was observed by the San Diego Water Board staff during an April 29, 2013, inspection of the properties. Approximately 75 acres of the Pike property and 10 acres of the PAGC property were covered with an estimated two foot thick layer of waste. Based upon these values, 274,267 cubic yards of waste were discharged to land at the properties.
7. The "wastes" described in Finding 6 and discharged at the properties qualify for classification as "non-hazardous wastes" as defined in section 20220 of California Code of Regulations (CCR) Title 27. Discharges of nonhazardous wastes to land are regulated by the San Diego Water Board pursuant to authority under the Water Code and CCR Title 27.
8. On June 3, 2013, the San Diego Water Board issued Notice of Violation (NOV) No. R9-2013-0089 to Mr. Pike and PAGC. See Attachment 2, NOV. The NOV alleged that the waste spreading activities violated Water Code section 13260<sup>3</sup> because Mr. Pike and PAGC failed to file a report of waste discharge (ROWD) with the San Diego Water Board and receive Waste Discharge Requirements prior to spreading waste at the properties; and furthermore violated Basin Plan Waste Discharge Prohibition No. 1 because Mr. Pike and PAGC are causing, or are threatening to cause a condition of pollution,<sup>4</sup> contamination or nuisance.<sup>5</sup>

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<sup>3</sup> Pursuant to Water Code section 13260(a)(1) "[a]ny person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge. The Regional Board has not received a report of waste discharge for wastes discharged at the properties.

<sup>4</sup> "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as, an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses; (B) Facilities which serve these beneficial uses." Water Code §13050(l).

<sup>5</sup> "Nuisance" means anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage

The NOV required the submittal of a ROWD (a complete Form 200 and application fee) by June 28, 2013 from Mr. Pike and PAGC. On August 27, 2013, the San Diego Water Board received the application fee and an incomplete Form 200 from Mr. Pike for his property. Mr. Pike's Form 200 failed to include information characterizing the discharge. The San Diego Water Board has not received a ROWD from PAGC.

9. Unauthorized Discharge of Waste Resulting from Waste Spreading Activities:  
The discharge of waste during waste spreading activities into tributaries to Wilson Creek is a discharge of waste to waters of the state in violation of Water Code section 13260 and the following waste discharge prohibitions contained in the Basin Plan:

"(1) The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited."

"(7) The dumping, deposition, or discharge of waste directly into waters of the state, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board."

10. Section 13304(a) of the Water Code provides that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county

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inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes." Water Code §13050(m).

for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

11. The unauthorized discharge of waste to the properties creates, or threatens to create a condition of pollution in surface and groundwater, and may result in the degradation of water quality as follows:
  - a. The discharge of waste directly into waters of the state can alter or obstruct flows, thereby causing flooding, unwarranted sediment discharges, and/or affecting existing riparian functions (WARM and WILD).
  - b. Surface water runoff from plant clippings contains nutrients, acting as biostimulatory substances that can cause excessive plant growth and decay in receiving waters, thereby increasing water turbidity and impairing aesthetic enjoyment (REC-2). The decaying process consumes large amounts of oxygen, causing a drop in water oxygen levels which is often lethal to fish and other water inhabitants (WARM and WILD). In some cases algal blooms can even result in the production of dangerous cyanotoxins, harmful to human health (REC-1 and MUN).
  - c. Excessive nutrients in plant clippings can also leach into groundwater, causing elevated levels of nitrates in drinking water supply (MUN), rendering it harmful to human health if ingested.
12. The unauthorized discharge of waste to the properties causes a condition of nuisance because waste decomposition has resulted in continuing offensive odors on and off the properties in the residential neighborhood, as evidenced by neighbor complaints.
13. Cleanup and abatement is necessary to ensure that the unauthorized discharge of waste ceases to cause a condition of pollution or nuisance. Because cleanup and abatement activity will occur within and adjacent to the tributaries to Wilson Creek, best management practices (BMPs) during remedial action are necessary to prevent further conditions that threaten the beneficial uses of Wilson Creek and its tributaries.
14. The following actions will reduce the threat of discharges to waters of the state as a result of waste spreading activities at the properties:
  - a. Removal of waste from surface waters of the state, and restoration to pre-discharge conditions.

- b. Installation of temporary BMPs to minimize further discharges of waste to surface waters of the state; and
  - c. Removal, relocation, or amendment of waste discharged to land to ensure proper application methods (i.e., disking, tilling, etc.) and proper agronomic application rates protective of waters of the state.
15. The cleanup completion deadline of 90 days is reasonable given the proximity of the 2013/14 Wet Season (beginning October 1, 2013), the potential threat to groundwater and surface water quality from storm water runoff through the waste, and the amount of time necessary to characterize the waste and transport it to an appropriate waste handler.
16. In accordance with Water Code section 13267(b) these findings provide the Discharger with a written explanation of the need for remedial action and reports, and they identify the evidence that supports the requirements to implement cleanup and abatement activities and submit reports.
17. CCR Title 27 (section 20090(f)) allows that nonhazardous decomposable waste may be used as a soil amendment; however applicable BMPs shall be implemented and the San Diego Water Board may issue waste discharge or reclamation requirements.
18. Issuance of this Cleanup and Abatement Order is an enforcement action taken by a regulatory agency. The Cleanup and Abatement Order may require earth disturbing and revegetation activities. This Cleanup and Abatement Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 et seq.) pursuant to California Code of Regulations, Chapter 3, title 14, section 15308.

**IT IS HEREBY ORDERED** that, pursuant to section 13304 and section 13267 of Division 7 of the Water Code, the Dischargers shall cease the discharge of waste and clean up and abate the condition of unauthorized waste discharge in accordance with the schedule below:

1. No later than fourteen days after the adoption of Addendum No. 1 to CAO R9-2013-0122, the Dischargers, individually or collectively, shall prepare and submit to the San Diego Water Board a Restoration Plan for the cleanup and abatement of waste discharges to the properties. The Restoration Plan shall be subject to the Executive Officer's approval (or his delegate's approval) and must detail the following activities and their timing:
  - a. Removal of waste from surface waters of the state, and restoration to pre-discharge conditions.
  - b. Installation of BMPs to minimize further discharges of waste to surface waters of the state; and
  - c. Removal, relocation, or amendment of waste discharged to land to ensure proper agronomic application rates protective to ground waters of the state.
  - d. Monitoring and waste characterization, including methodologies and sampling locations.
  - e. A schedule detailing the sequence of restoration activities and time frame for completing each activity.
2. The Restoration Plan shall provide technical rationale and management practices that will allow the implementation of corrective actions to comply with one of the following requirements, either option a or b:<sup>6</sup>
  - a. Restoration Plan for complete removal and proper disposal of the waste at a properly permitted facility. Or
  - b. Restoration Plan for management and reapplication of the waste to comply with treatment and soil amendment requirements. A Restoration Plan for waste treatment and reapplication shall include the following minimum information:

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<sup>6</sup> From California Code of Regulations, Title 27, sections 20377 and 20250.

- i. Performance Standard: The Restoration Plan shall include the Discharger's proposed specific design, operation plan, waste application rates, and maintenance plans to maximize the degradation, transformation, and immobilization of waste constituents in the treatment zone. The Restoration Plan shall also include a plan for application of BMPs to prevent the erosion of wastes into surface waters and minimize the percolation of waste constituents into the local groundwater resources.
  - ii. Demonstration: The Restoration Plan shall include design and operation parameters that will ensure that the waste can be completely degraded, transformed, or immobilized in the treatment zone.<sup>7</sup> During the full-scale implementation of the Restoration Plan samples of wastes and degradation residuals shall be collected within the treatment zone to verify that complete degradation, transformation, or immobilization is taking place.
  - iii. The maximum depth of the treatment zone shall not exceed 5 feet from the initial soil surface.
3. Within two weeks of approval of the Restoration Plan by the Executive Officer or his delegate, the Dischargers, individually or collectively, shall implement the Restoration Plan in accordance with the restoration activities schedule.
4. Forty-five days after initiation of restoration activities, or a date approved by the Executive Officer or his delegate, and monthly thereafter until all restoration activities are complete, the Dischargers, individually or collectively, shall submit technical reports that provide information to substantiate the restoration activities completed to date and to ultimately substantiate that all elements of the Restoration Plan have been fulfilled. Corrective actions shall be proposed and included in these technical reports when restoration activities fail to satisfy any interim or final success criteria.
5. All restoration activities must be completed no later than ninety days after the adoption of Addendum No. 1 to CAO R9-2013-0122, unless approved otherwise by the Executive Officer or his delegate.
6. With each report required by this Cleanup and Abatement Order, the Dischargers shall provide under penalty of perjury under the laws of California a "Certification" statement to the San Diego Water Board. The "Certification" shall include the following signed statement:

---

<sup>7</sup> The Restoration Plan must include a reasonable schedule of tasks (including sampling, analysis and reporting tasks) designed to demonstrate this, including the operation of a test plot for a sufficient period to give the San Diego Water Board a reasonable indication that degradation, transformation, or immobilization will take place in the treatment zone.

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. Pursuant to Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.*

#### **NOTIFICATIONS**

1. **Applicability.** Requirements established pursuant to Water Code sections 13304 and 13267(b) are enforceable when signed by the Executive Officer of the San Diego Water Board.
2. **Enforcement Actions.** The San Diego Water Board reserves its right to take any enforcement action authorized by law for violations, including but not limited to, violations of the terms and conditions of this Cleanup and Abatement Order (i.e., implementation and maintenance of BMPs, and mitigation for impacts).
3. **Inspection and Entry.** Dischargers shall allow the San Diego Water Board, State Water Board, United States Environmental Protection Agency (USEPA), the County of Riverside, and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to at reasonable times do the following:
  - a. Enter upon the properties;
  - b. Access and copy any records related to this Cleanup and Abatement Order;
  - c. Inspect and photograph any facilities, equipment, practices, or operations regulated or required by this Cleanup and Abatement Order; and
  - d. Sample or monitor any substances or parameters onsite for the purposes of assuring Cleanup and Abatement Order compliance or as otherwise authorized by the federal Clean Water Act or the Porter-Cologne Water Quality Control Act.

4. **Potential Liability.** Pursuant to Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated. Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports as required by section 13267, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
5. **Cost Reimbursement.** Pursuant to Water Code section 13304, the San Diego Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order. Dischargers shall reimburse the State of California for all reasonable costs actually incurred by the San Diego Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the State Water Board.
6. **Waste Management.** Dischargers shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in Water Code section 13050(m). Dischargers shall, obtain, or apply for coverage under waste discharge requirements or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.
7. **Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the San Diego Water Board that is subject to review as set forth in Water Code section 13320(a), may petition the State Water Board to review the action. Any petition must be made in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition within thirty (30) days of the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday, or state holiday, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the internet at [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

8. **Modifications.** Any modification to this Cleanup and Abatement Order shall be in writing and approved by the Executive Officer, including any potential extensions. Any written extension request by the Dischargers shall include justification for the delay.
9. **No Limitation of Water Board Authority.** This Cleanup and Abatement Order in no way limits the authority of the San Diego Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the properties consistent with the Water Code. This Cleanup and Abatement Order may be revised as additional information becomes available.

#### REPORTING REQUIREMENTS

1. **Duty to Use Qualified Professionals.** Dischargers shall provide documentation that plans, and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of licensed professionals. Dischargers shall include a statement of qualifications and license numbers, if applicable, of the responsible lead professionals in all plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their license stamp, as applicable, to the report, plan, or document.
2. **Electronic and Paper Media Reporting Requirements.** The Dischargers shall submit both electronic and paper copies of all reports required under this Cleanup and Abatement Order including work plans, technical reports, and monitoring reports. Larger documents shall be divided into separate files at logical places in the report to keep file sizes under 150 megabytes. The Dischargers shall continue to provide a paper transmittal letter, a paper copy of all figures larger than 8.5 inches by 14 inches (legal size), and an electronic copy (on Compact Disc [CD] or other appropriate media) of all reports to the San Diego Water Board. All paper correspondence and documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: "GeoTracker Site ID: T10000004989" for the Pike property and "GeoTracker Site ID: T10000004990" for the PAGC property. The Dischargers shall comply with the following reporting requirements for all reports and plans (and amendments thereto) required by this Cleanup and Abatement Order:
  - a. **Reports and Plans Required by this Cleanup and Abatement Order.** The Dischargers shall submit one paper and one electronic, searchable Portable Document Format (PDF) copy of all technical reports, monitoring reports, progress reports, and plans required by this Cleanup and Abatement Order. The PDF copy of all the reports shall also be uploaded into the GeoTracker database, as required by Reporting Requirement G.2.(b)(iv) below.

- b. Electronic Data Submittals to the San Diego Water Board. In compliance with the Cleanup and Abatement Order data is required to be submitted electronically via the Internet into the GeoTracker database <http://geotracker.waterboards.ca.gov/>. The electronic data shall be uploaded on or prior to the regulatory due dates set forth in the Cleanup and Abatement Order or addenda thereto. To comply with these requirements, the Dischargers shall upload to the GeoTracker database the following minimum information:
- i. Laboratory Analytical Data: Analytical data (including geochemical data) for all waste, soil, and water samples in Electronic Data File (EDF) format. Waste, soil, and water include analytical results of samples collected from the following locations and devices: surface samples, equipment, monitoring wells, boreholes, gas and vapor wells or other collection devices, surface water, groundwater, piezometers, and stockpiles.
  - ii. Locational Data: The latitude and longitude of any permanent monitoring location (surface water or sediment sampling location) for which data is reported in EDF format, accurate to within one (1) meter and referenced to a minimum of two (2) reference points from the California Spatial Reference System (CSRS-H), if available.
  - iii. Site Map: Site map or maps which display discharge locations, streets bordering the facility, and sampling locations for all waste, soil, and water samples. The site map is a stand-alone document that may be submitted in various electronic formats. A site map must also be uploaded to show the maximum extent of any soil impact and water pollution. An update to the site map may be uploaded at any time.
  - iv. Electronic Report: A complete copy (in character searchable PDF) of all work plans, assessment, cleanup, and monitoring reports including the signed transmittal letters, professional certifications, and all data presented in the reports.
3. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Dischargers or by a duly authorized representative and submitted to the San Diego Water Board. A person is a duly authorized representative only if: 1) The authorization is made in writing by the Discharger; and 2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.).

4. All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Executive Officer  
Attn: Roger Mitchell Place ID 793882 & 793885  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

After September 30, 2013, submit reports to the San Diego Water Board's new address:

2469 Northside Drive, Suite 100  
San Diego, CA 92108-2717

5. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CLEANUP AND ABATEMENT ORDER MAY SUBJECT YOU TO FURTHER ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO, ASSESSMENT OF CIVIL LIABILITY UNDER SECTIONS 13268 AND 13350 OF THE WATER CODE AND REFERRAL TO THE DISTRICT ATTORNEY OR ATTORNEY GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR CRIMINAL LIABILITY.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order originally adopted by the California Regional Water Quality Control Board, San Diego Region, on September 5, 2013 and amended on July 14, 2017.

Ordered by:



---

DAVID W. GIBSON  
Executive Officer

Attachments:

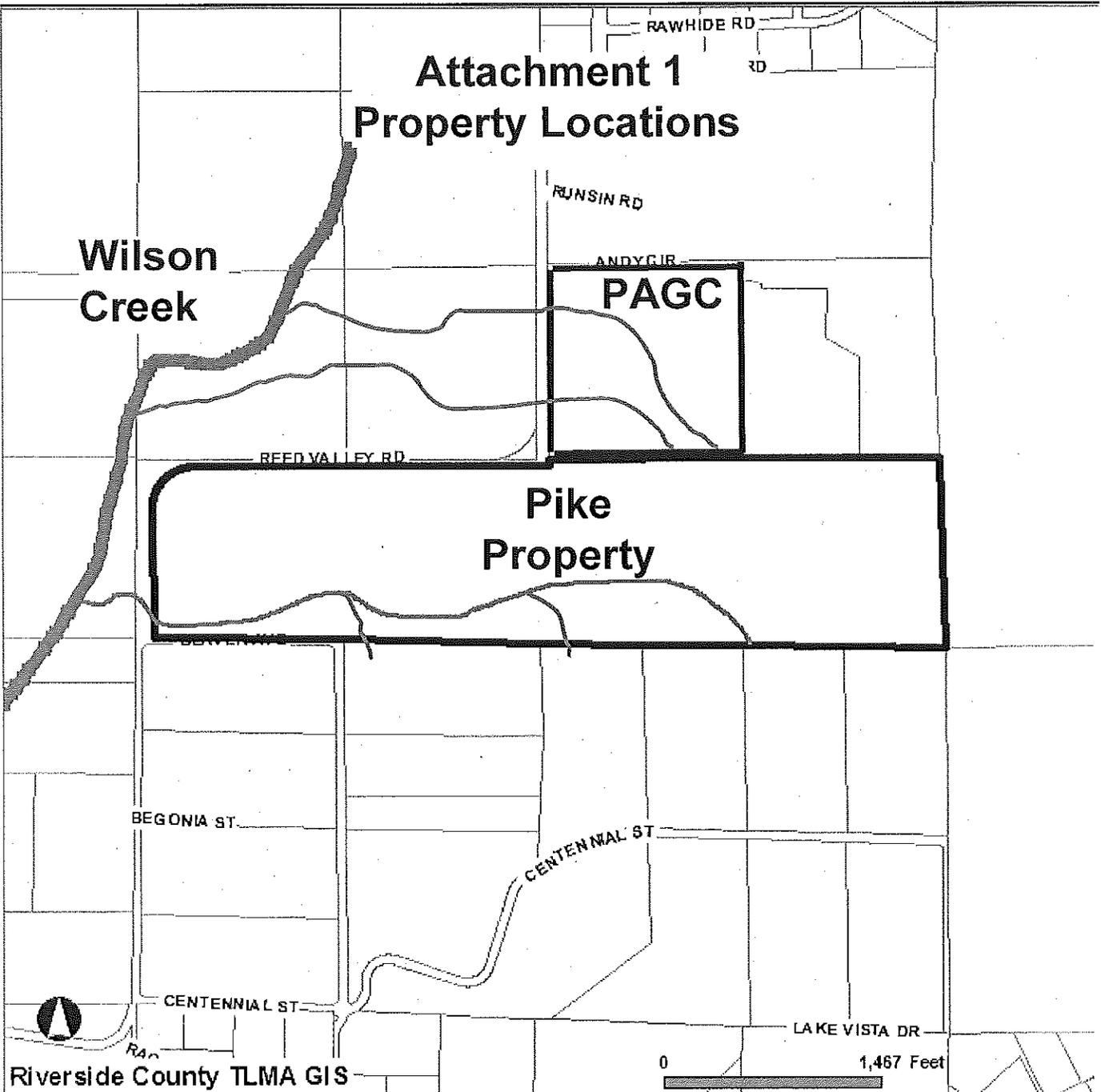
1. Property Locations
2. NOV

# Attachment 1 Property Locations

Wilson  
Creek

PAGC

Pike  
Property





# Attachment 2 NOV



## California Regional Water Quality Control Board, San Diego Region

June 3, 2013

**Certified Mail – Return Receipt Requested**

Article Numbers: 7011 0470 0002 8961 8620  
7011 0470 0002 8961 8682

Mr. Jim Pike  
P.O. Box 822  
Palos Verdes, CA 90274

**In reply refer to / attn:**  
**793882:RMitchell**

Prairie Avenue Gospel Center, Inc.  
C/O Dan Pike  
5965 Waterfront Place  
Long Beach, CA 90803

**Subject: Notice of Violation No. R9-2013-0089, Parcels Nos. 571280042<sup>1</sup> and 571280014, Reed Valley Road, Riverside County, San Diego Region**

Messrs. Pike:

Enclosed is Notice of Violation (NOV) No. R9-2013-0089 issued to Mr. Jim Pike and Prairie Avenue Gospel Center, Inc., for violation of Water Code sections 13260 and 13264 et seq., and provisions of the Water Quality Control Plan for the San Diego Basin (Basin Plan). As described in the NOV, the violations are subject to further enforcement pursuant to the Water Code. The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law.

If the ROWD described in the NOV is not received by 5:00 pm on June 28, 2013, the San Diego Water Board will pursue additional enforcement options.

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

In the subject line of any response, please include the reference number "793882:RMitchell." For questions or comments, please contact Mr. Roger Mitchell by phone at 858-467-2724, or by email at [RMitchell@waterboards.ca.gov](mailto:RMitchell@waterboards.ca.gov).

Sincerely,

Julie Chan, Chief  
Cleanup and Land Discharge Branch  
JAC: jro:mm

<sup>1</sup> 39801 Reed Valley Road, Aguanga CA. 92536

Enclosure: Notice of Violation No. R9-2013-0089

cc: Lionel Martinez, Senior Riverside County Code Enforcement Officer  
County of Riverside, Transportation and Land Management Agency, Code Enforcement  
French Valley Office, 37600 Sky Canyon Drive, Suite G, No. 507, Murrieta, CA 92563

(via email) Mr. Peter Holladay, Organic Ag Inc.  
[peter@organicspreading.com](mailto:peter@organicspreading.com)

(via email) Greg Reyes, Riverside Area Local Solid Waste Enforcement Supervisor  
[gireyes@rivcocha.org](mailto:gireyes@rivcocha.org)

(via email) Leslie Graves, State Water Resources Control Board, Land Disposal Program Manager  
[lgraves@waterboards.ca.gov](mailto:lgraves@waterboards.ca.gov)

Tech Staff Info & Use	
Reg. Measure ID	390119, 390120
Place ID	793882, 793885
Order No.	R9-2013-0089
Party ID	539862, 5639863, 569864
Inspection ID	12421445, 12421446
Violations ID	947439, 947440, 947441 947442, 947443, 947444

# NOTICE OF VIOLATION

## No. R9-2013-0089

Jim Pike  
P.O. Box 822  
Palos Verdes Estates, CA. 90274  
APN: 571-280-042<sup>1</sup>

and

Prairie Avenue Gospel Center, Inc.  
C/O Dan Pike  
5965 Waterfront Place  
Long Beach, CA 90803  
APN: 571-280-014<sup>2</sup>

**Violation of California Water Code,  
Sections 13260 and 13264 et seq., and  
Provisions of the Water Quality Control  
Plan for the San Diego Basin**

793882:RMitchell

June 3, 2013

Mr. Jim Pike and Prairie Avenue Gospel Center, Inc., being jointly and severally liable, are hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

Mr. Jim Pike and Prairie Avenue Gospel Center, Inc. are in violation of Water Code, sections 13260 and 13264 et seq., and the Water Quality Control Plan for the San Diego Basin (San Diego Basin Plan).

### A. Summary of Violations

#### 1. Failure to Submit a Report of Waste Discharge

Pursuant to Water Code, section 13260(a): Any persons, discharging waste or proposing to discharge waste within the San Diego region, that could affect the quality of the waters of the State, must submit a report of waste discharge (ROWD) and an annual fee.<sup>3</sup> A complete *General Information Form for Waste Discharge Requirements* (Form 200),<sup>4</sup> must contain sufficient information for the San Diego Water Board to prescribe waste discharge requirements (WDRs).

<sup>1</sup> 39801 Reed Valley Road, Aguanga CA. 92536

<sup>2</sup> No physical street address on record.

<sup>3</sup> Pursuant to section 13263 of the Water Code, and in accordance with Calif. Code Regs. title 23, section 2200(a).

<sup>4</sup> [http://www.waterboards.ca.gov/rwqcb9/publications\\_forms/forms/docs/form200m.pdf](http://www.waterboards.ca.gov/rwqcb9/publications_forms/forms/docs/form200m.pdf)

A records search performed by San Diego Water Board staff on April 26, 2013 revealed that ROWDs for the discharge of green waste on the properties designated by assessor's parcel numbers (APN) 571280042 and 571280014 (hereinafter Sites Nos. 1 and 2, respectively) have not been filed with the San Diego Water Board.

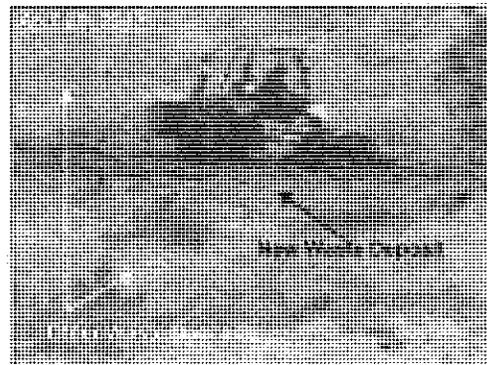
**2. Initiating a New Discharge of Waste to Land**

**Pursuant to Water Code, section 13264(a):** No person shall initiate any new discharge of waste prior to submitting a ROWD (in accordance with Water Code section 13260), and satisfying the requirements of the California Environmental Quality Act (CEQA).

During the April 29, 2013 inspection of Sites Nos. 1 and 2, San Diego Water Board staff observed wastes actively being discharged to land (see photographs 1 and 2 below) at Site No. 1, and visual evidence supporting complainant allegations that wastes have been discharged at Site Nos. 1 and 2 since August 2011 (see photographs 3 through 6 below).



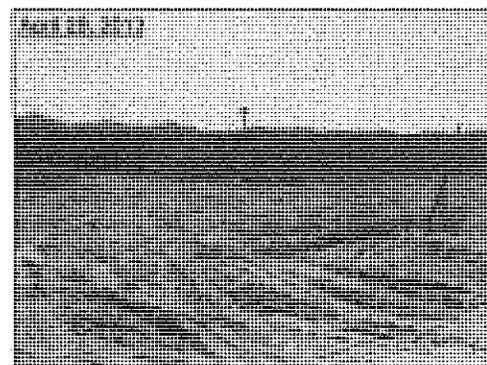
Photograph 1 --Waste discharged at Site No. 1



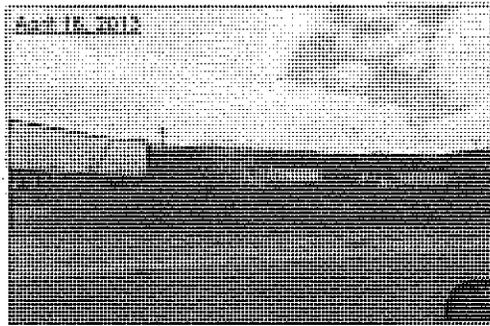
Photograph 2 -- Spreading waste at Site No. 1



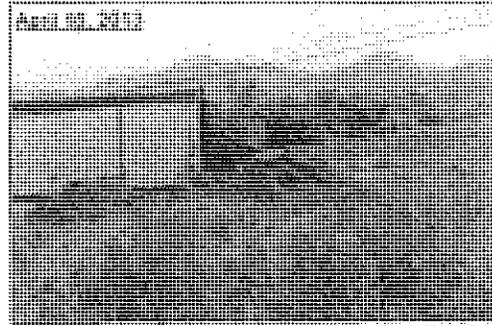
Photograph 3 --Waste discharged at Site No. 2



Photograph 4 -- Waste discharged at Site No. 2



Photograph 5 - Waste handlers at Site No. 2



Photograph 6 - Waste discharged at Site No. 2

Figure 1 and photograph 7, and figure 2 and photograph 8 (provided below) illustrate the relative size and estimated coverage of wastes discharged to land at Sites Nos. 1 and 2, respectively.

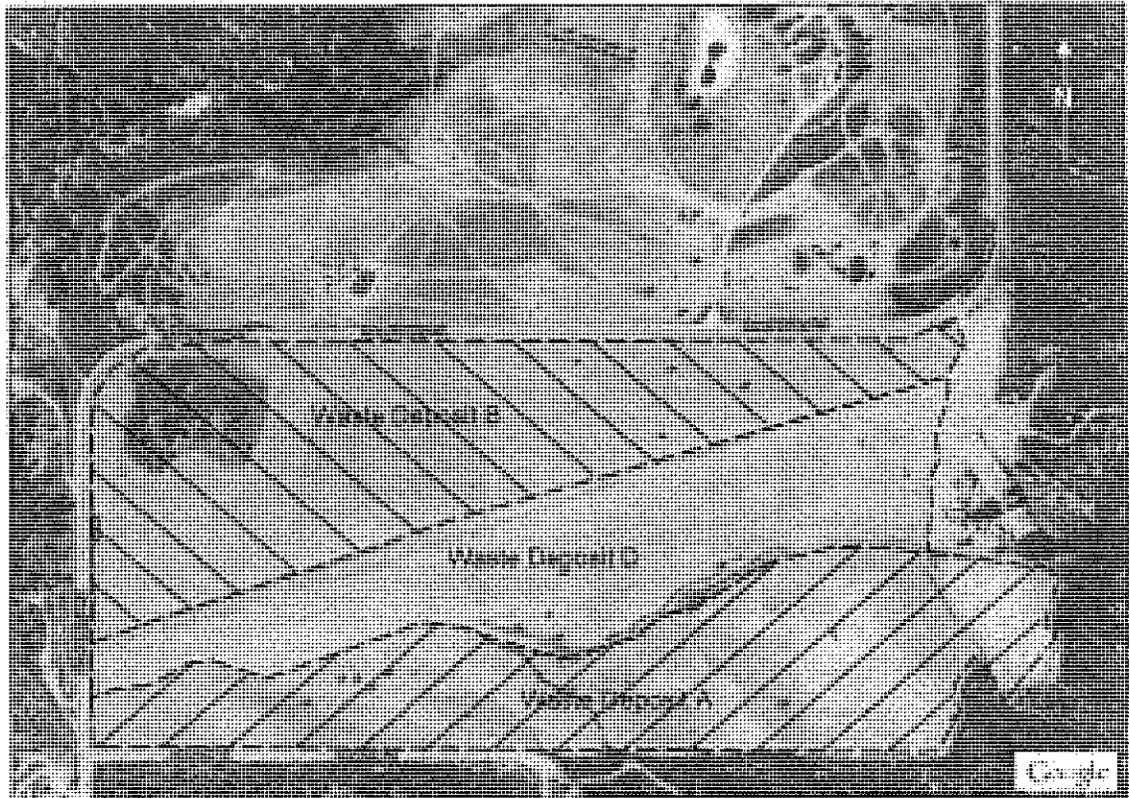
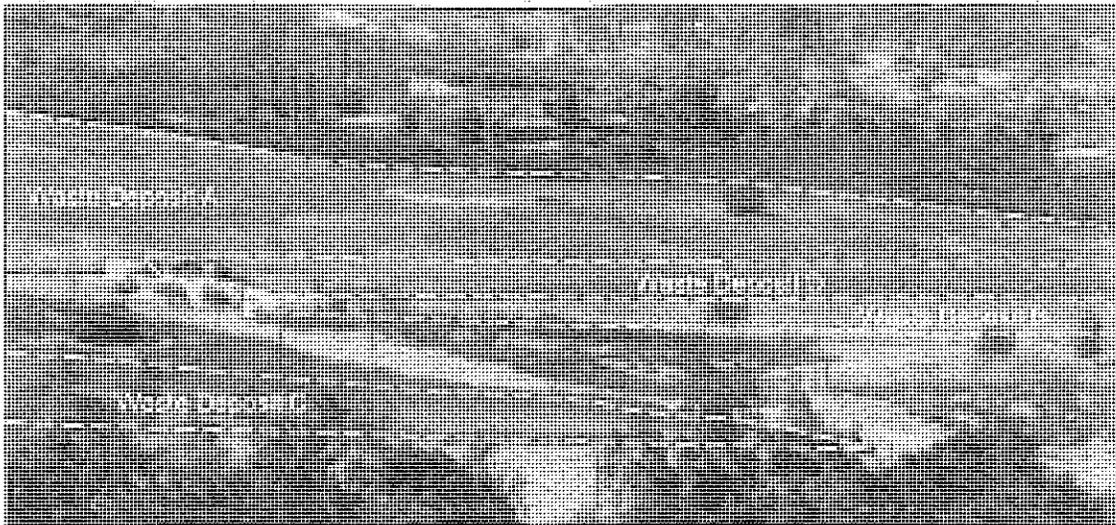


Figure 1 - Aerial view of Site No. 1 (~152 acres).

<sup>6</sup> Photographs provided by Reed Valley complainants.



Photograph 7 – South facing view of Site No. 1.

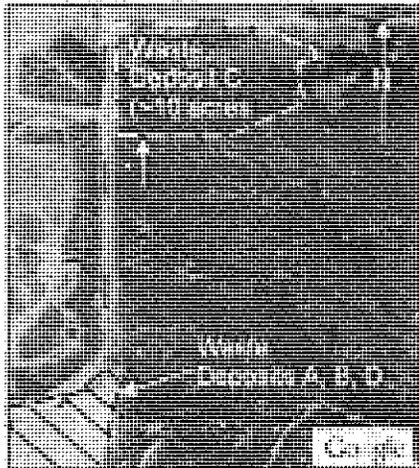
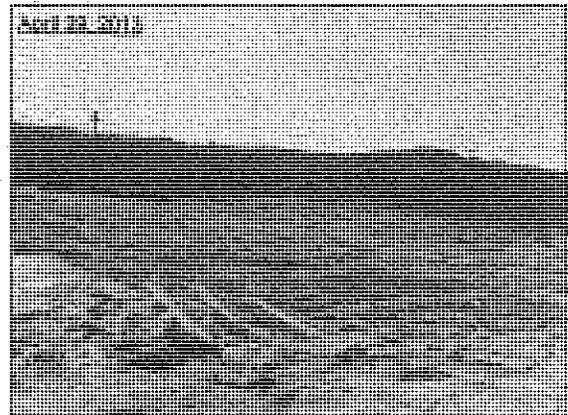
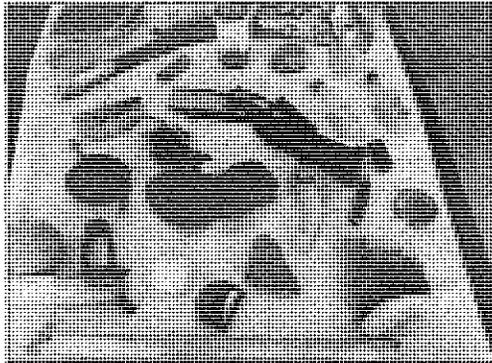


Figure 2 – Aerial view of Site No. 1.



Photograph 8 – South-east facing view of Site No. 2.

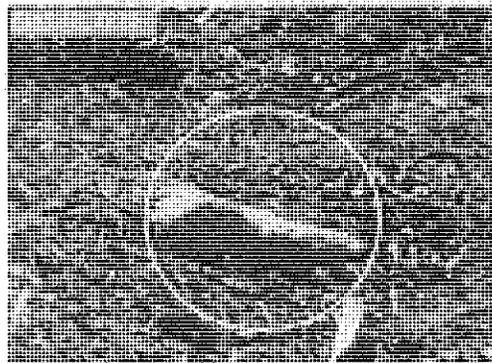
Wastes deposited at Sites Nos.1 and 2 consist primarily of green waste materials (i.e., landscaping wastes) and lesser quantities of glass, plastics, metals, and construction debris (see photographs 9 through 12 below). San Diego Water Board staff estimates the average thickness of the waste discharged at Site Nos. 1 and 2 is 2 feet, and covers an approximate area of 162 acres (Site No. 1, ~152 acres; Site No. 2, ~10 acres). Based on these values, the approximate total volume of waste discharged is 432,720 cubic yards.



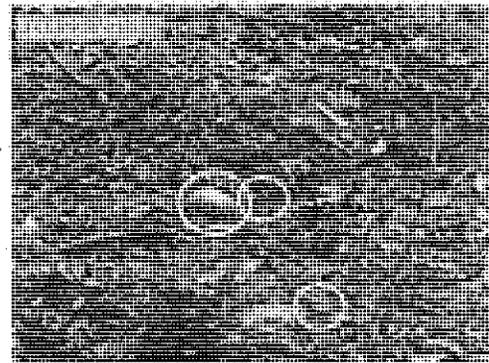
Photograph 9 – Various debris collected by the complainants from Site No. 1



Photograph 10 – Green waste materials and various plastics (circled)



Photograph 11 – Green waste materials and concrete (circled) other debris



Photograph 12 – Green waste materials and various plastics (circled)

### 3. Failure to Comply with San Diego Basin Plan, Waste Discharge Prohibition

#### Pursuant to Waste Discharge Prohibition No. 1 of the San Diego Basin Plan:

Discharges of waste to waters of the State in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance, as defined in Water Code section 13050, is prohibited.

Based on the type and volume of wastes discharged at Sites Nos. 1 and 2, there is a potential for conditions of pollution to occur, ultimately resulting in an impairment of the quality and beneficial uses of the waters of the State. Additionally, during the April 29, 2013 inspection the San Diego Water Board staff observed noticeable offensive odors, consistent with municipal solid waste decomposition associated with Site No. 1. The observed odors constitute a nuisance<sup>6</sup> in violation of Waste Discharge Prohibitions in the San Diego Basin Plan.

<sup>6</sup> Pursuant to Water Code, section 13050(m).

The Water Code section 13260 requires that you file a ROWD<sup>7</sup> with the San Diego Water Board. The ROWD must contain, but may not be limited, to: a complete Form 200,<sup>8</sup> the application fee<sup>9</sup> in the amount of \$1,583.46 payable to the "State Water Resources Control Board;" and a detailed workplan for compliance with the provisions of the Basin Plan. If the ROWD is not received by 5:00 pm on June 28, 2013, the San Diego Water Board will pursue additional enforcement options.

**B. Summary of Potential Enforcement Options**

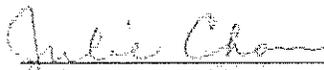
These violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of up to \$5,000 per day of violation (Water Code section 13350) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267 or 13383
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

Based on information provided by the complainants, the discharge of waste to land was originally initiated in August of 2011. As such, the current maximum administrative civil liability assessment for these violations is estimated to be \$3,240,000.

In addition, the San Diego Water Board may consider referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and referral to the municipal or District Attorney for criminal prosecution.

In the subject line of any response, please include the reference code "793882:RMitchell". Questions pertaining to this Notice of Violation should be directed to Mr. Roger Mitchell at 858-467-2724 or [RMitchell@waterboards.ca.gov](mailto:RMitchell@waterboards.ca.gov).

  
 Julie Chan, Chief  
 Cleanup and Land Discharge Branch

JAC:jro:rm

Enclosure: Unpermitted Waste Discharge Location Map

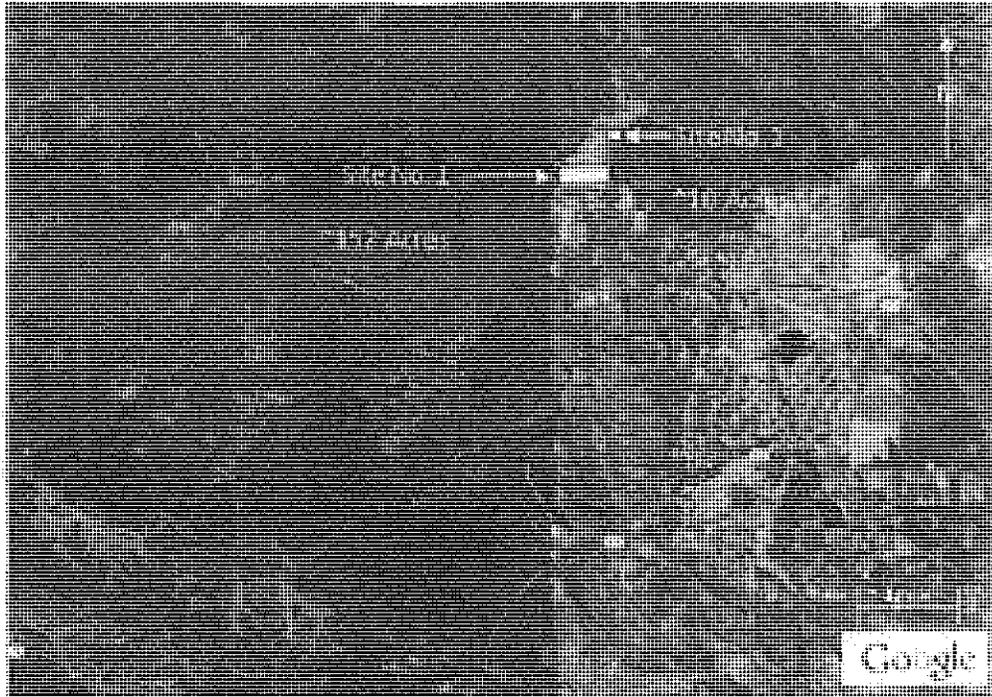
<sup>7</sup> As required by Water Code, sections 13260 and 13264.

<sup>8</sup> [http://www.waterboards.ca.gov/publications\\_forms/forms/docs/form200.pdf](http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf)

<sup>9</sup> Application and annual permit fees are pursuant to California Code of Regulations, Title 23, section 2200.

Tech Staff Info & Use	
Reg. Measure ID	390119, 390120
Place ID	793882, 793885
Party ID	539862, 539863, 539864
Inspection ID	12421445, 12421446
Violation ID	947439, 947440, 947441 947442, 947443, 947444

Enclosure 1  
Unpermitted Waste Discharges Location Map  
Reed Valley Road Aguanga CA



**LOUNSBERY FERGUSON  
ALTONA & PEAK LLP**

ESCONDIDO AND SAN DIEGO

960 Canterbury Place, Suite 300  
Escondido, California 92025-3870  
Telephone (760) 743-1201  
Facsimile (760) 743-9926  
www.LFAP.com

SPECIAL COUNSEL  
JOHN W. WITT

Direct: (760) 743-1226 ext 106  
Email: ERA@LFAP.com

November 16, 2016

*VIA EMAIL PRIOR TO FIRST CLASS MAIL*

Frank Melbourn  
[fmelbourn@waterboardsd.gov](mailto:fmelbourn@waterboardsd.gov)  
California Regional Water Quality Control  
Board  
San Diego - Region 9  
2375 Northside Drive, Suite 100  
San Diego, California 92108

Roger Mitchell  
[rmitchell@waterboardsd.gov](mailto:rmitchell@waterboardsd.gov)  
California Regional Water Quality Control  
Board  
San Diego - Region 9  
2375 Northside Drive, Suite 100  
San Diego, California 92108

RE: RWQCB Case No. R9-2013-1022

Dear Mr. Melbourn and Mr. Mitchell:

As promised during the meeting on November 8, 2016 at your offices, this letter is to confirm our clients' commitment to compliance and to summarize the recent history of the problem, including the substance of our discussions at the meeting.

Since I understand that there may be some change of staff working on this matter, let me start by briefly summarizing the salient facts for whomever takes over this matter. Our clients, James Pike and Riverside County Financial Group, LP, are the owners and managers of the subject 156-acre parcel in Aguanga ("Property"). The Property was used by our clients for several years to grow horse feed crops. In October, 2011, Mr. Pike executed a contract with Organic Ag, Inc. for the delivery of "green trimmings" to the Property to be spread and used as mulch, anticipating the planting and cultivation of organic olive trees. Mr. Pike was not aware of the need for a discharge permit and one of the principals of Organic Ag, Peter Holladay, specifically represented to him that the quality of the green trimmings would enhance the quality of the soil on the Property. Organic Ag's name itself constitutes a representation that its products are in fact organic and suitable for agriculture. Immediately after the first few loads of material were deposited and spread, Mr. Pike inspected the material and found it to be trash-free clean green trimmings. Mr. Pike was told that all of the rest of the material would be of that same quality

Frank Melbourn  
Roger Mitchell  
November 16, 2016  
Page 2 of 4

LOUNSBERY FERGUSON ALTONA & PEAK LLP

Organic Ag in turn contracted with Burrtec Waste Industries, Inc. ("Burrtec") and Ecology Auto Parts, Inc. ("Ecology") to deliver green waste to the Property. Both Burrtec and Ecology aggressively advertise themselves as experts in the green waste industry and they, like Organic Ag, are aware of the need for proper discharge permits, none of which were obtained. To make matters worse, after the first few loads, the "green trimmings" included substantial amounts of plastic and other materials. We recently learned that CR&R Incorporated ("CR&R") also dumped such waste on the Property. In addition to these dischargers, we continue to investigate to determine the original source dischargers of the waste. Our efforts to expose the sources have met with resistance from Burrtec in particular.

Shortly after delivery of the mulch began, Mr. Pike fell ill and spent approximately 180 days of the next year in the hospital. Because he was not able to monitor, the dischargers continued to deliver contaminated material to the Property without oversight for approximately a year. In total, approximately 5,500 truckloads of trash and debris-laden material were dumped onto the Property before Mr. Pike discovered the mess, realized that the dischargers had no intention to separate out the waste before delivery, and demanded that the dumping stop.

Though Organic Ag initially promised to clean-up the trash on the Property, its token effort involved only about a half dozen people picking up trash by hand. After several weeks of this by hand clean up made no dent in the amount of trash and debris on the Property, Mr. Pike ordered Organic Ag off the Property and demanded that Organic Ag develop a real solution to the problem. Concurrently, our clients received Notices of Violation from the Water Board and Riverside County demanding cleanup of the Property. The 30-day period to challenge such Notices obviously ran out long ago.

Having received little or no cooperation, Mr. Pike's family attorney filed a barebones Complaint in Superior Court against Organic Ag in late 2014, hoping that the threat of litigation would motivate Organic Ag. The lawsuit was filed after an expert from Geosyntec urged Mr. Pike to obtain counsel, a cleanup estimate of about \$1 million was received from Organic Depot, and Organic Ag began asserting that the amount of debris in the material dumped on the Property was "within the 1% legal limit". When the lawsuit did not have any immediate effect, our clients contacted the San Diego County Farm Bureau which referred them to our firm since we are familiar with the regulatory framework and with environmental litigation.

We amended the Complaint and began vigorously pursuing Organic Ag, Burrtec and the other dischargers. They responded by trying to bury our clients in paper discovery, forcing our clients to spend many tens of thousands of dollars addressing often redundant or irrelevant questions and document demands. From the start, we kept urging their attorneys to visit the Property, to see the scope and severity of the problem with their own eyes. When their attorneys and representatives

Frank Melbourn  
Roger Mitchell  
November 16, 2016  
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finally did go to the Property, the impact on them was obvious. Not long after, all parties agreed to mediation with Merv Thompson. The mediation is ongoing.

The original sources of the contaminated mulch still are not known to us. We expected Burrtec and the others to bring the source dischargers into the case but they have not done so, presumably to protect their business relationships with those sources. We are now awaiting responses to our discovery aimed at revealing the sources. Most likely, they include municipalities or counties that will also have to be added to the litigation and mediation.

Currently, despite the inexcusable resistance by the dischargers, they appear to have finally accepted the inevitable; the Property must be cleaned up. Our November 8 meeting was intended to give their representatives, Brent Clemmer (counsel for Burrtec) and John Griffin (counsel for Ecology), an opportunity to hear firsthand what we have been telling them all along, that partial solutions and long delays are not acceptable to the Water Board, any more than to our clients. Unfortunately, in the meantime, Mr. Pike has faced even more health challenges and so he was in no shape to attend himself.

The message from Mr. Mitchell was clear and we will comply. Staying in close communication with Board staff, the responsible parties, with our clients' cooperation of course, must prepare a plan for restoration of the Property and submit it for Board approval. In that regard, Mr. Mitchell stated unequivocally that the Board is not bound by the "1% rule" (14 CCR § 17852(a)(21)) and so a plan proposing anything short of complete removal of all of the contaminated mulch will not be approved. Any testing desired as part of developing the plan should also be communicated to the Board staff so that they have an opportunity to observe. Ultimately, the plan must meet all of the criteria set forth in the Notices and other prior communications from staff and be based on solid science. Restoration itself must begin promptly and progress must be reported to Board staff monthly.

We will be reaching out to Greg Reyes at the County of Riverside as well with regard to the County's particular concerns, including Title 14. Accordingly, Mr. Reyes is being copied on this letter.

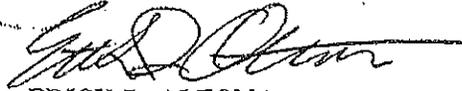
We understand that Board staff has a number of priority projects. However, we will be requesting priority because of Mr. Pike's medical condition. It is his sincere desire to see the Property restored and productive while he is still healthy enough to appreciate it.

Frank Melbourn  
Roger Mitchell  
November 16, 2016  
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LOUNSBERY FERGUSON ALTONA & PEAK LLP

We look forward to working with you and the rest of the Board staff. Please keep us informed as to any changes in the personnel assigned to this matter.

Very truly yours,



ERICK R. ALTONA

cc (via email):

David Gibson, Executive Director, San Diego Regional Water Quality Control Board,

*[dgibson@waterboards.ca.gov](mailto:dgibson@waterboards.ca.gov)*

Julie Macedo, Office of Enforcement, State Water Resources Control Board,

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Greg Reyes, County of Riverside Department of Environmental Health,

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November 21, 2016

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RE: RWQCB Case No. R9-2013-1022

Dear Mr. Melbourn and Mr. Mitchell:

This law firm represents Organic Ag, Inc. We have reviewed the letter dated November 16, 2016, from Erick Altona, and wish to clarify a few assertions of fact that are incorrect. Our understanding of the facts are as follows.

Mr. Pike was on location many times during the delivery and spreading of the green trimmings, pretty much until the time he up until the time he demanded that Organic Ag stop. Organic Ag saw him on countless occasions at the ranch working, and he even praised Organic Ag regarding the job they were doing. Organic Ag only placed material at his direction and where he wanted it. Organic Ag's picking crew worked on the property up to the filing of the instant lawsuit. As the property owner, James Pike was and is responsible for obtaining any permits needed on his property. It is not the responsibility of Organic Ag or any of its suppliers to secure permits for a property owner. The characterization that this mulch was somehow a surprise to Mr. Pike is simply false. He knew the material was being delivered, kept requesting thousands and thousands of loads, and knew that Organic Ag constantly employed a picking crew to clean up the inorganic material that was inherent in this free product provided to Mr. Pike.

Second, just because the name is "Organic Ag," does not mean that it is "Certified Organic" Ag. If Mr. Pike were operating a certified organic field, he should have been aware

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November 21, 2016  
Page 2

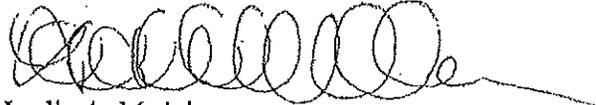
that a raw material, not composted, would not be considered 100 percent certified organic. Again, as a landowner in agriculture, he is required to understand the difference.

We respectfully disagree with the position that the green trimmings are discharges of waste into the waters of the United States. They are a highly regulated way of recycling municipal yard waste to enhance soil. While no green trimming is trash-free, Organic Ag has been in the business of cleaning up the trash for more than a decade. We understand and acknowledge the presence of inorganic material on the property, which comes up as a natural part of the decomposition process. If Mr. Pike would have handled the material as instructed by Organic Ag, and allowed Organic Ag to complete picking up the trash, the mulch would have been ready for planting a long time ago. We have seen no evidence that it is harmful to the environment, and indeed, the experience of Organic Ag, Inc. is the opposite—it enhances soil for agricultural applications. This is why it is allowed in state programs as a soil amendment.

We hope that this lawsuit doesn't force another small business in California to bankruptcy because of the ignorance of the property owner and inconsistent governmental regulation.

Very truly yours,

FERGUSON CASE ORR PATERSON LLP



Leslie A. McAdam

LAM:cs  
cc: (via email)  
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December 14, 2016

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San Diego, California 92108  
Email: [fmelbourn@waterboardsd.gov](mailto:fmelbourn@waterboardsd.gov)

RE: RWQCB Case No. R9-2013-1022

Dear Mr. Melbourn:

Organic Ag, Inc. objects to being included as a “responsible party” as proposed by Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 (CAO) for the reasons previously stated to the RWQCB in its letter dated November 21, 2016. Organic Ag, Inc. acted in accordance with the direction of the landowner, who requested that Organic Ag, Inc. provide green trimmings as mulch on the property—which we understand to be dryland farming with no irrigation. Organic Ag, Inc. was then prevented from going through and picking up trash by the landowner, who chose to engage in litigation instead of resolving the problem. As a result of the costs of litigation, Organic Ag, Inc. is extremely financially unstable and on the brink of bankruptcy. Adding Organic Ag, Inc. to the CAO for performing activities at the direction of the landowner, which other state agencies support is wholly unjust.

Very truly yours,

FERGUSON CASE ORR PATERSON LLP



Leslie A. McAdam

LAM:cs

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## APPLICATION Q & A

### 1. Do I need a permit to discharge waste?

If the operation or discharges from your property or business affects California's surface, coastal, or groundwater, you may need to obtain a permit to discharge waste from the appropriate Regional Water Quality Control Board (Regional WQCB).

If you are discharging pollutants (or proposing to) into surface waters, you must file completed federal National Pollutant Discharge Elimination System (NPDES) permit application forms with the appropriate Regional Board. Form 200 is to accompany the federal forms.

For other types of discharges, such as those affecting groundwater or in a diffused manner (e.g., erosion from soil disturbance or waste discharges to land) you must file a Report of Waste Discharge with the appropriate Regional Board in order to obtain Waste Discharge Requirements (WDRs). Form 200 is the basic form to be used.

For specific situations, the Regional WQCB may waive the requirement to obtain a WDR for discharges to land or may determine that a proposed discharge can be permitted more effectively through enrollment in a general NPDES permit or general WDR.

Typical activities that affect water include, but are not limited to, the following:

- Discharge of process wastewater not discharging to a sewer (factories, cooling water, etc.)
- Confined Animal facilities (dairies, feedlots, etc.)
- Waste containments (landfills, waste ponds, etc.)
- Construction sites
- Boatyards and shipyards
- Discharges of pumped groundwater and cleanups (underground tank cleanups, dewatering, spills)
- Material handling areas draining to storm drains
- Sewage treatment facilities
- Filling of wetlands
- Dredging, filling, and disposal of dredge wastes
- Commercial activities not discharging to a sewer (e.g. factory waste water, storm drain)
- Waste discharges to land

If there is a discharge of stormwater from your facility, you should visit our Stormwater page to find out if you need a Stormwater Permit in addition to any other permit. {put link in here}

### 2. Who must apply?

The owner or operator (depending on who controls day-to-day operations) of the facility must sign and submit the form.

### 3. What forms do I need?

#### WDRs

For discharge of waste to land, use **FORM 200**

#### NPDES

For discharges to surface waters, you will need Form 200 and one or more of the following federal NPDES permit application forms:

- For General Information to be completed in conjunction with Forms 2B, 2C, 2D, 2E, 2F, Short Form A and Standard Form A, use **FORM 200**
- For Publicly-Owned Treatment Works serving 10,000 persons or less, use **SHORT FORM A**
- For Publicly-Owned Treatment Works serving over 10,000 persons or treating significant industrial waste, use **STANDARD FORM A**
- For Publicly-Owned Treatment Works, use **FORM 2A**
- For Concentrated animal feeding operations and aquatic animal production facilities. New applications or renewals, use **FORM 2B**
- For existing manufacturing, commercial, mining, and silvicultural operations (including federal facilities), use **FORM 2C**

- For New manufacturing, mining, commercial and silvicultural operations, use **FORM 2D**
- For New applications or renewals for nonmanufacturing facilities, trailer parks, service stations, laundromats, commercial facilities, etc., use **FORM 2E**
- For Stormwater discharges associated with industrial activity, use **FORM 2F**, or see our Stormwater Page {Put link in here}

These application forms may be obtained at a Regional Board office or can be ordered from the National Center for Environmental Publications and Information at (513) 891-6561. Or, you may download the forms by clicking on the links provided.

**4. What is the application fee?**

Except for dairies, there is no application fee. You will be required to submit a payment which will serve as your first annual fee to complete your application. Except for dairies, all permitted dischargers must pay our annual fee. You will be billed for your annual fee. Failure to pay you annual fee may subject you to civil penalties, including fines. The Regional WQCB will notify you of your annual fee.

**6. How do I get Started?**

The process begins when you request an application from the appropriate Regional WQCB, or download it from this site. You must then file an application with the Regional Board. You will be asked to describe the wastes involved, the setting for the discharge, and the method of treatment or containment.

Once the application is completed and filed, the Regional WQCB staff will draft a permit. Issuance of the permit is by Regional Board order after a public hearing.

**7. How do I get an NPDES permit or WDRs?**

**NPDES**

The steps to obtain an NPDES permit are as follows:

1. File Form 200 and the appropriate federal NPDES application forms with the Regional Board. Anyone proposing to discharge must file a complete application at least 180 days before beginning the activity.
2. Regional Board staff reviews the application for completeness and may request additional information
3. Once the application is determined to be complete, Regional Board staff forwards it to the US Environmental Protection Agency (USEPA) within 15 days. USEPA has 30 days to review the application for completeness and to request additional information from the discharger. After the request for additional information is met, USEPA has 30 days to forward comments to the Regional Board.
4. Regional Board staff determines if they should issue the NPDES permit or prohibit the discharge. If a permit should be issued, Regional Board staff prepares a proposed permit and forwards a copy to USEPA for review.
5. USEPA review the application and has 30 days to object or submit comments to the Regional Board. USEPA may request an additional 60 days to review the proposed permit.
6. Following USEPA's review, Regional Board staff prepares a "Notice of Public Hearing" and mails it to the discharger with instructions for circulation. Regional Board staff also mails the public notice and proposed permit to persons and public agencies with known interest in the project. Regional Board staff may modify the proposed permit prior to the public hearing based on comments received from the discharger and interested parties.
7. The discharger must publish the notice for one day and submit proof of having complied with the instructions to the Regional Board within 15 days after the posting or publication.
8. The Regional Board holds a public hearing with at least 30 day public notification. The Regional Board may adopt the proposed permit or modify it and adopt it at the public hearing by majority vote. USEPA has 10 days to object to the adopted permit, and the objection must be satisfied before the permit becomes effective.

The entire Regional Board review and permit issuance process takes approximately six months, but may take longer depending upon the nature of the discharge and public concerns.

**WDRs**

The steps to obtain Waste Discharge Requirements are as follows:

1. File the Report of Waste Discharge form (FORM 200) with the necessary supplemental information with the Regional Board at least 120 days before beginning to discharge waste.
2. Regional Board staff reviews the application for completeness and may request additional information.
3. Once the application is complete, Regional Board staff determines whether the Regional Board should adopt WDRs, prohibit the discharge, or waive the WDRs.
4. If WDRs should be issued, Regional Board staff prepares proposed WDRs, and distributes them to persons and public agencies with known interest in the project for a minimum of 30 day comment period. Regional Board

staff may modify the proposed WDRs based upon comments received from the discharger and interested parties.

5. The Regional Board holds a public hearing with at least a 30 day public notification. The Regional Board may adopt the proposed WDRs or modify and adopt them at the public hearing by majority vote.

The entire process for developing and adopting the requirements normally takes about three months.

**8. What is the annual fee?**

See application fee.

**9. How long is this permit in effect?**

Waste Discharge Requirements (WDRs) are in effect until such time as you terminate your discharge, or until revoked by the Regional WQCB. NPDES permits expire after 5 years and must be reissued.

**10. How can I avoid the most common mistakes made in applying for this permit?**

It is highly recommended that you contact the appropriate RWQCB *BEFORE* you start to fill out the Form 200 (and any other accompanying forms). Discussion with RWQCB staff before hand can save you a lot of time and effort.

**11. What are the regulations that apply to this permit? Where can I get copies?**

Discharges in California are regulated under the California Water Code. Discharges to surface waters are regulated additionally under the Clean Water Act and 40 Code of Federal Regulations (CFR).

**12. Questions? Call...**

You should contact the appropriate RWQCB if you have any questions or concerns regarding the use of this Form. Please see the State map to determine the appropriate RWQCB you should contact. Telephone numbers for the RWQCBs are listed beside the map.

# Organic Ag, Inc.



## LETTER OF UNDERSTANDING

Date: October 24, 2013

James Pike  
39801 Reed Valley Road  
Aguanga, CA 92536

This agreement is entered into between Organic Ag, Inc. and James Pike. This agreement is to deliver and spread green trimmings on approximately 90 acres of land on the property owned by James Pike. Organic Ag will coordinate the delivery of the green trimmings and the spreading in a timely manner. There will be no charge for the spreading of the green trimmings.

Organic Ag Inc. agrees to monitor the cleanliness of the green trimmings and remove any excess trash as necessary.

  
Peter Holladay  
Organic Ag, Inc.

James Pike

Exhibit A  
Page 1 of 1

Phone: (805) 524-5410  
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