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10
11 In the Matter of Ecology Auto Parts, Inc.’s **PETITION FOR REVIEW OF ACTION BY**
12 Appeal of California Regional Water Quality) **CALIFORNIA REGIONAL WATER**
13 Control Board - San Diego Region Amended) **QUALITY CONTROL BOARD, SAN**
14 Cleanup And Abatement Order No. R9-2013-) **DIEGO REGION; REQUEST FOR STAY;**
15 0122) **REQUEST FOR EVIDENTIARY**
16) **HEARING IN THE ALTERNATIVE;**
17) **PRELIMINARY POINTS AND**
18) **AUTHORITIES IN SUPPORT OF**
19) **PETITION FOR REVIEW; AND**
20) **DECLARATION OF SAUL GRACIAN IN**
21) **SUPPORT OF REQUEST FOR STAY**
22)
23)

24 In accordance with California Water Code Section 13320, Petitioner Ecology Auto Parts,
25 Inc., (“Ecology”) submits this appeal seeking a reversal, stay and/or remand for evidentiary hearing
26 regarding a portion of the California Regional Water Quality Control Board - San Diego Region’s
27 (“Regional Board”) Cleanup and Abatement Order No. R9-2013-0122 (“CAO”), issued as an
28 amended CAO on July 14, 2017 (“Amended CAO”), as further described herein. The Amended
CAO was issued pursuant to an Addendum No. 1 to the CAO (“Addendum 1 to the CAO”), and
resulted in Ecology being named as a Responsible Party under Water Code Section 13304 (“Section
13304”) under the Amended CAO. This request for reversal, stay, and/or remand for evidentiary
hearing will hereinafter be referred to as “Petition for Review”.

This Petition for Review involves property located at 39801 Reed Valley Road in Aguanga,

1 California (“the Property”). Green trimmings were transported to and placed on the Property by
2 Ecology and others, and the Regional Board alleges that the green trimmings have caused violations
3 of Section 13304.

4 A summary of the basis for Ecology’s Petition for Review and a preliminary statement of
5 points and authorities are set forth in this Petition for Review in Section 7 in accordance with Title
6 23, California Code of Regulations (“C.C.R.”) section 2050(a). Ecology reserves the right to file
7 supplemental points and authorities in support of the Petition for Review once the administrative
8 record becomes available. Ecology also reserves the right to submit additional arguments and
9 evidence responsive to the Regional Board’s or other interested parties’ responses to Ecology’s
10 Petition for Review, to be filed in accordance with 23 C.C.R. § 2050.5.

11 **1. NAME, ADDRESS, TELEPHONE NUMBER, AND EMAIL ADDRESS OF THE**
12 **PETITIONER**

13 Ecology Auto Parts, Inc.
14 Richard Mandel
15 14150 Vine Place
16 Cerritos, CA 90703-2416
17 Email: richie@ecoparts.com

18 All materials and documents generated in connection with this Petition for Review should
19 also be provided to the counsel of record for Ecology Auto Parts, Inc. at the following addresses:

20 James Macdonald
21 Thomas Bois, II
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23 Irvine, CA 92602
24 Telephone: (946) 660-0011
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26 and,

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**2. THE SPECIFIC ACTION OF THE REGIONAL BOARD WHICH THE STATE
WATER BOARD IS REQUESTED TO REVIEW:**

1 Ecology seeks review and reversal of the Regional Board's Amended CAO wherein
2 Ecology was named as a Responsible Party under Section 13304.

3 **3. DATE OF THE REGIONAL WATER BOARD ACTION**

4 The CAO was amended to name Ecology as a Responsible Party and the Amended CAO
5 was issued on July 14, 2017.

6 **4. STATEMENT OF REASONS WHY THE REGIONAL WATER BOARD'S ACTION**
7 **WAS INAPPROPRIATE OR IMPROPER**

8 The Regional Board's issuance of the Amended CAO naming Ecology as a Responsible
9 Party was inappropriate and improper as follows:

10 A. In naming Ecology as a Responsible Party in the Amended CAO, the Regional
11 Board committed significant errors of law in concluding that liability as a transporter under Section
12 13304 is similar to, or broader than, liability of a transporter under CERCLA. See Section 7.IV.A.

13 B. In naming Ecology as a Responsible Party in the Amended CAO, the Regional
14 Board committed significant errors of law in failing to correctly apply California nuisance law to
15 determine whether Ecology is liable as a transporter of materials to the Property under Section
16 13304. See Section 7.IV.B.

17 C. The Amended CAO's findings and conclusions that Ecology is a discharger and
18 Responsible Party which may be held responsible for clean -up and abatement of the Property is not
19 supported by substantial evidence. See Sections 7.II.A.-D. and 7.V.

20 D. The Regional Board improperly relied upon inadmissible evidence in reaching its
21 conclusion that substantial evidence supports Ecology status as a Responsible Party. See Sections
22 7.II.E. and 7.V.B.

23 E. The Regional Board failed to conduct a formal hearing where cross-examination of
24 witnesses to allow Ecology to adequately dispute being named as a Responsible Party in the
25 amended CAO. This denied Ecology due process of law. See Section 7.VI.

26
27 **5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED:**

28 Ecology has been aggrieved in that the Regional Board engaged in errors of law, failed to

1 obtain substantial evidence to support its decisions, and denied Ecology due process to properly
2 challenge the Regional Board’s decision to name Ecology as a Responsible Party. As a result, the
3 Regional Board’s actions, if not reversed, will unnecessarily and unfairly force Ecology to incur
4 substantial costs for remediation that should instead be borne by parties that in fact engaged in
5 negligent or unreasonable intentional actions in causing the nuisance claimed by the Regional
6 Board.

7 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
8 **PETITIONER REQUESTS**

9 Ecology requests that the State Board grant this Petition for Review and thereafter vacate
10 the portion of Amended CAO which names Ecology as a Responsible Party for the reasons set
11 forth in this Petition for Review. Ecology also requests that the State Board immediately stay
12 enforcement of Amended CAO until the State Board has had an opportunity to consider and act
13 upon this petition. Finally Ecology requests a full evidentiary hearing at which Ecology be allowed
14 to present all necessary evidence to dispute the Regional Board’s decision to name it as a
15 Responsible Party.

16 **7. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
17 **ISSUES RAISED IN THE PETITION**

18 **I. Summary of Documents in Record Involving Facts and Law in Dispute**

19 On June 3, 2013 the Regional Board issued a Notice of Violation (“NOV”) to the Property
20 owners James V. Pike (“Pike”) and Prairie Avenue Gospel Center, Inc. (“PAGC”) for alleged
21 violations of California Water Code Sections 13260 and 13264 et seq. See **Attachment 1**. On
22 September 5, 2013 the Regional Board issued Cleanup and Abatement Order No. R9-2013-0122
23 naming Pike and PAGC as Responsible Parties under Section 13304 and directing them to
24 remediate waste discharges to the waters of the state. See **Attachment 2**. More than four years
25 later the Regional Board began engaging in discussions with Burrtec Waste Industries, Inc.
26 (“Burrtec”) (a similarly situated transporter, with some significant factual differences as discussed
27 below) about potentially naming it as a Responsible Party. On January 16, 2017 counsel for
28 Burrtec issued correspondence objecting to the naming of Burrtec as a Responsible Party (“January

1 16, 2017 Burrtec Correspondence”). This correspondence included case law demonstrating that
2 under California nuisance law, and correspondingly under Section 13304, Burrtec as a transporter
3 of green trimmings could not be named as a Responsible Party. See **Attachment 3 (without**
4 **exhibits to attachment)**.

5 On March 10, 2017 the Regional Board issued correspondence responding to the objections
6 by Burrtec raised in its January 16, 2017 Correspondence (“March 10, 2017 Regional Board
7 Memo”). See **Attachment 4**. On March 24, 2017 Burrtec’s counsel issued further correspondence
8 again providing case law demonstrating that under California nuisance law, and correspondingly
9 under Section 13304, Burrtec as a transporter could not be named as a Responsible Party. See
10 **Attachment 5 (without exhibits to attachment)**. On April 27, 2017 the Regional Board issued a
11 memorandum and Tentative Addendum No. 1 to the CAO providing its first formal notice that it
12 was tentatively proposing to name Ecology as a Responsible Party (“April 27, 2017 Regional
13 Board Memo”). See **Attachment 6**. On May 2, 2017 the Regional Board issued a memorandum
14 justifying its position concerning naming Ecology as a Responsible Party (“May 2, 2017 Regional
15 Board Memo”). See **Attachment 7**. On May 26, 2017 Ecology timely sent objections to the
16 April 27, 2017 Regional Board Memo (“May 26 Ecology Response”). See **Attachment 8**. On
17 June 9, 2017 the Regional Board issued a response to the May 26, 2017 Ecology Response
18 (“June 9 Regional Board Memo”). See **Attachment 9**. On July 14, 2017 the Regional Board
19 issued its Amended CAO naming Ecology as a Responsible Party. See **Attachment 10**. The
20 Regional Board also issued the final Addendum No. 1 on July 14, 2017. See **Attachment 11**.
21 Relevant misstatements of facts and law by the Regional Board contained in these documents and
22 otherwise in the record are described below.

23 **II. Summary of Facts**

24 **A. Ecology's Role**

25 Part of Ecology’s business includes transportation of green trimmings to various sites using
26 80,000 pound vehicles. Ecology entered into contractual relationships with several different
27 companies, including Burrtec, for the transportation of green trimmings to certain locations.
28 Ecology also has a working relationship with Organic Ag, Inc. (“Organic Ag”) to transport green

1 trimmings to Organic Ag's customers. Ecology does not, however, have a contractual relationship
2 with Organic Ag. Pursuant to its contractual relationship with Burrtec and its business relationship
3 with Organic Ag, Ecology transported deliveries of green trimmings to the Property. Ecology's
4 role therefore is strictly limited to that of a transporter of the green trimmings.¹

5 **B. Organic Ag's and Pike's Role**

6 In 2011, Organic Ag and Pike executed two Letters of Understanding (“LOU”) regarding
7 the delivery and spreading of green trimmings on the Property. The LOU provides in pertinent part
8 as follows:

9 “This agreement is entered into between Organic Ag, Inc. and James Pike. This
10 agreement is to deliver and spread green trimmings on approximately 90 acres of
11 land on the property owned by James Pike. Organic Ag will coordinate the
12 delivery of the green trimmings and spreading in a timely manner. There will be no
13 charge for the spreading of the green trimmings. Organic Ag, Inc. agrees to
14 monitor the cleanliness of the green trimmings and remove any excess trash as
15 necessary.” (Emphasis added).²

16 Ecology was neither a party to nor a beneficiary of the LOU. No agreement existed
17 between Pike and Ecology for the delivery of green trimmings to the Property. There was no direct
18 communication between Pike and Ecology regarding the placement or spreading of green
19 trimmings on the Property.³

20 Pike has filed a lawsuit against Organic Ag and others, including Ecology, asserting claims
21 for damages arising out of the green trimmings that were delivered to and spread on the Property.
22 The operative pleadings in the Pike Lawsuit is the Second Amended Complaint (the “Complaint”),
23 which was filed on January 8, 2016. ⁴ Pike alleges and confirms in the Complaint that his only
24 contract was with Organic Ag, and that it was Organic Ag's obligation to spread the green

25 ¹ See **Attachment 8**, Exhibit 1, relevant portions of the transcript of the Deposition of Saul Gracian, person most
26 knowledgeable on behalf of Ecology, taken on March 22, 2017.

² See **Attachment 8**, Exhibit 2, LOU.

27 ³ See **Attachment 8**, Exhibit 2, LOU; Exhibit 5, relevant portions of the transcript of the Deposition of Peter
28 Holladay of Organic Ag, taken on March 20, 2017; Exhibit 2, relevant portions of the transcript of the Deposition of
Saul Gracian.

⁴ See **Attachment 8**, Exhibit 3, Second Amended Complaint filed in *Pike, et al. v. Organic Ag., Inc. et al.*, Riverside
County Superior Court, Case No. MCC1401513 (the “Pike Lawsuit”)

1 trimmings on the Property.⁵ Pike's breach of contract allegations are solely against Organic Ag.⁶
2 Pike never alleges any contractual relationship with Ecology, any spreading activities conducted
3 by Ecology, any communications between himself and Ecology, or any authorizations for Ecology
4 to perform any spreading activities at or on the Property.⁷

5 **C. Organic Ag Spread Materials on the Property after Delivery by Ecology**

6 The Regional Board has contended that Ecology spread the materials it placed onto the
7 Property into the “waters of the state”.⁸ However, the evidence, as described above, has confirmed
8 that it was Organic Ag, and only Organic Ag, that “spread” the green trimmings. Ecology's role
9 began and ended with transporting the green trimmings to the Property. When an Ecology truck
10 arrived at the Property, a representative of Organic Ag would direct the driver to the location on
11 the Property where the green trimmings would be unloaded. Ecology exercised no discretion as to
12 where it delivered and unloaded the green trimmings (except for safety concerns).⁹ Upon
13 unloading the material, Ecology's role ended and the driver would leave the Property. Organic Ag
14 was required to sort through any of the delivered materials to separate out any potential municipal
15 waste that may be included in the materials, and Organic Ag would then spread the trimmings.¹⁰
16 Pike in fact testified in deposition that it was Organic Ag that spread the green trimmings directly
17 into the tributaries on the Property.¹¹

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⁵ See **Attachment 8**, Exhibit 3, Complaint. ¶¶ 11, 14.

25 ⁶ See **Attachment 8**, Exhibit 3, Complaint. ¶¶ 34-47.

26 ⁷ See **Attachment 8**, Exhibit 2, LOU; Exhibit 3, Complaint.

27 ⁸ See **Attachment 5**, April 27, 2017 Regional Board Memo, Page 2.

28 ⁹ See **Attachment 8**, Exhibit 5, relevant portions of the transcript of the Deposition of Peter Holladay; Exhibit 2, relevant portions of the transcript of the Deposition of Saul Gracian.

¹⁰ See **Attachment 8**, Exhibit 2, LOU.

¹¹ See **Attachment 8**, Exhibit 6, relevant portions of the transcript of the James Pike, taken on March 15, 2017 “Then there are three – one, two – three other tributaries that would run down for when it rains. It goes into that main stream. Organic Ag filled those up with the mulch...”

1 **D. Ecology Did Not Deposit Transported Materials Directly into the Waters of**
2 **the State**

3 In response to the Regional Board’s April 27 Memo, on May 26, 2017 Ecology submitted a
4 declaration from Saul Gracian. Mr. Gracian had been employed as a manager of Ecology’s green
5 cuttings transportation operations for eighteen (18) years. Mr. Gracian stated in his declaration that
6 Ecology trucks did not and could not have unloaded any green trimmings into or near the Wilson
7 Creek tributaries. Because of the enormous weight of these vehicles (80,000 pounds), drivers for
8 Ecology were instead directed to refrain from driving their trucks in or near the tributaries, and in
9 fact did not do so. This then avoided the significant risk that trucks would get stuck or tip over if
10 they were to drive near the tributaries. Instead, Ecology trucks drove only on paved surfaces or flat,
11 solid ground. The trucks would unload the green trimmings on these hard and flat surfaces, and
12 would then leave the Property. As a result, the unloading of green trimmings did not occur within
13 200 feet of the tributaries. Based on this evidence, Ecology presented evidence that it did not
14 deposit any green trimmings into the “waters of the state.”¹²

15 Based on the foregoing, the evidence reflects the following: (1) Ecology did not unload
16 any green trimmings into or within 200 feet of any tributaries on the Property; and (2) Organic Ag
17 spread the green trimmings unloaded by Ecology. Therefore there is simply no credible evidence,
18 or evidence of “ponderable legal significance”, that Ecology placed any green trimmings directly
19 into the “waters of the state,” or that Ecology placed or spread green trimmings where they would
20 necessarily be discharged into the waters of the state.

21 **E. Regional Board’s Improper “Evidence” Purporting to Demonstrate**
22 **Ecology Directly Placed Material into Waters of the State**

23 In response to the evidence submitted in the May 26, 2017 Ecology Response, the Regional
24 Board issued the June 9, 2017 Regional Board Memo. In that memo James Smith of the
25 Enforcement Team stated the following:

26 Ecology claims that it did not discharge material within 200 feet of the unnamed
27 tributary to Wilson Creek (Declaration of Gracian). Additionally, Gracian states

28 _____
12 See **Attachment 8**, Exhibit 4, Declaration of Saul Gracian,

1 that it was physically impossible to dump waste into the tributary due to loose dirt
2 and steep slopes in the vicinity of the tributary which would have resulted in
3 trucks tipping over or getting stuck. Based upon San Diego Water Board staff
4 observations during site visits, we disagree. Although the site has a slope to it, it is
5 anything but steep and is considered to be fairly flat. Additionally, during the dry
6 season most people would not realize if they were standing in the tributary or not.
7 The entire site is only 1,200 feet wide (North to South) with the tributary splitting
8 the width in half in the eastern portion. Therefore it is highly likely that the waste
9 deposits could have been made directly into the tributary, within 200 feet of it, or
10 where it probably could enter into the tributary, "waters of the state."¹³

11 The above statement amounts to improper lay witness speculation and/or are improper
12 expert testimony. See Section 7.V.B.¹⁴ As a result, Ecology will demonstrate below that when the
13 admissible and properly considered facts are considered and applied to the correct standard of law,
14 those facts simply do not amount to the “substantial evidence” needed to justify the Regional
15 Board’s decision to impose Responsible Party status on Ecology under Section 13304. See Section
16 7.V.C.

17 **III. Grounds for Petition**

18 Any interested person may petition the State Water Board for reconsideration of a decision
19 or order on any of the following grounds:

- 20 a. [i]rregularity in the proceedings, or any ruling, or abuse of discretion, by which the
21 person was prevented from having a fair hearing;
- 22 b. [t]he decision or order is not supported by substantial evidence;
- 23 c. [t]here is relevant evidence which, in the exercise of reasonable diligence, could not have
24 been produced;
- 25 d. [e]rror in law. (Cal. Code Regs., tit. 23, § 768.)

26 Ecology’s Petition for Review is based upon the first three grounds allowed under
27

28 ¹³ See **Attachment 9**, June 9 Regional Board Memo.

¹⁴ The Regional Board’s consideration of this evidence also improperly denied Ecology its due process rights, as shown below. See Section 7.VI.

1 California Code.

2 **IV. RWQCB Staff Applied an Error in Law in Naming Ecology as a Responsible**
3 **Party**

4 **A. RWQCB Improperly Applied CERCLA standards of Liability to a Section**
5 **13304 Claim**

6 In responding to the May 26, 2017 Ecology Response, and Ecology’s objections contained
7 within it, in its June 9, 2017 Memo the Regional Board’s James Smith, Assistant Executive
8 Officer/Head of the Prosecution Team stated the following,

9 “On page 6 of the May 26, 2017, submission, counsel for Ecology states, “Ecology
10 transported green trimmings [waste] to a property and unloaded them ...” This
11 would give rise to arranger CERCLA1 liability, and Water Code section 13304 is
12 undoubtedly broader than federal environmental authority.

13 This statement is an error in law in that it fundamentally misunderstands and
14 misrepresents the scope of liability under Section 13304 compared to CERCLA. It is true that in
15 some respects that Section 13304 liability is broader than CERCLA liability. However relating to
16 the legal issue that is under review as part of this Petition for Review, which is whether Ecology
17 as a transporter of green trimmings can be properly named as a responsible party under Section
18 13304, the legal contention that liability is as broad, or broader than liability under CERCLA, is
19 simply an error of law. That is because strict liability applies to transporters under CERCLA, but
20 not under Section 13304. Therefore a transporter can be found liable under CERCLA without
21 fault; i.e, the mere fact of transporting substances that fall under the umbrella of CERCLA
22 liability is enough to cause responsible party status under CERCLA.¹⁵ “Plainly, while a
23 CERCLA liable party *may* be at fault for the release, CERCLA liability can be imposed upon
24 blameless parties.” *United States v. Stringfellow*, 1993 U.S. Dist. LEXIS 19113, Page 34 (C.D.
25 Cal. 1993)”¹⁶

26 _____
27 15 In the initial NOV issued on June 3, 2013 the Regional Board did not include CERCLA in the category of “Other
28 Potential Enforcement Options”. See **Attachment A**. Nor has the Regional Board ever provided any chemical
forensic evidence demonstrated that Ecology transported any hazardous substances covered under CERCLA to the
Property, thereby exposing it to any potential CERCLA liability as a transporter.

16 Causation standards are applied more narrowly under nuisance law, and in turn § 13304, compared to under
CERCLA law. *See Orange County Water Dist. V. Alcoa Global Fasteners, Inc.* 12 Cal. App. 5th 252, 309 (2017).

1 In contrast, under Section 13304, as was previously explained in Ecology’s May 26, 2017
2 Response (and in prior correspondences issued by Burrtec), traditional tort concepts of nuisance
3 under California law must be applied. See City of Modesto Redevelopment Agency v. Superior
4 Ct. (2004) 119 Cal.App.4th 28, 38 (“Having concluded that the statute [Section 13304] must be
5 construed ‘in light of common law principles bearing upon the same subject’ — here the subject
6 of public nuisance—we turn next to identify those principles.” (Citation omitted)). This is because
7 Section 13304, unlike the CERCLA statute, has a causation requirement (only a party that has
8 “caused or permitted, causes or permits, or threatens to cause or permit any waste to be
9 discharged or deposited” can be held to be a Responsible Party under a Section 13304 claim). See
10 Section 13304(a) and City of Modesto Redevelopment Agency v. Superior Ct. (2004) 119
11 Cal.App.4th 28, 37.

12 Under nuisance standards of law that must be applied to a Section 13304 claim, a
13 transporter’s conduct, and for that matter any party’s conduct, cannot be said to ‘create’ a
14 nuisance unless it more actively or knowingly generates or permits the specific nuisance
15 condition. Redevelopment Agency of the City of Stockton v. BNSF Railroad Co., 643 F.3d 668,
16 674 (9th Cir. 2011). In other words, a transporter cannot be held liable for blameless conduct
17 under a Section 13304 claim, as it can under a CERCLA claim.

18 The fact that the Regional Board’s error of law was prejudicial to Ecology is demonstrated
19 in the following passage from the April 27, 2017 Regional Board Memo (which discusses the
20 Regional Board’s supposed grounds for naming Burrtec, also a transporter of green trimmings, as
21 a Responsible Party).

22 “Burrtec argues that it lacks the requisite control for liability, and that the mere
23 ‘unloading of green trimmings at the Property by Burrtec did not create or
24 threaten to create a condition of pollution or nuisance.’ The argument in Burrtec’s
25 March 24, 2017, submissions focuses on the lack of “affirmative” conduct, rather

26 “CERCLA’s departure from traditional tort principles can be found in the omission of the defendant from its causation
27 requirement, which as we have discussed focuses on whether a release caused plaintiff’s response costs, rather than
28 whether a defendant caused plaintiff’s response costs.” Furthermore a transporter is specifically named as one of the
four types of persons or entities that can be found to be a responsible party under CERCLA. However Section 13304
does not have a similar provision naming a “transporter” as one of the types of parties specifically liable under Section
13304.

1 than arguing that it was a mere supplier. In other words, Burrtec has admitted that
2 it placed the waste materials on the property at issue. Burrtec did not merely
3 supply the waste materials to a distributor. Burrtec physically transported the
4 waste to and placed it on the Pike property, and in some instances directly into
5 ‘waters of the state,’ or probably could have, given rain and wind.”

6 This passage therefore demonstrates that the Regional Board found that under Section
7 13304, the mere transportation of green trimmings (which it refers to as waste) to the Property
8 was sufficient to impose liability. However, that is not the standard of law applicable to a Section
9 13304 claim. Therefore, as more fully explained below, the Regional Board has engaged in an
10 error of law in concluding that if Ecology as a transporter has liability under CERCLA, it would
11 also necessarily have liability under Section 13304.

12 **B. Proper Standard of Law Applicable to a Section 13304 Claim.**

13 Section 13304(a) provides in pertinent part as follows:

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

23 First, we note that the standards of proof that apply to determining liability under Section
24 13304 are the same standards of proof applied to nuisance law. *Redevelopment Agency of the City*
25 *of Stockton v. BNSF Railroad Co.*, 643 F.3d 668, 674 (9th Cir. 2011). Under those standards, the
26 State Board has already determined under Section 13304 that hazardous substance manufacturers
27 *and distributors* are not Responsible Parties (absent some other act that gives rise to liability). See
28 *In the Matter of the Petition of Exxon Company, U.S.A., et al.* (1985), Cal.St.Wat.Res.Bd. 1985 WL

1 20026.

2 In *In re Exxon*, the Regional Board adopted a Cleanup and Abatement Order naming the gas
3 station property owners, Exxon, and even of more pertinence, the gasoline distributor, Phelps, as
4 Responsible Parties for benzene contamination that had resulted from leaking underground storage
5 tanks. The State Board however disagreed, and found instead there was no substantial evidence
6 showing liability for either Exxon or the gasoline supplier Phelps under Section 13304. *Id.* at 6.

7 Accordingly, the State Board ordered both Exxon *and the distributor Phelps* removed from
8 the Cleanup and Abatement Order, and held that only the property owners who actually had control
9 over the use of the gasoline could be responsible for discharges from the leaking gasoline tanks. *Id.*
10 A California Court of Appeal later noted that *In re Exxon* “does suggest that a party who merely
11 *supplies* a hazardous substance is not responsible under Water Code Sec. 13304.” *City of Modesto*
12 *Redevelopment Agency v. Superior Ct.* (2004) 119 Cal.App.4th 28, 41 (emphasis added).

13 The *City of Modesto* court noted that “[w]hile liability for nuisance is broad, however, it is
14 not unlimited.” *Id.* at 39. It then held liability stops well short of applying to “mere but-for
15 causation.” Under this standard applied to nuisance law, and therefore under Section 13304,
16 liability simply does not extend to those “who merely placed [products] in the stream of commerce
17 without warning adequately of the dangers of improper disposal.” *City of Modesto*, 119 Cal.App.4th
18 at 43. The *City of Modesto* California Appellate Court, in holding dry cleaning solvent
19 manufacturers *and distributors* were not accountable for a dry cleaners’ discharge of those solvents
20 into public sewer systems, found that only those who “took affirmative steps directed toward the
21 improper discharge of solvent wastes . . . may be liable under [Section 13304].” *Id.*

22 This legal concept was recently applied in *City of Merced Redevelopment Agency v. Exxon*
23 *Mobil Corp.*, 2015 U.S. Dist. LEXIS 13549, Page 68 (E.D. Cal. 2015). In *City of Merced*, just as
24 was the case in *In re Exxon*, the Plaintiff attempted to hold Exxon and Chevron, as manufacturers,
25 suppliers *and distributors* of gasoline, liable under a Section 13304 claim for delivering gasoline to
26 leaking tanks (this time due to the presence of a chemical referred to as MTBE in the delivered
27 gasoline). A similar claim was first made by the plaintiff in California Superior court, under a
28 nuisance cause of action, and was soundly rejected by that court (“the court held that the City's

1 nuisance claim failed. Accordingly, the court granted the defendants summary judgment on their
2 nuisance claim.” *City of Merced* at p. 11. The *City of Merced* Eastern District Court essentially
3 held the same, this time under a Section 13304 claim, ruling Exxon and Chevron “are not liable for
4 creating or assisting in the creation of a nuisance at the R Street stations. As such, they are not
5 responsible parties under § 13304(a).” This despite the fact that not only did Exxon and Chevron
6 manufacturer the gasoline at issue, but they also delivered the gasoline to the properties at issue and
7 placed it into leaking underground storage tanks.

8 In responding to Ecology’s objections to being named as a Responsible Party, the Regional
9 Board appeared to be distinguishing the case law described above by making the arguments it
10 previously raised to Burrtec’s objections to being named as a Responsible Party. See May 2, 2017
11 Regional Board Memo (“As such, there is evidence documenting Ecology's participation in a role
12 similar to that of Burrtec. Therefore, Ecology's legal arguments would likely be substantially
13 similar to those of Burrtec. Namely, that it is not a "discharger" because it delivered and deposited
14 green waste onto the Pike property and that it did not spread any green waste.”)

15 The below passages from the April 27, 2017 Regional Board Memo appear to encompass
16 the Regional Board’s arguments in that regard:

17
18 “Burrtec did not merely supply the waste materials to a distributor, Burrtec
19 physically transported the waste to and placed it on the Pike property” and,

20
21 “*City of Modesto* is distinguishable because Burrtec is more than a mere supplier.
22 *In re County of San Diego* is not to the contrary: it confirms that Water Code
23 section 13304 is broader than sections 13260 and 13263, and applies to discharges
24 that are uncontrolled, intentional, or negligent. *Id.*, at *3. Burrtec may not have
25 expected liability to arise from its actions, but placing waste material that
26 contained excessive trash, including glass, plastics, metals, and construction debris
27 can subject it to liability under Water Code section 13304.¹⁷ See April 27, 2017

28

17 Ecology presumes that the rationale the Regional Board applied to conclude that Burrtec was a Responsible Party as a transporter is being applied equally by the Regional Board to support Ecology’s Responsible Party status.

2 The Regional Board's arguments do not in fact distinguish those cases, or any other case
3 cited by Ecology and/or Burrtec (at least in any meaningful way). In fact, those cases only bolster
4 Ecology's claim that it cannot be named as a Responsible Party. This is because the cases cited
5 above involved defendants that not just supplied materials, but also physically transported products
6 that contained hazardous substances and placed the products at the sites in question. Whether the
7 term used is "supplier" versus "distributor" versus "transporter" is meaningless for the purpose of
8 determining liability under Section 13304. Therefore the Regional Board's fixation on the term
9 "supplier" versus "transporter", used in an attempt to distinguish the cases above, must be rejected
10 by the State Board. See *In re Exxon* (both Exxon, the manufacturer, and C. P. Phelps, the
11 distributor of gasoline that physically transported and placed the gasoline into leaking
12 underground storage tanks, found to have no liability under § 13304); *City of Modesto* (defendants
13 that both manufactured and supplied solvents, and therefore presumably transported and placed
14 those solvents at contaminated dry cleaning sites, all found to have no liability under § 13304);
15 *City of San Diego v. U.S. Gypsum Co.* (1994) Cal. App. 4th 575 (a distributor of thermal system
16 insulation, and two parties that both manufactured and supplied decorative ceiling compounds, all
17 found to have no liability under nuisance law); and *City of Merced* (Chevron and Exxon, as
18 manufacturers, suppliers *and distributors*, both found to have no liability under California nuisance
19 law in a California Superior Court, and under California nuisance law *and Section 13304* in a
20 California Federal District Court). As a result, the consistent theme throughout these cases is not
21 whether a party is labelled a "supplier" versus "transporter" versus "distributor", but instead
22 whether the party actually engaged in some negligent or intentionally unreasonable acts separate

23
24 _____
25 18 Ecology further notes that the fact that municipal waste may or may not have been included in materials delivered
26 to the Property by Ecology is not material to whether Ecology has liability under nuisance law. This is because
27 Ecology has already established that the mere delivery of hazardous materials to a property does not expose the
28 transporter to liability under nuisance law. Furthermore it was already contemplated as part of the LOU between Pike
and Organic Ag that the materials that would be delivered would most likely contain such materials (since the LOU
specifically stated "Organic Ag, Inc. agrees to monitor the cleanliness of the green trimmings and remove any excess
trash as necessary.") Therefore the fact that some municipal waste potentially remains at the Property in material
spread by Organic Ag throughout the Property simply provides evidence that Organic Ag or Pike engaged in negligent
or unreasonable actions by failing to separate it out before spreading it. However this fact does not provide substantial
evidence that Ecology engaged in any negligent or intentional unreasonable acts that would support liability under a
Section 13304 claim.

1 and apart from the mere delivery of materials containing hazardous substances to a contaminated
2 site. Here, Ecology did not do so, as further explained in Section 7.V.III, and therefore cannot be
3 named as a Responsible Party.

4 This legal conclusion was in fact specifically confirmed in W. Coast Home Builders, Inc. v.
5 Aventis Cropscience, USA Inc., 2009 U.S. Dist. LEXIS 74460, 39 ELR 20200 (N.D. Cal. Aug. 21,
6 2009). In that case an owner of a landfill brought a nuisance claim against “the original
7 generators, arrangers and/or transporters of the solid waste and hazardous waste that is present in
8 soil and in the groundwater plume underneath the Property.” W. Coast at Page 6 (emphasis added).

9 The generator and transporters, (35 parties in total, referred to in the opinion as “the
10 Generator Defendants”), argued the following:

11 The Generator defendants argue that the most that plaintiff can show is that the
12 Generator defendants sent hazardous substances and waste to the Landfill. The
13 Generator defendants argue that it is undisputed that they had no responsibility for
14 the operations at the Landfill, and it is the operation of the Landfill that plaintiff
15 claims gives rise to the groundwater contamination now existing under portions of
16 its property. The Generator defendants argue that plaintiff's discovery responses
17 confirm that the only basis for its claims against the Generator defendants is their
18 disposal of waste at the landfills. W. Coast at Page 28.

19 In response, just as the Regional Board appears to contend in the case under review, the
20 plaintiff landfill owner argued for an incorrect standard of law for its nuisance claim, contending
21 “that a defendant may be liable for a nuisance without negligence.” The W. Coast Court rejected
22 this contention, and stated “[w]hile plaintiff is correct that negligence is not a necessary element of
23 a nuisance claim, in the absence of negligence there must be some intentional conduct that is
24 unreasonable.” W. Coast at Page 28. The W. Coast Court further held, when applying the facts of
25 that case to determine liability under California nuisance law, as follows:

26 “Here, the Generator defendants are entitled to summary judgment because their
27 conduct -- disposing of their waste at the landfill -- did not create or assist in the
28 creation of the nuisance. Plaintiff has not submitted any evidence suggesting that

1 defendants' conduct was unreasonable. It is undisputed that the Generator
2 defendants played no part in the operation of the Landfill, and it is undisputed that
3 the Generator defendants' only role with respect to the Landfill was having their
4 waste taken there for purposes of its disposal. Defendants' conduct is too
5 attenuated from the creation of the alleged nuisance.” W. Coast Pages 31-32.

6 Therefore, as can be seen above, the Regional Board engaged in an error in law in finding
7 that mere transportation of hazardous substances, without more, is sufficient to impose liability on
8 Ecology. As can be also seen below in Section V, substantial evidence was not presented to show
9 that Ecology did anything more than transport the green trimmings to the site. Therefore this error
10 of law was also prejudicial to Ecology.

11 **V. Substantial Evidence Does Not Support the Naming of Ecology as a**
12 **Responsible Party**

13 Pursuant to California Administrative Code, Title 23, Section 737.1(b) a party may petition
14 the Board for reconsideration of a decision which is not supported by substantial evidence. As the
15 California Appellate court recognized in Bank of America N.T. and S.A. v. State Water Resources
16 Control Board, (1974) 42 Cal.App.3d 198, the findings of the Regional Board must be supported
17 by substantial evidence. The Bank of America court defined substantial evidence as follows:

18 "It has been said that if the word "substantial" means anything at all, it clearly
19 implies that such evidence must be of ponderable legal significance. Obviously the
20 word cannot be deemed synonymous with "any" evidence. It must be reasonable in
21 nature, credible, and of solid value; it must actually be "substantial" proof of the
22 essentials which the law requires in a particular case.' “(Bank of America at 213,
23 citing Estate of Leed (1952) 112 Cal.App.2d 638, 644).

24 Therefore in naming Ecology as a responsible party, “the State Water Board must
25 determine whether there is substantial evidence that [the responsible party] caused or permitted the
26 discharge...” In the Matter of the Petition of Sanmina Corporation, (1993) Cal.St.Wat.Res.Bd.
27 1993 Cal. ENV LEXIS 21 at Page 4. Furthermore, “[t]here must be substantial evidence to
28 support a finding of responsibility for each party named. This means credible and reasonable

1 evidence which indicates the named party has responsibility." In the *Matter of the Petition of*
2 *Sanmina Corporation*, (1993) Cal.St.Wat.Res.Bd. 1993 Cal. ENV LEXIS 21, Page 5.

3 **A. Ecology Has Affirmatively Presented Evidence Demonstrating Substantial**
4 **Evidence Does Not Support it Being Named a Responsible Party**

5 **i. Substantial Evidence Demonstrates Ecology did not Choose the Location**
6 **Where Materials were Placed, nor Spread those Materials.**

7 Ecology has presented substantial evidence that, although it delivered and placed materials
8 on the Property, other parties engaged in negligent or intentionally unreasonable acts in spreading
9 the materials to allegedly cause damage to the waters of the state. (See Amended CAO at 1.d and
10 1. E. "As it pertains to this CAO, Ecology Auto Parts, Inc. (hereinafter Ecology) trucks delivered
11 and placed green waste to various locations on the properties." and "Burrtec contracted with
12 Organic Ag, Inc. (hereinafter Organic Ag) to supply green waste to Organic Ag. Ecology
13 contracted with Organic Ag to supply green waste to Organic Ag. Pike contracted with Organic Ag
14 for the delivery and spreading of green waste on the properties. Organic Ag spread the green waste
15 piles placed by Burrtec and Ecology on the properties.").¹⁹

16 Ecology has also presented evidence that at no point and time did Ecology ever choose the
17 location where the green trimmings would be delivered. Instead, those locations were chosen by
18 Organic Ag. See Section 7.II. B. and C. Finally it is established by substantial evidence that
19 Organic Ag, not Ecology, spread the green trimmings throughout the Property, which in turn
20 caused the alleged entry of the green trimmings into the tributaries. See Section 7.II.C.^{20 21}

21 **ii. Ecology Has Also Presented Substantial Evidence that it did not Deliver**
22 **Materials Within 200 Feet of any Tributaries**

23 As to the exact location where Ecology placed the green trimmings, Ecology submitted a

24 _____
19 See Amended CAO, Complaint ¶¶ 11, 14, and Declaration and Deposition of Sal Gracian. See also Section 7.II.A.
25 and B.

20 See Deposition of Pike, Page 298 and Deposition of Peter Holladay, Page 229.

26 21 Ecology further notes that, like the landfill owner that fails to properly manage its waste once it is delivered to the
27 landfill, or the gasoline tank owner that fails to properly maintain its gasoline tanks after the gasoline is delivered, or the
28 dry cleaner owner that fails to prevent spills from its property after solvents are delivered to its operations, it is Pike's
responsibility to properly manage the materials once Ecology delivers the materials to the Property. Therefore the
Regional Board's speculation that materials delivered by Ecology "could have [entered waters of the state], given rain
and wind rain" simply does not provide substantial evidence of negligent or other unreasonable intentional acts that
would constitute liability under Section 13304.

1 declaration from Saul Gracian, manager for Ecology, whose responsibilities include overseeing
2 Ecology's transportation operations. In his declaration (and his corresponding deposition
3 testimony) Mr. Gracian stated he had been employed by Ecology for approximately 18 years and
4 was responsible for overseeing the work performed by Ecology in processing and delivering green
5 trimmings to properties during that time.²² Mr. Gracian states in his declaration that the 80,000
6 pound Ecology trucks did not and could not have unloaded any green trimmings into or near the
7 tributaries at issue. Drivers for Ecology were instead directed not to, and did not drive their trucks
8 in or near the tributaries. This was because of the size and weight of the trucks, which caused a
9 significant risk that trucks would get stuck or tip over if they were to drive near the tributaries.
10 Ecology trucks instead drove only on paved surfaces, or flat, solid ground. As a result, the trucks
11 would unload the green trimmings on these hard and flat surfaces, and would then leave the
12 Property.²³

13 As a result, Mr. Gracian stated unequivocally that the unloading of green trimmings did not
14 occur within 200 feet of any of the tributaries. Based on this evidence, Ecology demonstrated in
15 the May 26, 2071 Ecology Response that it did not deposit any green trimmings directly into the
16 “waters of the state.”

17 **B. The Regional Board has Not Presented Substantial Evidence to Support its**
18 **Determination that Ecology is a Responsible Party**

19 **i. The Regional Board’s Responsive Evidence**

20 In response to the evidence submitted by Ecology, James Smith of the Regional Board’s
21 Enforcement Team stated the following in the June 9, 2017 Regional Board Memo:

22 Ecology claims that it did not discharge material within 200 feet of the unnamed
23 tributary to Wilson Creek (Declaration of Gracian). Additionally, Gracian states
24 that it was physically impossible to dump waste into the tributary due to loose dirt
25 and steep slopes in the vicinity of the tributary which would have resulted in
26 trucks tipping over or getting stuck. Based upon San Diego Water Board staff
27 observations during site visits, we disagree. Although the site has a slope to it, it is

28 ²² See Declaration at Paragraphs 1 and 2. Also see Deposition Gracian Transcript at Page 15.

²³ Gracian Declaration Para 4.

1 anything but steep and is considered to be fairly flat. Additionally, during the dry
2 season most people would not realize if they were standing in the tributary or not.
3 The entire site is only 1,200 feet wide (North to South) with the tributary splitting
4 the width in half in the eastern portion. Therefore it is highly likely that the waste
5 deposits could have been made directly into the tributary, within 200 feet of it, or
6 where it probably could enter into the tributary, "waters of the state."

7 **ii. The Enforcement Team's Evidence is Improper Lay Witness Testimony**

8 Ecology contends that the facts stated within the above passage are improper opinion
9 evidence provided by Mr. Smith (or whomever else provided him with these observations). Such
10 evidence is not "reasonable in nature, credible, and of solid value." *Bank of America* at 213. Nor is
11 it of "ponderable legal significance". *Id.* In fact, this is the type of testimony that would need to be
12 provided by someone that is expertly qualified to provide such opinions.

13 Unlike an expert witness, a lay witness may express opinion based only on his or her own
14 perception, not information acquired from others. (Evid. Code, § 800, subd. (a); *People v. McAlpin*
15 (1991) 53 Cal.3d 1289, 1306 & fn. 12. That is so because "[u]nlike an expert opinion, a lay
16 opinion must involve a subject that is "of such common knowledge that men of ordinary education
17 could reach a conclusion as intelligently as the witness." [Citation.]" (*People v. Fiore* (2014) 227
18 Cal.App.4th 1362, 1384). Furthermore, "when a lay witness offers an opinion that goes beyond the
19 facts the witness personally observed, it is held inadmissible." *People v. McAlpin*, at 1308.

20 As it stands now, Ecology has no idea who from the Enforcement Team is responsible for
21 the conclusions contained in the memorandum. Because the observations described in the June 9,
22 2017 Regional Board Memo may be based on someone else's perceptions, on that basis alone the
23 statements in the memorandum should be stricken as improper hearsay relied upon by a lay
24 witness. However, even ignoring that basis for striking this testimony, although someone might be
25 entitled to state their observations that the Property is "anything but steep", or that someone could
26 be standing in the tributary without knowing it, as a lay witness they are absolutely not entitled to
27 draw conclusions from those perceptions. Therefore they may not speculate and dispute Mr.
28 Gracian's statements that the slope is too steep to drive directly to a tributary, or that Ecology

1 would have risked losing a vehicle by driving directly down the slope to the tributary. This is
2 simply improper lay witness evidence, which does not have “ponderable legal significance”.
3 Therefore it cannot constitute “substantial evidence” of liability under Section 13304.

4 **iii. The Regional Board Witnesses Lack the Prerequisites to Provide**
5 **Expert Testimony**

6 **a. Lack of Expert Qualifications**

7 The qualification of a witness to testify as an expert is a matter within the sound discretion
8 of the trial court (and therefore within the State Board’s review of this petition). (*Hutter v. Hommel*
9 (1931) 213 Cal. 677, 681.) A person is qualified to testify as an expert if he or she has special
10 knowledge, skill, experience, training, or education sufficient to qualify him or her as an expert on
11 the subject to which his or her testimony relates. (Evid. Code, § 720, subd. (a); *Miller v. Los*
12 *Angeles County Flood Control Dist.* (1973) 8 Cal.3d 689, 701.) "The test is whether a witness
13 discloses sufficient knowledge of the subject to entitle his opinion to go to the jury." (*Hutter,*
14 *supra*, 213 Cal. at p. 681.)

15 Mr. Gracian provided his qualifications to provide the opinions contained in his declaration
16 – as stated above, 18 years working for Ecology in the specific capacity of supervising trucks that
17 delivered green trimmings to similar properties. However there is nothing whatsoever in the
18 record that would indicate that whomever made the initial observations described in the June 9,
19 2017 Regional Board Memo would be qualified to rely on those observations to provide expert
20 opinions.

21 There is no indication whatsoever that Mr. Smith, or anyone he relied upon for his opinion
22 as stated in the June 9, 2017 Memo, has any special knowledge, skill, experience, training or
23 education to qualify him to render the opinions stated above. The fact is Ecology is unaware of the
24 educational or work experience of anyone even remotely involved with these opinions. Certainly
25 Ecology is not aware whether those individuals ever worked in any area of construction,
26 transportation, or the waste industry which would allow them to substitute their opinions for
27 someone like Mr. Gracian with 18 years of personal experience in these fields. Therefore Mr.
28 Smith's testimony should be excluded.

1 **b. Lack of Foundation**

2 Section 801(b) also provides that an expert’s opinion must be “[b]ased on matter . . . that is
3 of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject
4 to which his testimony relates.” Cal. Evid. Code § 801(b). Section 803 further provides that the
5 trial court “may, and upon objection shall, exclude testimony in the form of an opinion that is
6 based in whole or in significant part on matter that is not a proper basis for such an opinion.” Cal.
7 Evid. Code § 803.

8 The analysis conducted by the California courts in determining whether expert opinion has
9 a reliable foundation includes a determination whether the expert engaged in sound reasoning in
10 connecting the foundation to the conclusions reached:

11 The value of opinion evidence rests not in the conclusion reached but in the
12 factors considered and the reasoning employed. . . . Where an expert bases his
13 conclusion upon assumptions which are not supported by the record, upon matters
14 which are not reasonably relied upon by other experts, or upon factors which are
15 speculative, remote or conjectural, then his conclusion has no evidentiary value. .
16 . . . When a trial court has accepted an expert’s ultimate conclusion without critical
17 consideration of his reasoning, and it appears the conclusion was based upon
18 improper or unwarranted matters, then the judgment must be reversed for lack of
19 substantial evidence. *Pac. Gas & Elec. Co. v. Zuckerman*, (1987) 189 Cal. App.
20 3d 1113, 1135-36, citing *In re Marriage of Hewitson*, (1983) 142 Cal. App. 3d
21 874, 885-887 (emphasis added).

22 Even if Mr. Smith (or whomever he relied upon) had the necessary expert qualifications,
23 that is not enough to render the opinions. Rather, the expert must demonstrate that the “reasoning
24 employed” establishes a non-speculative nexus between the purported foundation for the expert’s
25 opinion and the opinion offered. *See Johnson v. Sup.Ct. (Rosenthal)* (2006) 143 Cal.App.4th 297,
26 307 (excluding expert testimony where there is no reasoning or factual basis to support the
27 declarant’s conclusion) and In *Bay Area Rapid Transit District v. Superior Court*, (1996), 46 Cal.
28 App. 4th 476 (rejecting the testimony of an expert on commuter trains because it was speculative

1 because “the factors considered and the reasoning employed” was lacking).

2 Mr. Smith has not presented the necessary foundational requirements to allow him, or
3 anyone he relied upon, to render the opinion provided by the Regional Board in the June 9, 2017
4 Regional Board Memo. Although Mr. Smith admits in his memorandum that the slope is not flat,
5 he does not explain how the actual angle of the slope would preclude Mr. Gracian’s conclusion that
6 no deposits could be made within 200 feet of a tributary. Furthermore Mr. Smith does not even
7 address the evidence of the looseness of the deposits near the tributaries, which Mr. Gracian stated
8 also would prevent driving the trailers near the tributaries. There simply is no foundational
9 evidence presented to support the Regional Board’s expert opinion evidence. Therefore it is not of
10 “ponderable significance”, and cannot be used to demonstrate substantial evidence.

11 **C. The Evidence Presented by Ecology, When Compared to the Evidence Presented**
12 **by the Regional Board, at Worst Cancels Each Other, Leaving No Substantial**
13 **Evidence that Ecology Delivered its Materials Into the “Waters of the State”**

14 Ecology contends that given Mr. Gracian's clearly superior qualifications to provide
15 evidence of whether Ecology delivered its materials within 200 feet of any tributaries that testimony
16 should be provided greater weight compared to the Regional Board’s speculative testimony.
17 However, even if both sides of the proffered evidence is considered by the State Board, at worst the
18 evidence cancels each other out. In that event, there is no other evidence that has been submitted by
19 the Regional Board to support its contention that Ecology delivered waste directly into “waters of
20 the state” (or that Ecology engaged in negligent or intentionally unreasonable acts). There are no
21 photographs or witness testimony stating that the green trimmings delivered by Ecology were in
22 fact placed within 200 feet of the tributaries. There is also no attempt to forensically recreate where
23 Ecology placed its materials. Given the evidence on the record, the State Board must conclude that
24 the only substantial evidence presented to date is that Ecology delivered materials to the Property,
25 but did nothing more. That simply is not sufficient to find liability under a Section 13304 claim, as
26 seen below.

1 **D. The Evidence in the Record Does not Meet the Substantial Evidence Standard**
2 **When Applied to the Correct Standard of Law**

3 The evidence provided by Ecology, when compared to the evidence (or lack thereof)
4 provided by the Regional Board, does not allow the Regional Board to meet the “substantial
5 evidence” standard to impose liability under California nuisance law, and in turn under a Section
6 13304 claim. As stated above, it is not enough under nuisance law, and in turn Section 13304, to
7 simply demonstrate that Ecology transported the materials at issue to the Property. *In re Exxon,*
8 *City of Modesto, City of San Diego, City of Merced* and *Aventis* all stand for the proposition that
9 transporting and depositing materials to a property, even if those materials contained hazardous
10 substances, simply is not enough to confer Responsible Party status. More is required.

11 Instead of acknowledging the applicable law that applies to a Section 13304 claim, the
12 Regional Board appears to be relying on the fact that Ecology is a transporter as defined in
13 CERCLA, and transporters are liable under CERCLA, and therefore Ecology is liable under Section
14 13304. However, as shown above in Section 7. IV., CERCLA and Section 13304 liability are not
15 the same. In this regard Ecology notes that the Regional Board has not cited a single California
16 case, whether it be state or federal, or a single State Board decision, which supports that the
17 evidence it has provided supports naming Ecology as a Responsible Party under Section 13304.
18 Instead, the applicable law, and the specific facts of this case, are analogous to *In re Exxon, City of*
19 *Modesto, City of San Diego, City of Merced* and *Aventis*, which are all distributor/transporter cases
20 cited by Ecology above. Under those cases, this State Board, California federal district courts, a
21 California superior court, and California appellate courts, all determined there can be no liability for
22 Ecology as a mere transporter of green cuttings under Section 13304.

23 Here, substantial evidence simply does not exist that Ecology did anything more than
24 transport and deposit the materials. It is undisputed that Organic Ag, not Ecology, spread the
25 materials after they were placed at the Property.²⁴ Furthermore substantial evidence was presented
26 by Ecology, not disputed in a way that is of “ponderable legal significance”, that Ecology did not

27 _____
28 24 As stated above in FN18, any evidence that municipal waste may be present at the Property would provide evidence
that Pike and/or Organic Ag engaged in negligent or intentional unreasonable acts in failing to remove it from the
materials delivered by Ecology. However, that does not provide substantial evidence that Ecology engaged in such
acts.

1 place waste within 200 feet of a tributary. Even if the Regional Board’s speculations as to where
2 Ecology placed the materials are credited by the State Board, at worst these two sets of evidence
3 simply cancel each other out. Since Organic Ag and/or the owner Pike, rather than Ecology, were
4 the parties that spread the waste, and thereby caused the damage alleged to have been caused to the
5 waters of the state, Ecology’s “conduct is too attenuated from the creation of the alleged nuisance.”
6 See Aventis at Page 32. This leaves the State Board without substantial evidence to conclude that
7 Ecology has liability under a Section 13304 claim. Therefore the Regional Board’s determination of
8 Ecology’s liability under a Section 13304 claim must be reversed.

9 **VI. Due Process (Irregularity in Hearings)**

10 The State of California (including its agencies) may not deprive any person of life, liberty,
11 or property without due process of law. U.S. Const. Amend. XIV, § 1; U.S. Const. Amend. V, Cal.
12 Const., art. I, §7. The exercise of a quasi-judicial power requires that an agency must satisfy at
13 least minimal requirements of procedural due process. Horn v. County of Ventura (1979) 24 Cal.3d
14 605, 612. Minimum due process requires some form of notice and an opportunity to be heard. *Id.*
15 This is codified at Section 11425.10(a) (1) of the Government Code which mandates, “The agency
16 shall give the person to which the agency action is directed notice and an opportunity to be heard,
17 including the opportunity to present and rebut evidence.”

18 “[D]ue process generally requires consideration of (1) the private interest that will be
19 affected by the official action, (2) the risk of an erroneous deprivation of such interest through the
20 procedures used, and the probable value, if any, of additional or substitute procedural safeguards,
21 (3) the dignitary interest in informing individuals of the nature, grounds and consequences of the
22 action and in enabling them to present their side of the story before a responsible governmental
23 official, and (4) the governmental interest, including the function involved and the fiscal and
24 administrative burdens that the additional or substitute procedural requirement would entail.”
25 People v. Ramirez (1979) 25 Cal.3d 260, 269 citations omitted).

26 Due process includes a reasonable opportunity to know the claims of the adverse party and
27 to present objections. See Ryan v. California Interscholastic Federation (2001) 94 Cal.App.4th
28 1048, 1072. When an administrative agency conducts a hearing, the party must be “apprised of the

1 evidence against him so that he may have an opportunity to refute, test, and explain it” *Clark*
2 *v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1171-72. This right is protected by
3 Government Code Section 11513(b) which guarantees the right to cross-examine witnesses on any
4 matter relevant to the issues. Indeed, an agency decision based on information of which the parties
5 were not apprised and had no opportunity to controvert amounts to a denial of a hearing. *Clark v.*
6 *City of Hermosa Beach*, 48 Cal.App.4th at 1171-72. Ecology’s due process rights were violated
7 because it was not apprised of the evidence to be used against it and given a reasonable opportunity
8 to refute, test, or explain such evidence.

9 A review of the evidence demonstrates that the Regional Board appears to have relied
10 heavily on inspections of the Property, and opinions rendered by those persons that performed those
11 inspections. Ecology however, as discussed above, has valid concerns about both the competency
12 of these inspections, as well as the opinions applied.

13 In particular, the following statements of James Smith of the Enforcement Team as stated
14 the following in its June 9, 2017 Regional Board Memo are of concern:

15 Ecology claims that it did not discharge material within 200 feet of the unnamed
16 tributary to Wilson Creek (Declaration of Gracian). Additionally, Gracian states
17 that it was physically impossible to dump waste into the tributary due to loose dirt
18 and steep slopes in the vicinity of the tributary which would have resulted in trucks
19 tipping over or getting stuck. Based upon San Diego Water Board staff
20 observations during site visits, we disagree. Although the site has a slope to it, it is
21 anything but steep and is considered to be fairly flat. Additionally, during the dry
22 season most people would not realize if they were standing in the tributary or not.
23 The entire site is only 1,200 feet wide (North to South) with the tributary splitting
24 the width in half in the eastern portion. Therefore it is highly likely that the waste
25 deposits could have been made directly into the tributary, within 200 feet of it, or
26 where it probably could enter into the tributary, "waters of the state."

27 Due process requires a party to be “apprised of the evidence against him so that he may
28 have an opportunity to refute, test, and explain it” *Clark v. City of Hermosa Beach*, 48

1 Cal.App.4th at 1172. Due process includes “the right to present legal and factual issues in a
2 deliberate and orderly manner.” White v. Board of Medical Quality Assurance, 128 Cal.App.3d at
3 705.

4 Without the ability to examine RWQCB staff at a hearing regarding the factual basis for the
5 allegations in the CAO, and in particular the evidence cited by the Enforcement Team concerning
6 its contention that Ecology placed material directly into the tributaries (as stated above), Ecology
7 was denied “a reasonable opportunity to know the claims of the adverse party and to present their
8 objections.” Ryan v. CIF-San Diego Section, 94 Cal.App.4th at 1072. A party must be “apprised of
9 the evidence against him so that he may have an opportunity to refute, test, and explain it”
10 Clark v. City of Hermosa Beach, 48 Cal.App.4th at 1172.

11 As it stands now, Ecology has no idea if Mr. Smith, or someone else from the Enforcement
12 Team, is responsible for the observations and/or conclusions described above. Nor does Ecology
13 know if these individuals have the proper experience or education which would allow them to
14 render what appears to be expert opinions. Therefore on that basis alone those statements have
15 denied Ecology its due process right to know the basis of the claims asserted against it.

16 Furthermore, even if the individuals that are responsible for these opinions had been
17 properly identified, Ecology has not been provided any opportunity to directly challenge the basis
18 of the claims that the Property is “anything but steep”, or that an Ecology driver “would not realize
19 if they were standing in the tributary or not”. Therefore Ecology has been denied its due process
20 rights to challenge those statements. Furthermore Ecology has not been provided an opportunity to
21 question Regional Board individuals as to why they ignored Mr. Gracian’s statement that it was not
22 just the steepness of the slope that prevented 80,000 pound trucks from depositing materials in close
23 proximity to the tributaries, but also the loose unconsolidated nature of the soil. Since Ecology had
24 no opportunity for a full and fair hearing, Ecology was prevented from having an opportunity to
25 refute, test, and explain the allegations and evidence presented by the RWQCB, denying Ecology
26 due process. Therefore if the Amended CAO is not reversed, it nonetheless should be set aside and
27 remanded back to the RWQCB for a full and fair hearing.

28

1 **8. A STATEMENT THAT THE PETITION FOR REVIEW HAS BEEN SENT TO**
2 **THE REGIONAL BOARD AND TO THE DISCHARGER, IF NOT THE PETITIONER**

3 A true and correct copy of this Petition for Review was sent on August 14, 2017 to the
4 Regional Board at the following address:

5 Mr. David W. Gibson, Executive Officer
6 California Regional Water Quality Control Board
7 San Diego Region
8 2375 Northside Drive, Suite 100
9 San Diego, California 92108-2700

10 This Petition for Review has also been sent by electronic transmission to counsel
11 representing other named dischargers at the following email addresses, or by registered certified
12 mail, as stated below:

13 Counsel for Burrtec:

14 Brent S. Clemmer, Esq.
15 Slovak Baron Empey Murphy & Pinkney, LLP
16 Clemmer@sbemp.com

17 Cynthia Pertile Tarle, Esq.
18 Tarle Law, P.C.
19 cptarle@tarlelaw.com

20 Suzanne Varco
21 Varco & Rosenblam
22 Email: Svarco@envirolawyer.com

23 Counsel for Pike:

24 Erick Altona
25 Lounsbury, Ferguson, Altona & Peak, LLP
26 Email: era@lfap.com

27 Counsel for Organic Ag:

28 Leslie A. McAdam,
Ferguson, Case, Orr, Paterson, LLP
Email: lmcadam@fcoplaw.com

For Prairie Avenue Gospel Center, Inc.:

By Registered Certified Mail Return Receipt Requested
Attn: Daniel S. Pike
5965 Waterfront Place
Long Beach, California 90808-4839

1 **9. A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS RAISED**
2 **IN THE PETITION FOR REVIEW WERE RAISED BEFORE THE REGIONAL BOARD**

3 The substantive issues described within the Petition for Review were raised before the
4 Regional Board in the documents described above in Section 7.I. However no hearing has been
5 provided by the Regional Board in regards to its decision to name either Burrtec, or Petitioner
6 Ecology, as a Responsible Party in this action.

7 **10. REQUEST FOR STAY**

8 Ecology requests that the State Water Board issue a stay of the Regional Board action
9 pending the State Water Board’s full review of this matter. A stay is necessary to prevent the
10 consequences of the Regional Board’s action from being irreversible, forcing Ecology to
11 implement a remedy that it has no responsibility to implement given it is not a Responsible Party.

12 There will be no remedy for the wrongful action of the Regional Board if while awaiting
13 review, Ecology must proceed to comply with deadlines for constructing the costly remedy
14 proposed for the Site.

15 **A. There Will Be Substantial Harm To The Petitioner Or To The Public Interest If A**
16 **Stay Is Not Granted.**

17 Given that a 270 day period is provided by law for the State Water Board’s review, the
18 Regional Board action, if not stayed, forces Ecology to proceed with major expenditures
19 (potentially exceeding 1 million dollars) for a remediation plan before the State Water Board’s
20 decision on the merits would be issued. See Declaration of Saul Gracian, ¶ 5 concurrently filed
21 with the Petition for Review. Therefore without a stay, Ecology may be forced to engage in
22 expenditures the State Water Board ultimately determines it is not required to pay for. If it were to
23 do so, there is no guarantee that it would ever be able to recover these funds from the actual
24 Responsible Parties. Forcing Ecology to proceed with treatment without administrative and
25 judicial review of the Regional Board action would therefore deprive Ecology of due process of
26 law. See Declaration of Saul Gracian, ¶ 6 concurrently filed with the Petition for Review.

1 **B. There Will Be No Substantial Harm To Other Interested Persons And To The**
2 **Public Interest If A Stay Is Granted**

3 Evidence presented in the record have demonstrated that any materials at issue have
4 already been removed from the tributaries.²⁵ Although there are some immediate steps that may be
5 necessary to protect the tributaries, the previously named Responsible Parties are engaging in
6 efforts to address those concerns. As relates to a full remedial effort, the Regional Board has
7 already identified other Responsible Parties that are required to implement any necessary remedial
8 measures. Therefore any delay in Ecology’s participation in the construction of the treatment
9 system will therefore, not harm other persons or the public interest. See Declaration of Saul
10 Gracian, ¶ 7 concurrently filed with the Petition for Review.

11 **C. The Petition For Review Presents Substantial Questions Of Law And Fact**
12 **Regarding The Disputed Act.**

13 Important legal questions are at issue in this Petition for Review as stated above in Section
14 4 as follows:

- 15 • In naming Ecology as a Responsible Party in the Amended CAO, the Regional
16 Board committed significant errors of law in concluding that liability as a
17 transporter under Water Code Section 13304 (“Section 13304”) is similar to, or
18 broader than, liability of a transporter under CERCLA.
- 19 • In naming Ecology as a Responsible Party in the Amended CAO, the Regional
20 Board committed significant errors of law in failing to correctly apply California
21 nuisance law to determine whether Ecology is liable as a transporter of materials to
22 the Property under Section 13304.
- 23 • The Amended CAO's findings and conclusions that Ecology is a discharger and
24 Responsible Party which may be held responsible for clean -up and abatement of
25 the Property is not supported by substantial evidence.
- 26 • The Regional Board improperly relied upon inadmissible evidence in reaching its
27 conclusion that substantial evidence supports Ecology status as a Responsible Party.

28 _____
25 See Declaration of Martin Hamman, **Attachment 8**, Exhibit 7, and Deposition Transcript of James Pike.

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- The Regional Board failed to conduct a formal hearing where cross-examination of witnesses to allow Ecology to adequately dispute being named as a Responsible Party in the amended CAO. This denied Ecology due process of law. See Declaration of Saul Gracian, ¶ 8 concurrently filed with the Petition for Review.

11. PETITIONER’S REQUEST FOR EVIDENTIARY HEARING

For the reasons set forth above in Section 7.VI, in the event the State Board does not reverse the Regional Board’s decision to name Ecology as a Responsible Party under the Amended CAO, Ecology requests that the State Board either conduct a full evidentiary hearing, or remand this matter to the Regional Board to conduct a full evidentiary hearing, along with supporting evidence, in accordance with Title 23, C.C.R. Section 2052.

Respectfully submitted,

Dated: August 11, 2017

BOIS & MACDONALD

By: James Macdonald
James C. Macdonald
Attorney for Appellant Ecology Auto Parts, Inc.

1 THOMAS J. BOIS, II (Bar No. 110250)
2 JAMES C. MACDONALD (Bar No. 175760)
3 BOIS & MACDONALD
4 2030 Main Street, Suite 660
5 Irvine, California 92614
6 Telephone: (949) 660-0011; Facsimile: (949) 660-0022
7 Email: tbois@boismac.com
8 Email: jmacdonald@boismac.com

9 Attorneys for Appellant Ecology Auto Parts, Inc.

10
11 In the Matter of Ecology Auto Parts, Inc.'s) **DECLARATION OF SAUL GRACIAN**
12 Appeal of California Regional Water Quality) **SUBMITTED IN SUPPORT OF PETITION**
13 Control Board - San Diego Region Amended) **FOR REVIEW OF ACTION BY**
14 Cleanup And Abatement Order No. R9-2013-) **CALIFORNIA REGIONAL WATER**
15 0122) **QUALITY CONTROL BOARD, SAN**
16 **DIEGO REGION AND REQUEST FOR**
17 **STAY**

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26 I Saul Gracian, hereby declare as follows:

27 1. I am a Manager at Ecology Auto Parts, Inc., ("Ecology") and have been employed
28

1 at Ecology for at least eighteen (18) years. As manager, I have responsibility for overseeing all
2 trucking operations of the business and am in charge of all trucks that leave facilities which
3 process green trimming materials, including those trucks that delivered green trimmings to the
4 property located at 39801 Reed Valley Road in Aguanga, California (“the Property”).

5 2. In my capacity as Manager of Ecology I am aware of the proceedings by the
6 California Regional Water Quality Control Board - San Diego Region (“Regional Board”)
7 regarding Cleanup and Abatement Order No. R9-2013-0122 (“CAO”), issued as an amended CAO
8 on July 14, 2017 (“Amended CAO”). I have submitted a declaration to the Regional Board in
9 these proceedings, and have also been deposed in a related state court proceeding filed by James
10 Pike, a named Responsible Party in the Amended CAO.

11 3. It is my understanding that a Petition for Review has been filed on behalf of
12 Ecology to obtain a reversal of the Regional Board’s decision to name Ecology as a Responsible
13 Party under the Amended CAO.

14 4. Ecology has been aggrieved by the Regional Board’s decision to name it as a
15 Responsible Party in the Amended CAO in that the Regional Board engaged in errors of law,
16 failed to obtain substantial evidence to support its decisions, and denied Ecology due process to
17 properly challenge the Regional Board’s decision to name Ecology as a Responsible Party (all as
18 described more fully within the Petition for Review).

19 5. It is my understanding the Amended CAO directs Ecology to perform remediation
20 of the green trimmings that were delivered to the Property, and imposes substantial daily fines and
21 penalties on Ecology if it does not comply with the Amended CAO. As a result, the Regional
22 Board’s actions, if not stayed, will unnecessarily and unfairly force Ecology to incur substantial
23 costs for remediation (potentially exceeding one million dollars), and expose it to potential
24 penalties and fines, that should instead be borne by parties that in fact engaged in negligent or
25 unreasonable intentional actions in causing the alleged nuisance claimed by the Regional Board.

26 6. Ecology requests that the State Board immediately stay enforcement of the
27 Amended CAO until the State Board has had an opportunity to consider and act upon Ecology’s
28 Petition for Review. Given that a 270 day period is provided by law for the State Water Board’s

1 review, the Regional Board action, if not stayed, will potentially force Ecology to proceed with a
2 major expenditure of funds for a remediation plan, and expose it to substantial penalties, before the
3 State Water Board's decision on the merits would be issued. Therefore without a stay, Ecology
4 may be forced to engage in substantial expenditures that the State Water Board ultimately
5 determines it is not required to pay for. If Ecology were to do so, there is no guarantee that it
6 would ever be able to recover these funds from the actual Responsible Parties. Forcing Ecology to
7 proceed with treatment without administrative and judicial review of the Regional Board action
8 would therefore cause an extreme financial hardship to Ecology.

9 7. Evidence presented in the record has demonstrated that any green trimmings at
10 issue have already been removed from impacted tributaries. Although there are some immediate
11 steps that may be necessary to further protect the tributaries, it is my understanding the
12 Responsible Parties initially named in the CAO are engaging in efforts to address those concerns.
13 As relates to a full remedial effort, the Regional Board has already named those Responsible
14 Parties as parties responsible for implementing any necessary remedial measures.

15 8. It is my understanding the Petition for Review involves substantial questions of law
16 and fact as follows:

- 17 • In naming Ecology as a Responsible Party in the Amended CAO, the Regional
18 Board committed significant errors of law in concluding that liability as a
19 transporter under Water Code Section 13304 ("Section 13304") is similar to, or
20 broader than, liability of a transporter under CERCLA.
- 21 • In naming Ecology as a Responsible Party in the Amended CAO, the Regional
22 Board committed significant errors of law in failing to correctly apply California
23 nuisance law to determine whether Ecology is liable as a transporter of materials to
24 the Property under Section 13304.
- 25 • The Amended CAO's findings and conclusions that Ecology is a discharger and
26 Responsible Party which may be held responsible for clean -up and abatement of
27 the Property is not supported by substantial evidence.
- 28 • The Regional Board improperly relied upon inadmissible evidence in reaching its

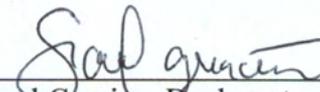
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conclusion that substantial evidence supports Ecology status as a Responsible Party.

- The Regional Board failed to conduct a formal hearing where cross-examination of witnesses to allow Ecology to adequately dispute being named as a Responsible Party in the amended CAO. This denied Ecology due process of law.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This Declaration is executed on 8/11, 2017 in Cerritos, California.



Saul Gracian, Declarant

1 THOMAS J. BOIS, II (Bar No. 110250)
2 JAMES C. MACDONALD (Bar No. 175760)
3 BOIS & MACDONALD
4 2030 Main Street, Suite 660
5 Irvine, California 92614
6 Telephone: (949) 660-0011; Facsimile: (949) 660-0022
7 Email: tbois@boismac.com
8 Email: jmacdonald@boismac.com

9 Attorneys for Appellant Ecology Auto Parts, Inc.

10
11 In the Matter of Ecology Auto Parts, Inc.'s) **DECLARATION OF JAMES C.**
12 Appeal of California Regional Water Quality) **MACDONALD SUBMITTED IN SUPPORT**
13 Control Board - San Diego Region Amended) **OF PETITION FOR REVIEW OF ACTION**
14 Cleanup And Abatement Order No. R9-2013-) **BY CALIFORNIA REGIONAL WATER**
15 0122) **QUALITY CONTROL BOARD, SAN**
16) **DIEGO REGION AND REQUEST FOR**
17) **STAY**

18 I James C. Macdonald, hereby declare as follows:

19 1. I am a Partner with the law firm of Bois & Macdonald and represent Ecology Auto
20 Parts, Inc (“Ecology”) relating to the proceedings by the California Regional Water Quality
21 Control Board - San Diego Region (“Regional Board”) regarding Cleanup and Abatement Order
22 No. R9-2013-0122 (“CAO”), issued as an amended CAO on July 14, 2017 (“Amended CAO”).

23 2. I know the following of my own personal knowledge and if called as a witness, I
24 could and would competently testify to the matters discussed herein. I further attest that I have
25 personal knowledge of the facts alleged in Ecology’s Petition for Review to obtain a reversal, stay
26 and/or remand for evidentiary hearing of the Regional Board’s decision to name Ecology as a
27 Responsible Party under the Amended CAO (“Petition for Review”). It is my understanding that
28 each of the attachments attached to this declaration are also part of the administrative record in this

1 matter and are therefore authenticated by means of being part of that record.

2 3. On June 3, 2013 the Regional Board issued a Notice of Violation (“NOV”) to the
3 Property owners James V. Pike (“Pike”) and Prairie Avenue Gospel Center, Inc. (“PAGC”) for
4 alleged violations of California Water Code Sections 13260 and 13264 et seq. A true and correct
5 copy of the NOV is attached hereto as **Attachment 1**.

6 4. On September 5, 2013 the Regional Board issued Cleanup and Abatement Order
7 No. R9-2013-0122 (“CAO”) naming Pike and PAGC as Responsible Parties under Section 13304
8 and directing them to remediate waste discharges to the waters of the state. A true and correct
9 copy of the CAO is attached hereto as See **Attachment 2**.

10 5. On January 16, 2017 counsel for Burrtec issued correspondence objecting to the
11 naming of Burrtec as a Responsible Party (“January 16, 2017 Burrtec Correspondence”). This
12 correspondence included case law demonstrating that under California nuisance law, and
13 correspondingly under Section 13304, Burrtec as a transporter of green trimmings could not be
14 named as a Responsible Party. A true and correct copy of the January 16, 2017 Burrtec
15 Correspondence is attached hereto as **Attachment 3 (without exhibits to attachment)**.

16 6. On March 10, 2017 the Regional Board issued correspondence responding to the
17 objections by Burrtec raised in its January 16, 2017 Correspondence (“March 10, 2017 Regional
18 Board Memo”). A true and correct copy of the March 10, 2017 Regional Board Memo is attached
19 hereto as **Attachment 4**.

20 7. On March 24, 2017 Burrtec’s counsel issued further correspondence again
21 providing case law demonstrating that under California nuisance law, and correspondingly under
22 Section 13304, Burrtec as a transporter could not be named as a Responsible Party (“March 24,
23 2017 Burrtec Correspondence”). A true and correct copy of the March 24, 2017 Burrtec
24 Correspondence is attached hereto as **Attachment 5 (without exhibits to attachment)**.

25 8. On April 27, 2017 the Regional Board issued a memorandum and Tentative
26 Addendum No. 1 to the CAO providing its first formal notice that it was tentatively proposing to
27 name Ecology as a Responsible Party (“April 27, 2017 Regional Board Memo”). A true and
28 correct copy of the April 27, 2017 Regional Board Memo is attached hereto as **Attachment 6**.

Attachment 1



EDMUND G. BROWN, JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

June 3, 2013

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

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

Certified Mail – Return Receipt Requested

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

In reply refer to / attn:
793882:RMitchell

Subject: Notice of Violation No. R9-2013-0089, Parcels Nos. 571280042¹ 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.

Sincerely,

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

¹ 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

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

(via email) Leslie Graves, State Water Resources Control Board, Land Disposal Program Manager
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: 571-280-042¹

and

Prairie Avenue Gospel Center, Inc.
C/O Dan Pike
5965 Waterfront Place
Long Beach, CA 90803
APN: 571-280-014²

**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.³ A complete *General Information Form for Waste Discharge Requirements* (Form 200),⁴ must contain sufficient information for the San Diego Water Board to prescribe waste discharge requirements (WDRs).

¹ 39801 Reed Valley Road, Aguanga CA. 92536

² No physical street address on record.

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

⁴ 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 5⁵ – Waste haulers at Site No. 2



Photograph 6⁵ – 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.

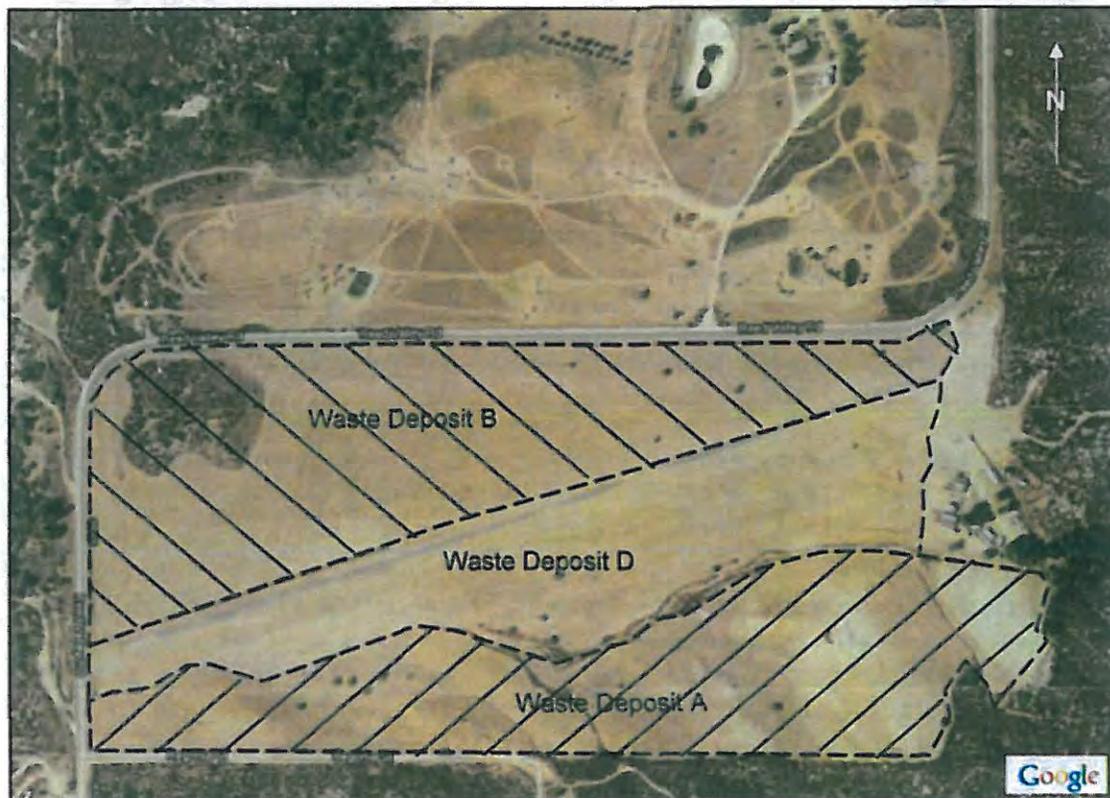


Figure 1 – Aerial view of Site No. 1 (~152 acres).

⁵ Photographs provided by Reed Valley complainants.



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



Figure 2 – Aerial view of Site No. 2.



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 nuisance⁶ in violation of Waste Discharge Prohibitions in the San Diego Basin Plan.

⁶ Pursuant to Water Code, section 13050(m),

The Water Code section 13260 requires that you file a ROWD⁷ with the San Diego Water Board. The ROWD must contain, but may not be limited, to: a complete Form 200,⁸ the application fee⁹ 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.



Julie Chan, Chief
Cleanup and Land Discharge Branch

JAC:jro:rnm

Enclosure: Unpermitted Waste Discharge Location Map

⁷ As required by Water Code, sections 13260 and 13264.

⁸ http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf

⁹ 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



Attachment 2



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

September 5, 2013

Mr. James V. Pike
P.O. Box 822
Palos Verdes, California 90274-0822

USPS No. 7011 0470 0002 8961 7838
In reply refer to Place ID 793882 Melbourn

Prairie Avenue Gospel Center, Inc.
Attn: Daniel S. Pike
5965 Waterfront Place
Long Beach, California 90808-4839

USPS No. 7011 0470 0002 8961 7845
In reply refer to Place ID 793885 Melbourn

Cleanup and Abatement Order No. R9-2013-0122, Unauthorized discharge of waste to land and tributaries of Wilson Creek

Enclosed is Cleanup and Abatement Order No. R9-2013-0122, issued today by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) pursuant to Water Code section 13267 and 13304. This Order directs James V. Pike and Prairie Avenue Gospel Center, Inc. to cleanup and abate the effects of the unauthorized discharge of waste to land and tributaries of Wilson Creek, and to submit technical reports to the San Diego Water Board.

In the subject line of any response, please include the appropriate Place ID. For questions or comments, please contact Mr. Frank Melbourn by telephone at 858-467-2973 or by email at fmelbourn@waterboards.ca.gov.

Respectfully,

DAVID W. GIBSON
Executive Officer

TOMAS MORALES, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353 | (858) 467-2952 | www.waterboards.ca.gov/sandiego



LFAP000786

Mr. Pike
Prairie Avenue Gospel Center
CAO No. R9-2013-0122

- 2 -

September 5, 2013

DWG:cmc:ftm

Enclosure: Cleanup and Abatement Order No. R9-2013-0122

Copies with enclosure via email to:

1. Chiara Clemente, San Diego Water Board, cclemente@waterboards.ca.gov
2. Wayne Durant, Co. of Riverside, wdurant@rctlma.org
3. Leslie Graves, State Water Resources Control Board, lgraves@waterboards.ca.gov
4. Catherine Hagan, State Water Resources Control Board chagan@waterboards.ca.gov
5. Julie Macedo, State Water Resources Control Board, jmacedo@waterboards.ca.gov
6. Stephen Mayville, Santa Ana Water Board, smayville@waterboards.ca.gov
7. Roger Mitchell, San Diego Water Board, rmitchell@waterboards.ca.gov
8. John Odermatt, San Diego Water Board, jodermatt@waterboards.ca.gov
9. Greg Reyes, Riverside Area Local Solid Waste Enforcement, gjreyes@rivcocha.org

Mr. Pike	
CIWQS	
Violation IDs	947439, 947440, 947441
Place ID	793882
Party ID	541784
GeoTracker	
Site ID	T10000004989

Prairie Avenue Gospel Center, Inc.	
CIWQS	
Violation IDs	947442, 947443, 947444
Place ID	793885
Party ID	539863
GeoTracker	
Site ID	T10000004990

TOMÁS MORALES, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353 | (858) 467-2952 | www.waterboards.ca.gov/sandiego



LFAP000787

**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.**

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

1. 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.
2. 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.
3. Tributaries to Wilson Creek flow westward through the properties. The tributaries are "waters of the state"¹ 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).

¹ As defined in Water Code section 13050(e).

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 13267,² Investigations; inspections, Chapter 4, 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 152 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 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.

² 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."

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 13260³ because the Dischargers 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 the Dischargers are causing, or are threatening to cause a condition of pollution,⁴ contamination or nuisance.⁵ The NOV required the submittal of a ROWD (a complete Form 200 and application fee) by June 28, 2013 from the Dischargers. 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."

³ 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.

⁴ "'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).

⁵ "'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).

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 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 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, 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:⁶
 - a. Restoration Plan for complete removal and proper disposal of the waste at a properly permitted facility. Or

⁶ From California Code of Regulations, Title 27, sections 20377 and 20250.

- 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:
 - 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.⁷ 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, 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.

⁷ 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.

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:

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 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

CAO No. R9-2013-0122
Pike & PAGC Properties
Aguanga, California

September 5, 2013

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.

Ordered by:

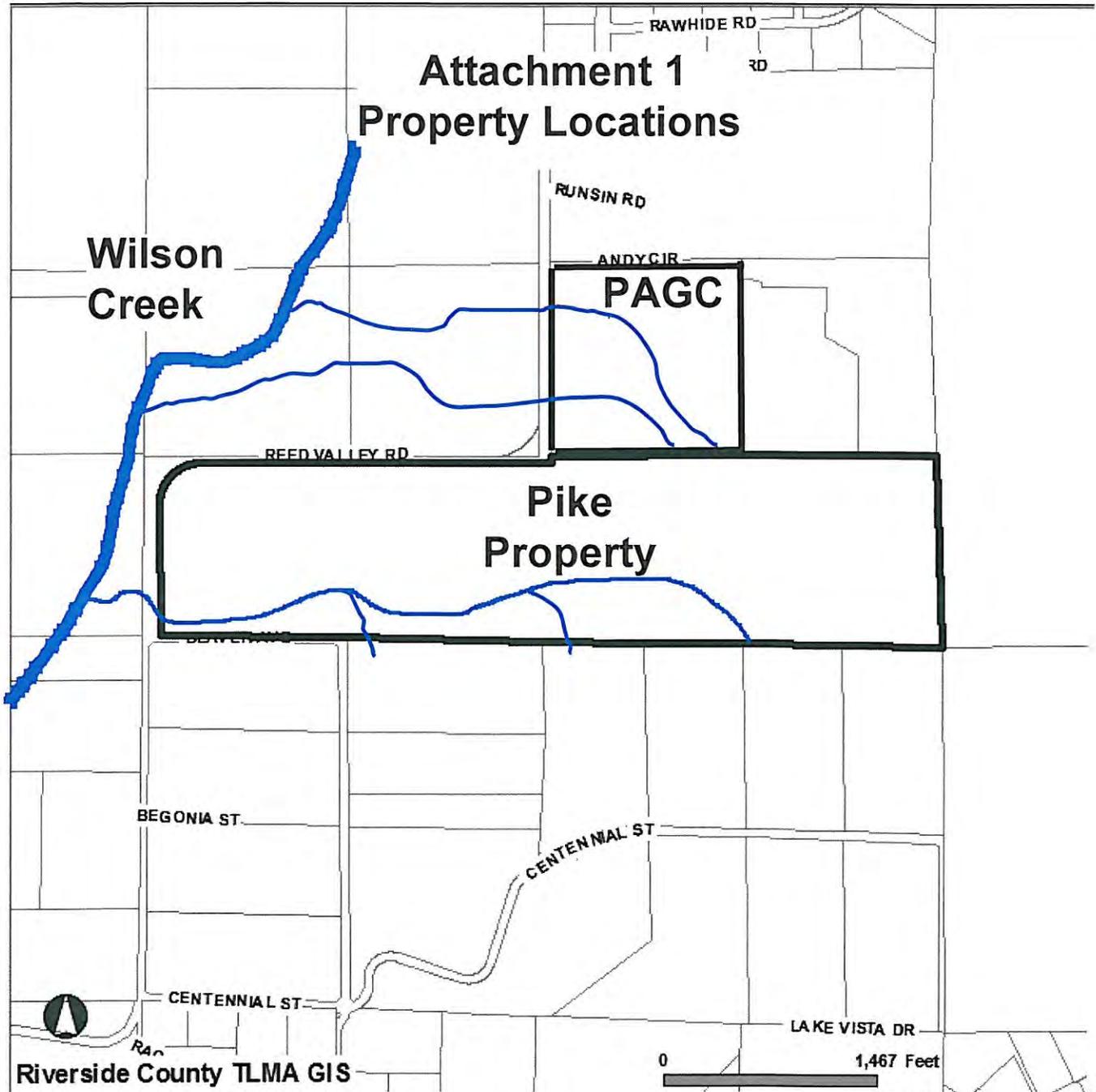


DAVID W. GIBSON
Executive Officer

Attachments:

1. Property Locations
2. NOV

Attachment 1 Property Locations



Wilson
Creek

PAGC

Pike
Property

Riverside County TLMA GIS

LFAP000801



Attachment 2 NOV



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

June 3, 2013

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

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

Certified Mail – Return Receipt Requested
Article Numbers: 7011 0470 0002 8961 8620
7011 0470 0002 8961 8682

In reply refer to / attn:
793882:RMitchell

Subject: Notice of Violation No. R9-2013-0089, Parcels Nos. 571280042¹ 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.

Sincerely,

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

¹ 39801 Reed Valley Road, Aguanga CA. 92536

TOMAS MORALES, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353 | (858) 467-2952 | www.waterboards.ca.gov/sandiego



LFAP000802

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

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

(via email) Leslie Graves, State Water Resources Control Board, Land Disposal Program Manager
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: 571-280-042¹

and

Prairie Avenue Gospel Center, Inc.
C/O Dan Pike
5965 Waterfront Place
Long Beach, CA 90803
APN: 571-280-014²

**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.³ A complete *General Information Form for Waste Discharge Requirements* (Form 200),⁴ must contain sufficient information for the San Diego Water Board to prescribe waste discharge requirements (WDRs).

¹ 39801 Reed Valley Road, Aguanga CA. 92536

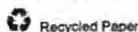
² No physical street address on record.

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

⁴ http://www.waterboards.ca.gov/rwqcb9/publications_forms/forms/docs/form200m.pdf

TOMAS MORALES CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123 | (858) 467-2952 | www.waterboards.ca.gov/sandiego



LFAP000804

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

Attachment 3

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ENVIRONMENTAL
LAW GROUP LLP
Varco & Rosenbaum

REED VALLEY ROAD, AGUANGA, CALIFORNIA

Burrtec Waste Industries, Inc.'s Written
Submittal of Comments to Tentative
Addendum No. 1 to Cleanup and
Abatement Order No. R9-2013-0122

Place ID: 793882 Melbourn

Designated Party: Burrtec Waste Industries, Inc.

Represented by: Suzanne R. Varco
Varco & Rosenbaum
Environmental Law Group LLP
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January 6, 2017

INTRODUCTION

Varco & Rosenbaum represents Burrtec Waste Industries, Inc., a California corporation (“Burrtec”), in this matter. In the Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 (“TCAO”) dated November 30, 2016, the California Regional Water Quality Control Board, San Diego Region (“Water Board”) named Burrtec as a “discharger” in the Reed Valley Road case.

The TCAO proposes to add Burrtec as a discharger and responsible party to Cleanup and Abatement Order No. R9-2013-0122 (the “CAO”). The Water Board bases its decision to name Burrtec in the CAO on two erroneous findings: first, that Mr. Pike authorized Burrtec to apply green trimmings to the approximately 194 acres of land (the “Properties”) owned by Mr. Pike and the Prairie Avenue Gospel Center, Inc.; and second, that Burrtec paid Organic Ag, Inc. (“Organic Ag”) to spread the green trimmings on the Properties and pick municipal waste from the spread material.

As detailed herein, Burrtec does not meet the legal requirements of a “discharger” under California Water Code Section 13304(a) that must be demonstrated in order to assign liability for the cleanup and abatement of the Properties. Supply and distribution of material without actual discharge is not enough to establish responsibility under Water Code section 13304. Burrtec merely supplied the green trimmings and had no control over the subsequent discharge activities performed by other named dischargers; therefore, Burrtec is neither a discharger, nor a responsible party. The TCAO should be revised to remove reference to Burrtec as a “discharger” or responsible party.

COMMENT

Burrtec Waste Industries, Inc. is not a Discharger as Defined in California Water Code Section 13304

The TCAO makes the following erroneous findings:

- 1. Finding 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. As it pertains to this CAO, Mr. Pike authorized Burrtec to apply the materials described above to the properties.”**
- 2. Finding 1.d.: “Organic Ag, Inc. (hereinafter Organic Ag) was paid by Burrtec to spread the material described above to the properties, and to pick municipal waste from the spread waste.”**

I. Factual Background

a. Burrtec Contracted with Organic Ag to Supply Material.

In March of 2008, Organic Ag and Burrtec entered into a Green Waste Delivery Agreement, wherein Burrtec agreed to deliver “Green Waste,” defined as “organic waste material generated from gardening, agriculture or landscaping activities, including but not limited to, grass and plant clippings, leaves, tree and shrub trimmings and plant remains,” to a facility designated by Organic Ag. Organic Ag, upon receipt of the “Green Waste”, agreed to “process and otherwise manage all Green Waste delivered by Burrtec, in accordance and compliance with all applicable federal, state, or local laws and regulations.”¹ The Agreement stipulated that Organic Ag would be responsible for: “(i) processing the Green Waste into mulch, soil amendments and other beneficial uses; (ii) for the management of the Green Waste once delivered to the Designated Facility; and (iii) for the ultimate proper disposal of all the Green Waste.”² Organic Ag warranted that it would “receive, process, manage, recycle, sell, apply and use the Green Waste in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations;” and that it had been issued and would maintain “all permits, licenses, certificates or approvals required by federal, state and valid and applicable laws, ordinances and regulations necessary to allow Organic Ag to accept, store, process, sell, apply and dispose of the Green Waste.”³

In addition, Organic Ag agreed to indemnify Burrtec “from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses...” arising from Organic Ag’s actions.⁴ Title to all “Green Waste” and processed mulch material would transfer to Organic Ag upon delivery and receipt by Organic Ag. While Burrtec paid a processing fee to Organic Ag, Organic Ag processed, managed, and disposed of the material in whatever manner Organic Ag determined appropriate.⁵ The Agreement also noted that Organic Ag would be responsible for obtaining signed written documentation from the owners or managers of land allowing for Organic Ag’s placement of the green trimmings and mulch product on the owner’s property for agricultural application.

The Agreement makes clear that Burrtec’s role is solely the supply and delivery of the green trimmings to Organic Ag’s designated facilities.⁶ Nothing in the Agreement addresses, much less governs, the methods by which Organic Ag would process, place and dispose of the green trimmings and mulch product.⁷

¹ See Exhibit 1, p. 1. (Green Waste Delivery Agreement)

² See Exhibit 1, p. 1. (Green Waste Delivery Agreement)

³ See Exhibit 1, p. 2. (Green Waste Delivery Agreement)

⁴ See Exhibit 1, p. 3. (Green Waste Delivery Agreement)

⁵ See Exhibit 1, pp. 1-2. (Green Waste Delivery Agreement)

⁶ See Exhibits 1.

⁷ See Exhibits 1.

b. Burrtec was Not a Party to Any Contractual Agreement between Mr. Pike and Organic Ag.

In 2011, Organic Ag and James Pike signed an agreement to deliver and spread green trimmings as a mulch product on approximately 90 acres of land owned by Mr. Pike.⁸ Burrtec was neither a party to, nor a beneficiary of, this agreement. The Agreement required Organic Ag to remove any excess trash from the mulch product.⁹ Contrary to TCAO Finding 1.d., Burrtec did not pay Organic Ag to spread the material on the Properties, nor to pick municipal waste from the spread material; the spreading and cleanup of the mulch product was subject to the specific terms of the agreement between Organic Ag and Mr. Pike. Burrtec paid Organic Ag a processing fee to process and dispose of the green trimmings and mulch product “in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations.”¹⁰ The decision to discharge the material via spreading in violation of §§ 13260 and 13304 was Organic Ag’s and Mr. Pike’s alone.¹¹

No agreement existed between Mr. Pike and Burrtec. No direct communications occurred between Mr. Pike and Burrtec with respect to the placement or spreading of the mulch product. As further proof that no contractual arrangement existed between Burrtec and Mr. Pike, the original complaint filed by Mr. Pike for breach of contract was against Organic Ag and Peter Holladay, not Burrtec. In his Complaint, Mr. Pike alleges that there was a contract for the spreading of the material, and that contract was solely with Organic Ag.¹²

Similarly, in Mr. Pike’s First Amended Complaint, Mr. Pike admits that his contract was with Organic Ag, and that it was Organic Ag’s obligation to spread the green trimmings on the Properties.¹³ Mr. Pike’s breach of contract allegations are solely against Organic Ag.¹⁴ Mr. Pike never alleges any contractual relationship with Burrtec, any spreading activities conducted by Burrtec, or any communications between himself and Burrtec. Importantly, Mr. Pike never alleges that he authorized Burrtec to perform any activities at the Properties.

Mr. Pike filed a Second Amended Complaint on January 8, 2016. Again, Mr. Pike alleges that his only contract was with Organic Ag and that it was Organic Ag’s obligation to spread the green trimmings on the Properties.¹⁵ Again, Mr. Pike’s breach of contract allegations are solely against Organic Ag.¹⁶ Mr. Pike again never alleges any contractual relationship with Burrtec, any spreading

⁸ See Exhibit 2 (Letter of Understanding)

⁹ See Exhibit 2 (Letter of Understanding)

¹⁰ See Exhibit 1, p. 2

¹¹ See Exhibit 2 (Letter of Understanding)

¹² See Exhibit 6 (Complaint)

¹³ See Exhibit 7, ¶¶ 11, 14 (First Amended Complaint)

¹⁴ See Exhibit 7, ¶¶34-45 (First Amended Complaint)

¹⁵ See Exhibit 8, ¶¶ 11, 14 (Second Amended Complaint)

¹⁶ See Exhibit 8, ¶¶34-47 (Second Amended Complaint)

activities conducted by Burrtec, any communications between himself and Burrtec, or any authorization for Burrtec to perform any spreading activities at or on the Properties. The only contract attached to any of Mr. Pike's complaints is his contract with Organic Ag.¹⁷

Burrtec had no contract with Mr. Pike, never communicated directly with Mr. Pike, and did not spread green trimmings as mulch material on the Properties pursuant to Mr. Pike's or anyone else's authority. Therefore, TCAO Finding 1.c., which states that "Mr. Pike authorized Burrtec to apply the materials described above to the properties," is in error.

c. Nature of the Discharges

The Water Board's original CAO, issued September 5, 2013, defines the discharges that occurred on the Properties in Findings 6 and 9.¹⁸ The Water Board determined that the discharge occurred when "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."¹⁹ (emphasis added). In Finding 9, the Water Board explained that the unauthorized discharge of waste resulted from "waste **spreading** activities into tributaries to Wilson Creek" – the waste **spreading** activities conducted by Organic Ag and authorized by Mr. Pike.²⁰

The contractual arrangement between Burrtec and Organic Ag governs only Burrtec's supply of the green trimmings. As confirmed by the complaints discussed above and correspondence from counsel for both Mr. Pike and Organic Ag, Inc., Burrtec had no contractual privity with Mr. Pike; Burrtec was simply a supplier of material (among several) and Organic Ag, Inc. was responsible for all contractual obligations with Mr. Pike, including processing the material, spreading of the material, and the material's proper handling and management.²¹ Burrtec had no involvement in the spreading of the waste, and therefore had no involvement in the discharge activities described by the Water Board. The Water Board's TCAO Finding 1.d. which states "Organic Ag, Inc. was paid by Burrtec to spread the material described above to the properties, and to pick municipal waste from the spread waste." is in error.

II. Legal and Factual Analysis Demonstrates that the Requirements Necessary to Establish Liability as a Discharger Under Section 13304 Have Not Been Met as to Burrtec.

Burrtec's mere supply of green trimmings does not constitute a discharge. Liability for cleanup and abatement of a discharged waste is governed by the

¹⁷ See Exhibits 2, 6, 7, 8

¹⁸ See Exhibit 3, pp. 2-3. (CAO)

¹⁹ See Exhibit 3, p. 2. (CAO)

²⁰ See Exhibit 3, p. 3. (CAO)

²¹ See Exhibits 4, 5 (Counsel correspondence to RWQCB)

Porter-Cologne Water Quality Control Act – specifically Section 13304 of the California Water Code, which states:

“A 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.”

California courts have explained that the Porter-Cologne Act “must be construed in light of the common law principles bearing upon the same subject” and as such “not only is the party who maintains the nuisance liable but also the party or parties who create or assist in its creation.” (*City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal.App.4th 28, 38 (quotations and citations omitted).) The *City of Modesto* court noted that “[w]hile liability for nuisance is broad, however, it is not unlimited.” (*Id.* at 39.) Liability stops well short of applying to “mere but-for causation.” (*Team Enterprises, LLC v. Western Investment Real Estate Trust* (9th Cir. 2011) 647 F.3d 901, 912.)

More significantly, liability does not extend to those “who merely placed [products] in the stream of commerce without warning adequately of the dangers of improper disposal.” (*City of Modesto*, 119 Cal.App.4th at 43.) In holding dry cleaning solvent manufacturers and distributors were not accountable for a dry cleaners’ discharge of those solvents into public sewer systems, the Court of Appeal found that only those who “took affirmative steps directed toward the improper discharge of solvent wastes...may be liable under [Section 13304].” (*Id.*)

These principles have been reaffirmed in subsequent cases. Exxon was held not liable (and not a responsible party under § 13304(a)) for a nuisance created by spilled or leaked gasoline that it had sold and distributed because Exxon never “instructed purchasers of its MTBE-containing gasoline to use it in a hazardous manner,” nor did Exxon “affirmatively promote any such use.” (*City of Merced Redevelopment Agency v. Exxon Mobil Corp.* (E.D.Cal. 2015) 2015 WL 471672, at *22.) Similarly, in *County of Santa Clara v. Atlantic Richfield Co.*, the court explained that lead paint manufacturers could not be held liable under § 13304 for “their mere manufacture and distribution of lead paint or their failure to warn of its hazards.” (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 310; see also *Redevelopment Agency of City of Stockton v. BNSF Ry. Co.* (9th Cir. 2011) 643 F.3d 668, 674 (quoting *County of Santa Clara* and holding, “We cannot agree that [] passive but-for causation is sufficient for nuisance liability to attach.”).)

Most importantly, the Water Resources Control Board has already determined that hazardous substance suppliers are not responsible under section 13304 absent hazardous use. (*In the Matter of the Petition of Exxon Company, U.S.A., et al* (1985) Cal.St.Wat.Res.Bd, 1985 WL 20026.) After the Regional Water Quality Control Board adopted a Cleanup and Abatement Order naming gas station property owners, Exxon, and the gasoline supplier responsible for benzene contamination that resulted from corrosion in underground storage tanks, the State Water Resources Control Board found that there was not substantial evidence showing that either Exxon or the gasoline supplier had owned the corroded tanks. (*Id.*, at *6.) Accordingly, the Board ordered Exxon and the supplier removed from the Cleanup and Abatement Order. (*Id.*) Only the property owners who actually had control over the use of the gasoline could be responsible for discharges from the gasoline tanks. (*Id.*) The California Court of Appeal later noted that “*In re Exxon* does suggest that a party who merely supplies a hazardous substance is not responsible under Water Code section 13304...” (*City of Modesto*, 119 Cal.App.4th at 41.)

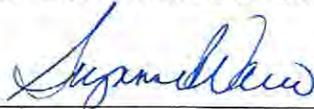
As discussed above, Burrtec’s contractual relationship was solely with Organic Ag, as a supplier of green trimmings and mulch material. Burrtec did not have a contractual relationship with Mr. Pike, and did not spread any material on the Properties. Burrtec had no control over the placement, spreading or management of the green trimmings or mulch material once delivery to the Designated Facility (here the Pike property) was made. Only Organic Ag contracted with Mr. Pike for the delivery, placement, and spreading of the green trimmings and mulch material at the Properties. Therefore, since Burrtec’s role was only as a supplier of raw material, the law does not support the naming of Burrtec as a discharger or responsible party.

III. Conclusion

As a mere supplier of green trimmings, Burrtec is not a discharger within the confines of either statutory or case law. As such, Burrtec cannot be named as a responsible party to Tentative Addendum No. 1 to the Cleanup and Abatement Order R9-2013-0122. The Tentative Addendum No. 1 must be amended to remove reference to Burrtec as a responsible party or “discharger.”

Respectfully Submitted,

VARCO & ROSENBAUM
ENVIRONMENTAL LAW GROUP LLP



Suzanne R. Varco
Counsel for Burrtec Waste Industries,
Inc., a California Corporation

SRV/ssr
Enclosures

cc: Brent Clemmer, Esq. (via email only)
Service List for *Pike et al. v. Organic Ag., Inc., et al.*, Case No. MCC1401513
(via email only)

SERVICE LIST

Pike, et al. v. Organic Ag, Inc., et al.

Riverside County, Southwest Justice Center, Case No. MCC1401513

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Attorneys for Cross Defendant CR&R
INCORPORATED (Roe 5)

Attachment 4



San Diego Regional Water Quality Control Board

March 10, 2017

James V. Pike
P.O. Box 822
Palos Verdes, California 90274-0822

Certified Mail – Return Receipt Requested
Article Number: 7010 1060 0000 4953 2963
In reply refer to Place ID: 793882 Melbourn

Prairie Avenue Gospel Center, Inc.
Attn: Daniel S. Pike
5965 Waterfront Place
Long Beach, California 90808-4839

Certified Mail – Return Receipt Requested
Article Number: 7016 2140 0000 3904 2515
In reply refer to Place ID 793885 Melbourn

Organic Ag, Inc.
Levi Holladay, Agent for Service of Process
1007 Village Square
Fillmore, California 93015-1703

Certified Mail – Return Receipt Requested
Article Number: 7016 2140 0000 3904 2539
In reply refer to Place ID: 793882 Melbourn

Burrtec Waste Industries, Inc.
Cole Burr, Agent for Service of Process
9890 Cherry Avenue
Fontana, California 92335-5202

Certified Mail – Return Receipt Requested
Article Number: 7016 2140 0000 3904 2522
In reply refer to Place ID: 793882 Melbourn

**Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122
Unauthorized discharge of waste to land and tributaries of Wilson Creek**

Messrs. Pike, Holladay, and Burr:

Enclosed is Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122. This Revised Tentative Addendum responds to and incorporates public comments received by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), including but not limited to Mr. Pike, Organic Ag, Inc. (Organic Ag) and Burrtec Waste Industries, Inc. (Burrtec). This Revised Tentative Addendum will now be forwarded to the Executive Officer of the San Diego Water Board for consideration and approval.

The San Diego Water Board reviewed all evidence available to it, including inspections conducted by San Diego Water Board staff, in reaching its conclusions. The modification of the language in the Revised Tentative Addendum more accurately describes the various activities that give rise to Water Code section 13304 – ownership of the property where a discharge occurred, deposition of the material, and spreading of the material. We note that all are sufficient for Water Code section 13304 liability and that all are beyond mere “supply” of a product as discussed in *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal.App.4th 28.

In terms of responding to particular comments: the San Diego Water Board is not in a position to allocate or apportion responsibility in this matter. It is our understanding that there is civil litigation by and among the named parties. The San Diego Water Board identified people and entities in the Revised Tentative Addendum consistent with Water Code section 13304 liability and not theories of tort, breach of contract, or fraud and related causes of action.

Burrtec remains named in the Revised Tentative Addendum; although certain factual inaccuracies have been corrected as a result of the January 6, 2017, Burrtec public comment. Water Code section 13304 holds persons who have “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,” responsible for the waste’s abatement. Contrary to Burrtec’s allegation, it was not a mere “supplier” of the material, but rather deposited the green waste directly on Mr. Pike’s property as now described in the Revised Tentative Agreement, even if Organic Ag was responsible for further spreading. In reaching this conclusion, the San Diego Water Board reviewed but did not rely on the “Green Waste Delivery Agreement” (Contract) between Burrtec and Organic Ag because it did not cover the parties’ actions in this matter, but instead relied upon evidence provided under penalty of perjury to the San Diego Water Board.

We note that the Contract describes “Green Waste” as “any organic waste material generated from gardening, agriculture or landscaping activities, including but not limited to, grass and plant clippings, leaves, tree and shrub trimmings and plan remains.” This material is further described as being “clean” and “processed.” The June 3, 2013, San Diego Water Board Notice of Violation and accompanying photographs, indicates that municipal waste in the allegedly “clean” material was discharged in violation of the Water Code (see for example, photographs 9-12). Finally, the Contract calls for Burrtec to deliver clean, processed Green Waste to one of the designated Organic Ag facilities as listed on Exhibit A of the Contract. Instead, in this matter it appears that the materials were being directly deposited from Burrtec trucks onto the properties at issue.

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter particular to your site. For questions pertaining to this matter, please contact Frank Melbourn at (619) 521-3372 or fmelbourn@waterboards.ca.gov.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Smith', written in a cursive style.

JAMES G. SMITH
Assistant Executive Officer

JGS:jem:ftm

Enclosures:

1. Revised Tentative Addendum No. 1 to CAO No. R9-2013-0122 (Clean Copy)
2. Revised Tentative Addendum No. 1 to CAO No. R9-2013-0122 (Redline Strikeout from Tentative CAO No. R9-2013-0122 Copy)
3. Cleanup and Abatement Order No. R9-2013-0122

Copies with enclosure via email to:

1. Erick Altona, Lounsbury, Ferguson, Altona & Peak, LLP, era@lfap.com
2. Chiara Clemente, San Diego Water Board, cclemente@waterboards.ca.gov
3. Brent Clemmer, Slovak, Baron, Empey, Murphy & Pinkney, LLP, clemmer@sbemp.com
4. Richard Crockett, Burrtec Waste Industries, Inc., richard@burrtec.com
5. Wayne Durant, Co. of Riverside, wdurant@rctlma.org
6. John Griffin, Green & Hall, LLP, jgriffin@greenhall.com
7. Catherine Hagan, State Water Resources Control Board chagan@waterboards.ca.gov
8. Melissa Hall, State Water Resources Control Board, mhall@waterboards.ca.gov
9. Peter Holladay, Organic Ag, Inc., peter@organicspreading.com
10. Kenneth Lounsbury, Lounsbury, Ferguson, Altona & Peak, LLP, khl@lfap.com
11. Julie Macedo, State Water Resources Control Board, jmacedo@waterboards.ca.gov
12. Olufisayo Osibodu, San Diego Water Board osibodu@waterboards.ca.gov
13. Roger Mitchell, San Diego Water Board, rmitchell@waterboards.ca.gov
14. Greg Reyes, Riverside Area Local Solid Waste Enforcement, gireyes@rivcocha.org

Mr. Pike	
CIWQS	
Violation IDs	947439, 947440, 947441
Place ID	793882
Party ID	541784
GeoTracker	
Site ID	T10000004989

Prairie Avenue Gospel Center, Inc.	
CIWQS	
Violation IDs	947442,947443,947444
Place ID	793885
Party ID	539863
GeoTracker	
Site ID	T10000004990

Organic Ag, Inc.	
CIWQS	
Party ID	543943

Burrtec Waste Industries, Inc.	
CIWQS	
Party ID	5617

Attachment

1

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

**REVISED TENTATIVE 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 two 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. Burrtec contracted with Organic Ag, Inc. (hereinafter 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 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. 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 13260³ 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,⁴ contamination or nuisance.⁵ 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.
6. 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.

7. 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.
8. 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.
9. 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:

draft

DAVID W. GIBSON
Executive Officer

Attachment

2

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

REVISED TENTATIVE 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 two responsible parties to the CAO.

2.3. 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.

3.4. 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.

~~Mr. Pike authorized Burrtec to apply the material described above to the properties.~~

1.d. Burrtec contracted with Organic Ag, Inc. (hereinafter Organic Ag) was paid by Burrtec to supply green waste to spread the material described above to the properties Organic Ag, and to pick municipal waste from the spread waste. 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 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.

4.5. 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 13260³ 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,⁴ contamination or nuisance.⁵ 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.

5.6. 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.

6.7. 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.

7.8. 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.

8.9. 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:

draft

DAVID W. GIBSON
Executive Officer

Attachment

3

**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.**

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

1. 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.
2. 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.
3. Tributaries to Wilson Creek flow westward through the properties. The tributaries are "waters of the state"¹ 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).

¹ As defined in Water Code section 13050(e).

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 13267,² Investigations; inspections, Chapter 4, 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 152 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 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.

² 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."

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 13260³ because the Dischargers 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 the Dischargers are causing, or are threatening to cause a condition of pollution,⁴ contamination or nuisance.⁵ The NOV required the submittal of a ROWD (a complete Form 200 and application fee) by June 28, 2013 from the Dischargers. 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."

³ 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.

⁴ "'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).

⁵ "'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).

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 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 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, 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:⁶
 - a. Restoration Plan for complete removal and proper disposal of the waste at a properly permitted facility. Or

⁶ From California Code of Regulations, Title 27, sections 20377 and 20250.

- 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:
 - 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.⁷ 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, 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.

⁷ 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.

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:

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 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

September 5, 2013

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.

Ordered by:



DAVID W. GIBSON
Executive Officer

Attachments:

1. Property Locations
2. NOV

Attachment 1 Property Locations

Wilson
Creek

PAGC

Pike
Property

RAWHIDE RD

RD

RUNSIN RD

ANDY CIR

BEED VALLEY RD

BEGONIA ST.

CENTENIAL ST

CENTENNIAL ST

LAKE VISTA DR



0

1,467 Feet





Attachment 2 NOV



EDMUND G. BROWN, JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

June 3, 2013

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

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

Certified Mail – Return Receipt Requested
Article Numbers: 7011 0470 0002 8961 8620
7011 0470 0002 8961 8682

In reply refer to / attn:
793882:RMitchell

Subject: Notice of Violation No. R9-2013-0089, Parcels Nos. 571280042¹ 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.

Sincerely,

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

¹ 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

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

(via email) Leslie Graves, State Water Resources Control Board, Land Disposal Program Manager
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: 571-280-042¹

and

Prairie Avenue Gospel Center, Inc.
C/O Dan Pike
5965 Waterfront Place
Long Beach, CA 90803
APN: 571-280-014²

**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.³ A complete *General Information Form for Waste Discharge Requirements* (Form 200),⁴ must contain sufficient information for the San Diego Water Board to prescribe waste discharge requirements (WDRs).

¹ 39801 Reed Valley Road, Aguanga CA. 92536

² No physical street address on record.

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

⁴ 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).

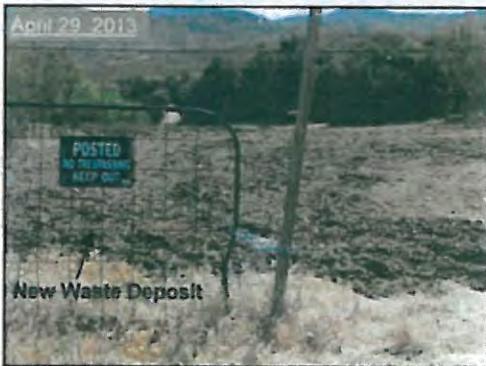
During the April 29, 2013 inspection of Sites Nos. 1 and 2, San Diego Water Board staff observed wastes actively being discharged to land (see photographs 1 and 2 below) at Site No. 1, and visual evidence supporting complainant allegations that wastes have been discharged at Site Nos. 1 and 2 since August 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 5⁵ – Waste haulers at Site No. 2



Photograph 6⁵ – 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).

⁵ Photographs provided by Reed Valley complainants.



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



Figure 2 – Aerial view of Site No. 2.



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 nuisance⁶ in violation of Waste Discharge Prohibitions in the San Diego Basin Plan.

⁶ Pursuant to Water Code, section 13050(m),

The Water Code section 13260 requires that you file a ROWD⁷ with the San Diego Water Board. The ROWD must contain, but may not be limited, to: a complete Form 200,⁸ the application fee⁹ 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

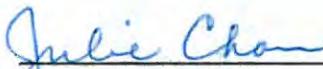
These violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of up to \$5,000 per day of violation (Water Code section 13350) and/or any of the following enforcement actions:

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.



Julie Chan, Chief
Cleanup and Land Discharge Branch

JAC:jro:rm

Enclosure: Unpermitted Waste Discharge Location Map

⁷ As required by Water Code, sections 13260 and 13264.

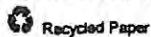
⁸ http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf

⁹ 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

TOMAS MORALES CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123 | (858) 487-2062 | www.waterboards.ca.gov/sandiego



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



Attachment 5

ATTORNEYS AT LAW
225 Broadway, Suite 1900
San Diego, CA 92101
619.231.5858
619.231.5853 (fax)

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LINDA C. BERESFORD
lindab@envirolawyer.com

ENVIRONMENTAL
LAW GROUP LLP
Varco & Rosenbaum

March 24, 2017

Mr. James G. Smith
Assistant Executive Officer
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

SAN DIEGO RWQCB
2017 MAR 24 PM 4:21

Re: Revised Tentative Addendum No. 1 to Cleanup and Abatement Order
R9-2013-0122, Pike/Aguanga

Dear Mr. Smith:

Varco & Rosenbaum Environmental Law Group LLP represents Burrtec Waste Industries, Inc. ("Burrtec") in this matter. We are in receipt of your letter of March 10, 2017 which enclosed a Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 ("RTA"). Despite prior comments submitted by this firm on behalf of Burrtec, the RTA confirmed Burrtec's status as a "discharger" in the Reed Valley Road case. Burrtec objects to this designation. As detailed in our comment letter dated January 6, 2017, and below, Burrtec does not meet the legal requirements of a "discharger" under California Water Code section 13304. Additionally, the RTA contains several factual inaccuracies.

RTA FACTUAL INACCURACIES

Several factual inaccuracies persist in the RTA which require correction prior to the issuance of a final Addendum to the Cleanup and Abatement Order.

First, the RTA states that while Organic Ag was responsible for the spreading of the green trimmings, Burrtec was responsible for the "deposit" of such materials onto the Pike Property. However, this characterization misinterprets the nature of Organic Ag and Burrtec's respective roles in handling the green trimmings. As a supplier, Burrtec's role began and ended with the delivery of green trimmings. Organic Ag determined where the green trimmings would be deposited, and directed Burrtec delivery trucks to those points. (See Exhibit 2, Hoyt Deposition (former Burrtec driver) ("Hoyt") 29:6-30:11, 31:24-32:1; Exhibit 3, Peter Holladay Deposition (Organic Ag representative) ("P Holladay"), 85:7-10, 114:11-115:22, 238:7-22; Exhibit 4, Soltero Deposition (Organic Ag representative) ("Soltero") 53:25, 1-2; Exhibit 7, Richard Crockett Deposition (Burrtec representative) ("Crockett"), 43:14-21.) Burrtec exercised no discretion in where it delivered and unloaded the green trimmings.

Second, your March 10, 2017 letter to Burrtec and others incorrectly characterizes the contractual arrangement between Burrtec and Organic Ag. Your letter suggests that Burrtec was obligated under its contract to deliver green trimmings to “one of the designated Organic Ag facilities as listed on Exhibit A to the Contract” and then proceeds to suggest that the Property is not such a designated facility. This is incorrect. The term “designated facility” in the contracts between Organic Ag and Burrtec was a reference to specific regional and geographic locations, not specific property or facility addresses. (See, Exhibit 1, Declaration of Richard Crockett; Exhibit 5, Levi Holladay Deposition (Organic Ag representative) (“L. Holladay”), 137:23-138:22; Exhibit 7, Crockett, 33:1-34:7.) Organic Ag would provide the specific property addresses for delivery to Burrtec by phone call or email. (See, Exhibit 1, Declaration of Richard Crockett; Exhibit 7, Crockett, 45:7-11.) The Property is located in one of the regional areas identified in the contract, and delivery to the Property was subject to the contractual terms between Burrtec and Organic Ag. (See, Exhibit 1, Declaration of Richard Crockett; Exhibit 6, Second Amendment to Green Waste Delivery Agreement; Exhibit 7, Crockett, 40:2-41:9.)

Third, the RTA at Finding 1.c. appears to state that Burrtec “collects grass, leaves, branches, dirt and other green plant material” and then immediately delivered that collected material to the Property. This is also inaccurate and reflects a failure to understand Burrtec’s processing practices. When the source-separated green material arrives at a Burrtec facility, it goes to a separate green processing area where it is unloaded, inspected and picked for trash, screened, ground up, and inspected again. (See, Exhibit 1, Declaration of Richard Crockett; Exhibit 2, Hoyt 19:8-16, 51:20-52:3; Exhibit 3, P. Holladay, 43:8-15; Exhibit 7, Crockett, 167:1-168:12). Burrtec inspectors regularly reject whole deliveries of green waste when they are found to contain an unacceptable amount of trash materials. (See, Exhibit 2, Hoyt 21:19-23).

Fourth, the RTA at Finding 1.a describes the Property as being 155 acres. The Cleanup and Abatement Order No. R9-2013-0122 states at Finding 6 that “[a]pproximately 152 acres of the Pike property and 10 acres of the PAGC property were covered with an estimated two-foot thick layer of waste.” These facts are incorrect. Recent evidence submitted by Mr. Pike shows that only approximately 75 acres of the Property are impacted by the spread green trimmings. (See, Exhibit 8, AEC Site Restoration Plan, p. 1 § 1.2.)

Fifth, the current conditions observed at the site are considerably different from the conditions described in the RWQCB 2013 Notice of Violation. Tributaries leading to waterways on the Property reportedly contain no trash and/or inorganic material, and the green trimmings mulch is reportedly “placed in a manner by which it was set back from the actual waterway.” (See, Exhibit 8, AEC Site Restoration Plan, p. 4 § 3.1.) Mr. Pike has testified that he removed all mulch and inorganic material from the waterways on the Property. (See, Exhibit 9, James Pike Deposition (“Pike”), 101:6-102:23, 104:5-7.) It is

requested that RWQCB staff inspect current site conditions to ensure accurate facts are included in the RTA.

Sixth and finally, the supporting documents supplied with your March 10 letter identify and reference several other suppliers of green trimmings to Organic Ag and the Property. The RTA is factually inaccurate in singling Burrtec out as the only supplier of green trimmings that is proposed to be added as a discharger, however inappropriately. Moreover, the majority of the green trimmings supplied by Burrtec were delivered and unloaded at the Property by a third party, not Burrtec.

BURRTEC'S DISCHARGER STATUS

California Water Code Section 13304(a) regulates any person 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." (Emphasis added.) The statute has two requirements: (1) that there be a deposit that "is or probably will be, discharged into the waters of the state;" **and** (2) such deposit must create or threaten to create a condition of pollution or nuisance. Both requirements must be satisfied to establish liability under section 13304(a).

First and most importantly, recent evidence submitted to the RWQCB confirms that the green trimmings are not located (deposited or otherwise) where they will be, or probably will be, discharged into the waters of the state. Following their recent site visit, AEC reported that "several sections of the tributary to Wilson Creek that traverses the Site were inspected and **no waste materials** were observed to be present in this waterway. The material appeared to be placed in a manner by which it was set back from the actual waterway." (See, Exhibit 8, AEC Site Restoration Plan, p. 4 § 3.1, emphasis added.) Moreover, Mr. Pike has confirmed that all green trimmings were placed in the waterways by Organic Ag and have been successfully removed from the waterways. (See, Exhibit 9, Pike, 101:6-102:23, 104:5-7.)

Second, even if the first criteria of deposit into the waters of the state could be satisfied, the mere unloading of green trimmings at the Property by Burrtec did not create or threaten to create a condition of pollution or nuisance. The Water Code liability derives from the common law of nuisance and must be construed in light of that common law. *Wells Fargo Bank, N.A. v. Renz*, 795 F. Supp.2d 898, 918 (2011), citing *City of Modesto Redevelopment Agency v. Super. Ct.*, 119 Cal.App.4th 28, 38 (2004). Such construction requires a showing of causation. *Santa Clara Valley Water Dist. v. Olin Corp.*, 655 F. Supp. 2d 1048, 1064 (N.D. Cal. 2009); citing *City of Modesto, supra.*, 119 Cal.App.4th at 37-38, (2004); *Portman v. Clementina Co.*, 147 Cal.App.2d 651, 656 (1957).

But-for causation is insufficient to impose liability for a discharge under Water Code section 13304. *Redevelopment Agency of City of Stockton v. BNSF Ry. Co.*, 643

F.3d 668, 678 (2011). Only those who engage in active and affirmative conduct may be liable under section 13304. *Id.* Liability cannot attach where the actions were passive and unknowing. *Id.* “Under California law, conduct cannot be said to ‘create’ a nuisance unless it more actively or knowingly generates or permits the specific nuisance condition.” *Id.* at 674. A defendant must take other ‘affirmative acts’ that contribute ‘directly’ to the nuisance.” *City of Merced Redevelopment Agency v. Exxon Mobil Corp.*, 2015 WL 471672 (E.D. Cal 2015) at *12, citing *In re Methyl Tertiary Butyl Ether (MTBE) Prods.*, 457 F.Supp.2d 455, 463 (S.D.N.Y.2006). There must be “evidence that [the defendant] actively or knowingly caused or permitted ... contamination.” *Id.*, citing *City of Stockton*, 643 F.3d at 671.

Liability under Water Code section 13304 must be premised upon a showing of control over the activity causing the discharge. The *Wells Fargo* court found there was no evidence that the alleged responsible party had any authority to control the cause of the contamination at the time the hazardous substances were released into the environment (795 F. Supp.2d. at 916), and that without evidence showing that the alleged responsible party had such control or active involvement, liability under section 13304 could not be shown. *Id.* at 919. The *Santa Clara* court held that where no evidence exists that the necessity for remedial action was caused by the alleged discharge, liability under Water Code section 13304 could not be maintained. *Santa Clara*, 655 F. Supp. 2d. at 1064.

The courts in *Wells Fargo*, *Santa Clara Valley*, and the other cases cite above relied on *City of Modesto Redevelopment Agency v. Superior Court*. In *City of Modesto*, the court held that liability under Water code section 13304 required a showing of affirmative action in the release causing the nuisance; mere placement of materials in the stream of commerce was not sufficient. *City of Modesto*, 119 Cal.App.4th at 43. The court further held, after reviewing the legislative history of the Porter-Cologne Act, that the legislative history “supports our conclusion that the Legislature did not intend the act to impose liability on those with no ownership or control over the property or the discharge, and whose involvement in a discharge was remote and passive” and “[t]he statute also provided there would be no liability if the discharge were caused by events beyond the discharger’s control. *Id.*

The State Water Resources Control Board has similarly held that a City could be treated as a discharge because it had *authority to control* a street and runoff from that street was adversely affecting water quality. *In re County of San Diego* (Order No. WQ 96–2, Feb. 22, 1996) 1996 WL 101751 at p. *5.

Here, evidence of control is lacking. There is no evidence that Burrtec unloaded or otherwise “deposited” the green trimmings where it was, or probably would be, discharged into the waters of the state. In fact, there is no evidence in the record showing the locations at which Burrtec unloaded the green trimmings. The evidence is clear that Burrtec had no involvement in the spreading of the green trimmings. (*See*, Exhibit 1,

Mr. James G. Smith

March 24, 2017

Page 5

Declaration of Richard Crockett; Exhibit 3, P Holladay, 237:14-238:6.) The evidence does show, however, that Organic Ag moved, relocated, and spread the green trimmings throughout the Property. (See, Exhibit 4, Soltero, 21:4-5, 51:5-7, 56:20-24, 60:2-8.) Burrtec did not know where Organic Ag was spreading the material and had no control over the ultimate location of the Green Trimmings spread by Organic Ag. (See, Exhibit 3, P Holladay, 237:20-238:6.) It was solely Organic Ag that spread and relocated the Green Trimmings in a manner which resulted in a discharge into the waters of the state. (See, Exhibit 4, Soltero, 37:3-17, 51:5-7; Exhibit 9, Pike, 101:8-9.) As a mere supplier of green trimming material, Burrtec's involvement was both remote and passive. (See, Exhibit 4, Soltero, 57:8-18; Exhibit 5, L Holladay, 135:3-17; 160:12-15; Exhibit 7, Crockett, 17:12-18:17, 179:25-3.) As Burrtec had no control over Organic Ag's activities, it cannot be held liable for the direct actions of another party over which it had no control.

Absent the subsequent spreading carried out by Organic Ag at Mr. Pike's behest, Burrtec's delivery of Green Trimmings cannot be shown to have caused, or be likely to have caused, a discharge into the waters of the state. Furthermore, Burrtec's delivery alone did not create nor threaten to create either a condition of pollution or nuisance. As such, Burrtec cannot be considered a discharger under Water Code section 13304(a).

CONCLUSION

Burrtec respectfully requests that the Prosecution Team reevaluate its recommendation to the Executive Officer for approval of the Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 naming Burrtec as a discharger, or in the alternative requests that this matter be referred to the San Diego Regional Water Quality Control Board for a full hearing.

Yours very truly,

ENVIRONMENTAL LAW GROUP LLP
VARCO & ROSENBAUM



Suzanne R. Varco

SRV/ssr

Enclosures:

- Exhibit 1: Declaration of Richard Crockett, March 24, 2017
- Exhibit 2: Deposition of Robert Steven Hoyt, February 22, 2017
- Exhibit 3: Deposition of Peter Holladay, March 20, 2017
- Exhibit 4: Deposition of Pedro Soltero, March 21, 2017
- Exhibit 5: Deposition of Levi Holladay, March 21, 2017

Mr. James G. Smith
March 24, 2017
Page 6

Exhibit 6: Second Amendment to Green Waste Delivery Agreement, February 23, 2009

Exhibit 7: Deposition of Richard Crockett, March 23, 2017

Exhibit 8: Site Restoration Plan, AEC, March 10, 2017

Exhibit 9: Deposition of James Pike, March 15, 2017

Attachment 6



San Diego Regional Water Quality Control Board



San Diego Regional Water Quality Control Board

TO: David W. Gibson
Executive Officer / Head of the Advisory Team

FROM: 
James G. Smith
Assistant Executive Officer / Head of the Prosecution Team

DATE: April 27, 2017

SUBJECT: Consideration of Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122, Pike/Aguanga (**SUPPLEMENT TO MARCH 10, 2017, SUBMISSION**) PIN: CW-793882

On March 10, 2017, the Prosecution Team submitted the Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 (CAO) for your consideration and approval. Since that time, counsel for Burrtec Waste Industries, Inc. (Burrtec) and Mr. James Pike (Pike or Mr. Pike) have submitted additional comments, seeking to clarify certain factual inaccuracies in the CAO as well as objecting to some suggested modifications advanced by the Prosecution Team in the Revised Tentative Addendum. The Prosecution Team suggests that these additional comments be accepted into the administrative record, and submits responses to the additional comments herein as well as additional changes to the CAO as documented in the attached April 27, 2017, Revised Tentative Addendum No 1 to the CAO.

Additional documents for the administrative record:

1. March 24, 2017, Letter from Environmental Law Group (representing Burrtec);
2. April 3, 2017, Email from Lounsbery, Ferguson, Altona & Peak, LLP (representing Pike);
3. Revised Tentative Addendum No. 1 (dated April 27, 2017); and
4. This Prosecution Team response.

Burrtec's Submission:

Alleged Factual Inaccuracies:

1. Burrtec states that the CAO misinterprets the "nature of Organic Ag and Burrtec's respective roles in handling the green trimmings," and that Organic Ag, another named discharger/responsible party, determined where the green trimmings would be deposited. Burrtec characterizes itself merely as a supplier. This will be addressed later in this document in the Prosecution Team's response to Burrtec's objections to being included as a discharger/responsible party under Water Code section 13304.

Prosecution Team response: No change is needed to the Revised Tentative Addendum No. 1 to the CAO. The addendum added Burrtec as a discharger/responsible party based on Burrtec's actions and the policy underlying Water Code section 13304, as discussed infra. The information submitted by the parties to the San Diego Water Board clearly shows the roles of Organic Ag, Burrtec, and Ecology Auto Parts, Inc. (Ecology). Burrtec and Ecology transported and deposited "approximately 5,500 truckloads"¹ of green waste on the properties. Each truck load contained 20 tons or more of green waste, that is to say 40,000 pounds of green waste was dumped on the property each truckload. Considering that 5,500 green waste truckloads were dumped across the entirety of the properties it is reasonable to state that Burrtec and Ecology discharged and spread the waste into "waters of the state" or discharged and spread the waste such that the waste was likely to be discharged into "waters of the state." Additionally, it is clear from the submitted information that Organic Ag with the use of heavy equipment leveled out the waste piles deposited by Burrtec and Ecology to ensure an agreed upon depth of coverage across the properties.

Another critical issue thus appears to be the difference between Burrtec's characterization of the material discharged on the properties and that of the San Diego Water Board. Burrtec describes the deposited material as "green trimmings," while the CAO found that the discharged material was a "waste" as defined in section 13050(d) of the Water Code. Therefore the discharge of the waste into and additionally where it was likely to be discharged into the unnamed ephemeral streams tributary to Wilson Creek² on each property was in violation of the San Diego Water Board's Basin Plan Prohibitions 1, 2, and 7, and Water Code section 13264 for failing to file a report of waste discharge requirements prior to discharging the waste.

The Prosecution Team did not base its recommendation to add Burrtec as a discharger/responsible party on the contract between Burrtec and Organic Ag, and does not take a position regarding any assignment of liability or indemnity between the parties to the contract. The Prosecution Team stands by its position that it found San Diego Water Board inspections more persuasive than any description of the material in the contract.

2. Burrtec states that the March 10, 2017, San Diego Water Board letter incorrectly characterizes the contractual arrangement between Burrtec and Organic Ag.

¹ November 16, 2016, letter from Erick Altona, Lounsbury, Ferguson, Altona & Peak, LLP, at page 2, ¶2.

² The unnamed ephemeral streams were found to be "waters of the state" in the CAO. See CAO Finding No. 3.

Prosecution Team response: No change is needed to the Revised Tentative Addendum No. 1 to the CAO. The March 10, 2017, cover letter to the CAO is part of the administrative record, but by this correspondence to the Advisory Team, the Prosecution Team is requesting that Burrtec's March 24, 2017, submission likewise be included in the administrative record. Nothing in the Prosecution Team's summary, or Burrtec's clarification regarding its business practices, affects the language of the CAO relevant to the Pike property and the green waste material Burrtec deposited and delivered to such property.

3. Burrtec states that Finding 1.c of the Revised Tentative Addendum No. 1 to the CAO appears to state that Burrtec "collects grass, leaves, branches, dirt and other green plant material" and then immediately delivered that collected material to the Pike property, reflecting a misunderstanding of Burrtec's processing practices.

Prosecution Team response: No change is needed to the Revised Tentative Addendum No. 1 to the CAO. The Prosecution Team did not intend to comment on Burrtec's processing practices, and in fact, finding 1.c is silent on such practices. Based on the inspection conducted by San Diego Water Board staff, whatever Burrtec did to process the material was insufficient to remove all municipal waste material prior to placement on the Pike property.

4. Burrtec states that CAO Finding 6 incorrectly states that 152 acres of the Pike property was covered with waste when in fact it was approximately 75 acres.

Prosecution Team response: Burrtec is correct, and CAO Finding 6 should be corrected. Finding 6 should now read in pertinent part "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."

5. Burrtec states that the current conditions at the Pike property³ are considerably different from the conditions described in the San Diego Water Board's Notice of Violation (NOV) R9-2013-0089 dated June 3, 2013, and Burrtec requests a San Diego Water Board inspection to determine current Pike property site conditions.

³ James Pike and Prairie Avenue Gospel Center, Inc. (PAGC) are both owners of properties affected by the municipal waste. Mr. Pike is represented by counsel, who has submitted comments throughout this process. A representative for PAGC has not participated in this process, but given the San Diego Water Board inspection report and the conclusions that both properties were affected, both Mr. Pike and PAGC continue to be named in the Revised Tentative Addendum No. 1 to the CAO.

Prosecution Team response: No change to the CAO is needed. The original CAO was issued in September 2013, soon after the violations were noted and the San Diego Water Board became aware of the water quality issues in April 2013. As part of the work contemplated by the CAO, cleanup of waste material has been initiated through the removal of waste from the waterway. The Revised Tentative Addendum to the CAO is to address additional dischargers/responsible parties. San Diego Water Board staff will assess the condition of the properties prior to the approval of any final work plans or resolution of the CAO.

6. Burrtec states that it is not the only "supplier" of "green trimmings" at the Pike property.

Prosecution Team response: Burrtec does not identify other parties by name. If the reference is to Ecology, the Prosecution Team discusses Ecology below, and concludes that it can be named as a discharger/responsible party in a new Finding 1.d, *infra*.

Burrtec's Discharger Status:

Burrtec continues to object to being included in the Revised Tentative Addendum No. 1, to the CAO as a discharger/responsible party, and asserts that California law does not support liability under Water Code section 13304.

First, Burrtec argues that materials were not located where they will be or probably will be discharged into "waters of the state" (Page 3, third full paragraph). However, Burrtec admits that Mr. Pike "confirmed that all green trimmings ... have been successfully removed from the waterways." (Page 3, third full paragraph) This statement concedes that material was *in the waterways*. Burrtec has repeatedly argued that it only supplied the material and that Organic Ag placed it, but Mr. Pike provided a declaration that Burrtec trucks deposited waste materials onto his property and Burrtec impliedly admitted that it did deposit such material. However, in the March 24, 2017, Burrtec submission, it added to its statement by saying that the deposition was at the direction of Organic Ag. As repeatedly stated, the Prosecution Team does not take a position as to who is more responsible under the Revised Tentative Addendum No. 1 to the CAO, Organic Ag or Burrtec. Nor will it take a position as to who may have indemnity rights against the other. Instead, it appears from reviewing all appropriate evidence that (1) Burrtec deposited waste material onto the Pike property and (2) the waste materials were placed where they were, in fact, discharged into "waters of the state."

Burrtec further argues that a recent site visit determined that no waste materials were in the waterway. This does not mean that such materials were not originally placed where they were or probably could be discharged into "waters of the state" in 2013. As stated by Mr. Pike's counsel, "the main waterways were promptly cleared by [Mr. Pike] when the CAO was issued. They remain clear for the most part but future migration of trash back into the waterways is possible, probably inevitable, unless it is removed from the rest of the property." The Prosecution Team agrees.

Additionally, Burrtec in its submission requests that the San Diego Water Board conduct additional inspections, and admits that Mr. Pike has made cleanup efforts. Burrtec should not escape liability based on the actions taken by another to remedy water quality impacts. The CAO addendum is written to bring all dischargers/responsible parties to the table. No cleanup work will be duplicated. The dischargers/responsible parties can decide among themselves the proper allocation of responsibilities, whether for costs expended or work that remains to be completed.

Second, Burrtec argues that it lacks the requisite control for liability, and that the mere "unloading of green trimmings at the Property by Burrtec did not create or threaten to create a condition of pollution or nuisance." The argument in Burrtec's March 24, 2017, submission focuses on the lack of "affirmative" conduct, rather than arguing that it was a mere supplier.⁴ In other words, Burrtec has admitted that it placed the waste materials on the property at issue. Burrtec did not merely supply the waste materials to a distributor, Burrtec physically transported the waste to and placed it on the Pike property, and in some instances directly into "waters of the state," or probably could have, given rain and wind. Burrtec states that "[l]iability under Water Code section 13304 must be premised upon a showing of control over the activity causing the discharge." Burrtec does not indicate, nor can it credibly claim, that it was not in control of its trucks, drivers, or ability to contract with Organic Ag. Further, Burrtec admits that it has the ability to reject entire truckloads, sometimes a couple of truckloads a week, because of excess trash. (Hoyt deposition, 21:19-23) Based on these facts, Burrtec is properly named as a discharger/responsible party. *City of Modesto*⁵ is distinguishable because Burrtec is more than a mere supplier. *In re County of San Diego*⁶ is not to the contrary: it confirms that Water Code section 13304 is broader than sections 13260 and 13263⁷, and applies to discharges that are uncontrolled, intentional, or negligent. *Id.*, at *3. Burrtec may not have expected liability to arise from its actions, but placing waste material that contained excessive trash, including glass, plastics, metals, and construction debris⁸ can subject it to liability under Water Code section 13304.

⁴ Burrtec repeats its argument related to *City of Modesto* that "mere placement of materials in the stream of commerce" was not sufficient for liability. However, the Prosecution Team has established that Burrtec was not merely a supplier but it also transported the waste materials to the Pike property and deposited them on such property.

⁵ *City of Modesto Redevelopment Agency v. Superior Court* (2004), 119 Cal.App.4th 28

⁶ *In re County of San Diego* (Order No. WQ 96-2, 1996 WL 101751).

⁷ These sections deal with obtaining waste discharge requirements prior to discharge.

⁸ Notice of Violation No. R9-2013-0089, pg. 4.

Pike's Submission:

1. Pike states that Ecology Auto Parts, Inc. (Ecology) should be named as a discharger/responsible party under the CAO.

Prosecution Team response: At the time the Cleanup and Abatement Order was issued in 2013, the Prosecution Team did not have sufficient evidence to support naming more than the property owners, Mr. Pike and PAGC. Our current revisions seek to include additional dischargers/responsible parties based upon a sufficiency of evidence. Since the initial Cleanup and Abatement Order, Mr. Pike has filed a civil lawsuit and the parties have conducted discovery. In addition, Ecology has participated in meetings with the San Diego Water Board to develop an acceptable work plan for the Pike property. The Prosecution Team has no objection to adding the following language to the CAO:

1.d. As it pertains to this CAO, Ecology Auto Parts, Inc. (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. Pike states that the area affected by the dumping is approximately 75 acres, not 152 acres.

Prosecution Team response: See Response to Burrtec Comment No. 4.

In conclusion, the Prosecution Team has responded to all public comments raised in response to the circulation of Tentative Addendum No. 1 to CAO R9-2013-0122. All parties, including Ecology, have had an opportunity to comment.² The Prosecution Team recommends that the San Diego Water Board, or its delegee, adopt the April 27, 2017, Revised Tentative Addendum No. 1 to the CAO. In addition, regardless of the action taken by the San Diego Water Board, we request that the Advisory Team deem the administrative record complete as of receipt of this submission, and inform the parties of any rights that they may have in the event that they seek a hearing. Based on the extensive information exchanged to date, we presume that a petition would be to the State Water Resources Control Board pursuant to Water Code section 13320; therefore we would like confirmation.

² Plaintiff counsel copied counsel for Ecology on its November 16, 2016, submission, and Ecology did not object to Ecology being named as a discharger/responsible party. See April 3, 2017, email from Erick Altona. All comments and the San Diego Water Board responses have been publicly available on the San Diego Water Board website.

JGS:jem:ftm

Copies with enclosure via email to:

1. Erick Altona, Lounsbery, Ferguson, Altona & Peak, LLP, era@lfap.com
2. Chiara Clemente, San Diego Water Board, cclemente@waterboards.ca.gov
3. Brent Clemmer, Slovak, Baron, Empey, Murphy & Pinkney, LLP, clemmer@sbemo.com
4. Richard Crockett, Burrtec Waste Industries, Inc., richard@burrtec.com
5. Regan Furcolo, Walsh, McKean, Furcolo, LLP, rfurcolo@wmflp.com
6. John Griffin, Green & Hall, LLP, jgriffin@greenhall.com
7. Catherine Hagan, State Water Resources Control Board chagan@waterboards.ca.gov
8. Melissa Hall, State Water Resources Control Board, mhall@waterboards.ca.gov
9. Peter Holladay, Organic Ag, Inc., peter@organicspreading.com
10. Christopher Lea, Walsh, McKean, Furcolo, LLP, clea@wmflp.com
11. Kenneth Lounsbery, Lounsberry, Ferguson, Altona & Peak, LLP, khl@lfap.com
12. Julie Macedo, State Water Resources Control Board, jmacedo@waterboards.ca.gov
13. Olufisayo Osibodu, San Diego Water Board osibodu@waterboards.ca.gov
14. Roger Mitchell, San Diego Water Board, rmitchell@waterboards.ca.gov
15. Greg Reyes, Riverside Area Local Solid Waste Enforcement, gireyes@rivcocha.org

Primary Indexing Number (PIN): CW-793882

Attachment 7



3:17 PM 5/2/17
2017 MAY -2 AM 10:05

San Diego Regional Water Quality Control Board

TO: David W. Gibson
Executive Officer / Head of the Advisory Team

FROM: 
James G. Smith
Assistant Executive Officer / Head of the Prosecution Team

DATE: May 2, 2017

SUBJECT: Naming Ecology Auto Parts, Inc. as a Responsible Party under Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122, Pike/Aguanga. PIN: CW-793882

On April 28, 2017, John Griffin, Green & Hall, LLP, on behalf of Ecology Auto Parts, Inc. (Ecology) requested that Ecology be given 30 days to respond to the April 27, 2017, Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122. For your information, I have attached the request. The Prosecution Team has no objections to Ecology's request.

Contrary to Ecology's assertions, the Prosecution Team's decision to name Ecology was not based solely on statements made by Erick Altona, Counsel for Mr. Pike. The decision was based on several pieces of evidence including Ecology's admissions dated October 22, 2014, in its response to Mr. Pike's "First Set of Requests for Admission." Ecology admitted that it had oral agreements with Organic Ag, Inc. and Burrtec Waste, Inc. (Burrtec) for the delivery of green waste to Mr. Pike's property. Additionally, in its response, Ecology admitted that it delivered green waste to Mr. Pike's property and it provided "Load Ticket Reports" documenting the fact. See Attachment C to the December 13, 2016, Lounsbery, Ferguson, Altona & Peak, LLP, letter on behalf of Mr. Pike.

As such, there is evidence documenting Ecology's participation in a role similar to that of Burrtec. Therefore, Ecology's legal arguments would likely be substantially similar to those of Burrtec. Namely, that it is not a "discharger" because it delivered and deposited green waste onto the Pike property and that it did not spread any green waste. The Prosecution Team finds that in the case of Burrtec and Ecology the evidence is sufficient for Water Code section 13304 liability, regardless of any contractual indemnity between or among the parties.

The Prosecution Team disagrees with Ecology's claim that it has not had an opportunity to participate during this process given Ecology's attendance in a San Diego Water Board meeting to develop a site remediation plan for the Pike property and that Ecology was copied on all correspondence related to this matter. While the Prosecution Team disagrees with Ecology's assertion, in an effort to ensure that Ecology has an opportunity to be heard during this process, the Prosecution Team does not object to Ecology submitting a response no later than 30 days after April 27, 2017, the date the current administrative record was submitted to the Advisory Team for consideration.

JGS:jem:ftm

Enclosure: April 28, 2017, letter from John Griffin, Green & Hall, LLP

Copies with enclosure via email to:

1. Erick Altona, Lounsbery, Ferguson, Altona & Peak, LLP, era@lfap.com
2. Chiara Clemente, San Diego Water Board, cclemente@waterboards.ca.gov
3. Brent Clemmer, Slovak, Baron, Empey, Murphy & Pinkney, LLP, clemmer@sbemp.com
4. Richard Crockett, Burrtec Waste Industries, Inc., richard@burrtec.com
5. Regan Furcolo, Walsh, McKean, Furcolo, LLP, rfurcolo@wmflp.com
6. John Griffin, Green & Hall, LLP, jgriffin@greenhall.com
7. Catherine Hagan, State Water Resources Control Board chagan@waterboards.ca.gov
8. Melissa Hall, State Water Resources Control Board, mhall@waterboards.ca.gov
9. Peter Holladay, Organic Ag, Inc., peter@organicspreading.com
10. Christopher Lea, Walsh, McKean, Furcolo, LLP, clea@wmflp.com
11. Kenneth Lounsbery, Lounsbery, Ferguson, Altona & Peak, LLP, khl@lfap.com
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Primary Indexing Number (PIN): CW-793882



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John T. Griffin, Partner
jgriffin@greenhall.com

April 28, 2017

VIA E-MAIL AND U.S. MAIL

Mr. Frank Melbourn
California Regional Water Quality Control
Board
San Diego - Region 9
2375 Northside Drive
Suite 100
San Diego, California 92108

Mr. Roger Mitchell
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***
Our File No.: 1000.670

Dear Mr. Melbourn and Mr. Mitchell:

I am in receipt of a memo dated April 27, 2017, from James G. Smith to David W. Gibson regarding consideration of the Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-1022 (the "Memo"). This Memo attaches as an exhibit a Revised Tentative Addendum No. 1, dated April 27, 2017, which purports to name as a "responsible party" for the first time my client, Ecology Auto Parts, Inc. ("Ecology").

The apparent basis for the Regional Water Quality Control Board's ("Water Board") determination to name Ecology as a "responsible party" is correspondence received from Erick Altona, counsel for Mr. James Pike, dated November 16, 2016, and an e-mail from Mr. Altona dated April 3, 2017.

The Memo notes that Ecology "did not object to Ecology being named as a discharger/responsible party" following the November 16, 2016, correspondence from Mr. Altona. That correspondence, however, referred only to Ecology as a party to a contract with Organic Ag "to deliver green waste to the Property." There was no request in that correspondence that Ecology be named as a "responsible party." Indeed, the Water Board issued its Tentative Addendum two weeks later on November 30, 2016, and ***did not name*** Ecology as a responsible party. Any necessity on the part of Ecology to submit comments became moot following the issuance of the Tentative Addendum because it appeared that the Water Board had considered the information provided by Mr. Altona, and rejected the idea that Ecology should be named as a discharger .



Mr. Frank Melbourn
Mr. Roger Mitchell
April 28, 2017
Page 2

On March 10, 2017, the Water Board issued its Revised Tentative Addendum which responded to and incorporated public comments received by the Water Board from Mr. Pike, Organic Ag, and Burrtec Waste Industries, Inc. Even with the additional public comments received, the Water Board did not revise its Tentative Addendum to add Ecology as a "responsible party." Once again, therefore, there was no necessity on the part of Ecology to submit comments.

Mr. Altona's e-mail of April 3, 2017, is the first time any comment has been submitted to the Water Board suggesting that Ecology should be added as a "responsible party." Until my receipt of the Water Board's Memo yesterday, however, there has been no indication that the Water Board was considering adding Ecology as a discharger/responsible party to the Cleanup and Abatement Order.

Even though the April 27 Memo is the first time the Water Board has ever identified Ecology as a potential discharger/responsible party, the Memo notes that the Prosecution Team requests the Advisory Team to deem the administrative record complete and recommends adoption of the most recent Revised Tentative Addendum No. 1 without providing Ecology any opportunity to respond or submit comments. Adoption of the Revised Tentative Addendum by the Water Board at this time, however, without permitting Ecology the opportunity to respond, submit comments, and include information that it believes is important into the administrative record would be a violation of Ecology's due process rights.

Ecology therefore respectfully requests that it be given 30 days within which to review the Revised Tentative Addendum No. 1, dated April 27, 2017, and submit comments in response before Revised Tentative Addendum No. 1 is finalized.

Very truly yours,

A handwritten signature in black ink, appearing to read "John T. Griffin".

John T. Griffin

JTG
Enclosure

cc: Chiara Clemente, chiara@waterboardsd.gov
Catherine Hagan, catherine@waterboardsd.gov
Melissa Hall, melissa@waterboardsd.gov
Julie Macedo, julie@waterboardsd.gov



Mr. Frank Melbourn
Mr. Roger Mitchell
April 28, 2017
Page 3

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Greg Reyes, gjreyes@rivcocha.org
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Attachment 8

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ENVIRONMENTAL
LAW GROUP LLP
Varco & Rosenbaum

May 26, 2017

Via Hand Delivery and Electronic Mail

Mr. James G. Smith
Assistant Executive Officer, Head of the Prosecution Team
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

James.Smith@waterboards.ca.gov

Re: Ecology Auto Parts Responses to Prosecution Team Memo of April 27, 2017
Revised Tentative Add. No. 1 to Cleanup & Abatement Order R9-2013-0122,
Pike/Aguanga

Dear Mr. Smith:

Varco & Rosenbaum Environmental Law Group LLP represents Ecology Auto Parts, Inc. ("Ecology") in this matter. We are in receipt of your memo of April 27, 2017 (the "Memo") regarding consideration of the Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 (the "CAO"). This Memo attached as an exhibit a Revised Tentative Addendum No. 1, dated April 27, 2017 (the "RTA") which purports to name Ecology as a "responsible party" or "discharger" for the first time.

Ecology objects to its designation as a "responsible party" or "discharger" under the RTA or CAO. Ecology does not meet the legal requirements of a "discharger" under California Water Code Section 13304(a) that must be demonstrated in order to assign liability for the cleanup and abatement of the property at issue in the CAO. Supply and distribution of material without actual discharge is not enough to establish responsibility under Section 13304. As demonstrated by the evidence enclosed herewith, Ecology performed no "discharge" activities on the property and the RTA should be revised to remove Ecology as a named "responsible party."

1. Legal Standard

Cal. Water Code Sec. 13304(a) provides in pertinent part as follows:

A 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.

The State Water Resources Control Board has determined that hazardous substance suppliers are not responsible under Section 13304 absent hazardous *use*. *In the Matter of the Petition of Exxon Company, U.S.A., et al.* (1985), Cal.St.Wat.Res.Bd. 1985 WL 20026. After the Regional Water Quality Control Board adopted a Cleanup and Abatement Order naming the gas station property owners, Exxon, and the gasoline supplier, as responsible for benzene contamination that resulted from corrosion in underground storage tanks, the State Water Resources Control Board found there was no substantial evidence showing that either Exxon or the gasoline supplier had owned the corroded tanks. *Id.* at 6. Accordingly, the Board ordered Exxon and the supplier removed from the Cleanup and Abatement Order. *Id.* Only the property owners who actually had control over the use of the gasoline could be responsible for discharges from the gasoline tanks. *Id.* The California Court of Appeal later noted that “*In re Exxon* does suggest that a party who merely *supplies* a hazardous substance is not responsible under Water Code Sec. 13304.” *City of Modesto Redevelopment Agency v. Superior Ct.* (2004) 119 Cal.App.4th 28, 41.

The *City of Modesto* court noted that “[w]hile liability for nuisance is broad, however, it is not unlimited.” *Id.* at 39. Liability stops well short of applying to “mere but-for causation.” *Team Enterprises, LLC v. Western Investment Real Estate Trust*, 647 F.3d 901, 912 (9th Cir. 2011). Liability does not extend to those “who merely placed [products] in the stream of commerce without warning adequately of the dangers of improper disposal.” *City of Modesto*, 119 Cal.App.4th at 43. In holding dry cleaning solvent manufacturers and distributors were not accountable for a dry cleaners’ discharge of those solvents into public sewer systems, the Court of Appeal found that only those who “took affirmative steps directed toward the improper discharge of solvent wastes . . . may be liable under [Section 13304].” *Id.*

Here, Ecology does not fall within any definition of “discharger” under Sec. 13304(a). While Ecology may have *supplied* green trimmings to the Property, there is no evidence that Ecology took any “affirmative steps” directed toward improper discharge of waste into the waters of the state or had any control over the use of the green trimmings.

2. Factual Background

a. Ecology's Role

Part of Ecology’s business includes transportation of green waste material. Ecology has entered into contractual relationships with several different companies, including Burrtec Waste Industries, Inc. (“Burrtec”), for the transportation of green trimmings to certain locations. Ecology also has a working relationship with Organic Ag,

Inc. (“Organic Ag”) to transport green trimmings to Organic Ag's customers. Ecology does not, however, have a contractual relationship with Organic Ag.

Pursuant to its contractual relationship with Burrtec and its business relationship with Organic Ag, Ecology transported deliveries of green trimmings to the Reed Valley Road property at issue in the CAO (the “Property”). Ecology's role is strictly limited to transportation of the green trimmings.¹

b. Organic Ag's Role

In 2011, Organic Ag and James Pike executed two Letters of Understanding (“LOU”)² regarding the delivery and spreading of green trimmings on the Property. The LOU provides in pertinent part as follows:

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 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.

Ecology was neither a party to nor a beneficiary of the LOU. No agreement existed between Mr. Pike and Ecology for the delivery of green trimmings to the Property. There was no direct communication between Mr. Pike and Ecology regarding the placement or spreading of green trimmings on the Property.

Mr. Pike has filed a lawsuit against Organic Ag and others, including Ecology, asserting claims for damages arising out of the green trimmings that were delivered to and spread on the Property.³ The operative pleading in the Pike Lawsuit is the Second Amended Complaint (the “Complaint”), filed on January 8, 2016.⁴ Mr. Pike alleges in the Complaint that his only contract was with Organic Ag and that it was Organic Ag's obligation to spread the green trimmings on the Property.⁵ Mr. Pike's breach of contract

¹ Attached as Exhibit 1 are relevant portions of the transcript of the Deposition of Saul Gracian, person most knowledgeable on behalf of Ecology Auto Parts, Inc., taken on March 22, 2017.

² Attached as Exhibit 2 are copies of both Letters of Understanding.

³ *Pike, et al. v. Organic Ag, Inc., et al.*, Riverside County Superior Court, Case No. MCC1401513 (the “Pike Lawsuit”).

⁴ Attached as Exhibit 3 is a copy of the Second Amended Complaint filed in the Pike Lawsuit.

⁵ Second Amended Complaint, ¶¶ 11, 14.

allegations are solely against Organic Ag.⁶ Mr. Pike never alleges any contractual relationship with Ecology, any spreading activities conducted by Ecology, any communications between himself and Ecology, or any authorizations for Ecology to perform any spreading activities at or on the Property.⁷

3. Findings in the Memo

With the legal and factual background as set forth above, Ecology responds to the specific findings and allegations made in the Memo.

“Considering that 5,500 green waste truckloads were dumped across the entirety of the properties it is reasonable to state that Burrtec and Ecology discharged and spread the waste into ‘waters of the state’ or discharged and spread the waste such the waste was likely to be discharged into ‘waters of the state.’”⁸

Ecology objects to this conclusion. There is no evidence that Ecology “spread” the alleged waste. Indeed, the evidence confirms that it was only Organic Ag that “spread” the waste. Ecology's role began and ended with transporting the green trimmings to the Property. When an Ecology truck arrived at the Property, a representative of Organic Ag would direct the driver to the location on the Property where the green trimmings would be unloaded. Ecology exercised no discretion as to where it delivered and unloaded the green trimmings (except for safety concerns). Upon unloading the material, Ecology's role ended and the driver would leave the Property. Organic Ag would then spread the trimmings.⁹

Furthermore, the Prosecution Team itself alleges that “Organic Ag spread the green waste piles deposited by Burrtec and Ecology on the properties.”¹⁰ There is no evidence that Ecology spread any of the alleged waste.

With respect to allegations regarding the original placement of the alleged waste, the Memo asserts the following:

⁶ Second Amended Complaint, ¶¶ 34-47.

⁷ See Exhibit 2 and Exhibit 3.

⁸ Memo, p. 2.

⁹ See Declaration of Saul Gracian, attached as Exhibit 4. See also transcript of Deposition of Peter Holladay, taken on March 20, 2017, p. 229:1-6, relevant portions of which are attached as Exhibit 5.

¹⁰ Memo, p. 6 re proposed paragraph 1.e.

“Burrtec argues that it lacks the requisite control for liability, and that the mere ‘unloading of green trimmings at the Property by Burrtec did not create or threaten to create a condition of pollution or nuisance.’ The argument in Burrtec's March 24, 2017, submissions focuses on the lack of “affirmative” conduct, rather than arguing that it was a mere supplier. In other words, Burrtec has admitted that it placed the waste materials on the property at issue. Burrtec did not merely supply the waste materials to a distributor. Burrtec physically transported the waste to and placed it on the Pike property, and in some instances directly into ‘waters of the state,’ or probably could have, given rain and wind.”¹¹

There is no mention of Ecology in this section of the Memo, but Ecology will respond on the assumption that the same arguments will be applied to it as a basis for naming Ecology as a “responsible party.”

The Prosecution Team notes in its Memo that it “does not take a position as to who is more responsible under the Revised Tentative Addendum No. 1 to the CAO, Organic Ag or Burrtec.”¹² Rather, the Prosecution Team concludes simply that “(1) Burrtec deposited waste material onto the Pike property and (2) the waste materials were placed where they were, in fact, discharged into ‘waters of the state.’”¹³ Ecology takes issue with this conclusion. There is, in fact, a distinction between the actions of Burrtec and Ecology, as compared to the actions of Organic Ag.

Ecology is submitting herewith a declaration from Saul Gracian, manager for Ecology, whose responsibilities include overseeing Ecology's transportation operations. Mr. Gracian states in his declaration that Ecology trucks did not and could not have unloaded any green trimmings into or near the Wilson Creek tributaries. Drivers for Ecology were directed to and did not drive their trucks in or near the tributaries. Because of the size and weight of the trucks, there is a significant risk that trucks would get stuck or tip over if they were to drive near the tributaries. Ecology trucks drove only on paved surfaces or flat, solid ground. The trucks would unload the green trimmings on these hard and flat surfaces, and would then leave the Property. The unloading of green trimmings did not occur within 200 feet of the tributaries. Based on this evidence, Ecology did not deposit any green trimmings into the “waters of the state.”¹⁴

Once the Ecology trucks were unloaded, Organic Ag spread the green trimmings. In fact, Mr. Pike testified in deposition that it was Organic Ag that spread the green

¹¹ Memo, p. 5.

¹² Memo, p. 4.

¹³ Memo, p. 4.

¹⁴ *See* Declaration of Saul Gracian, Exhibit 4.

trimmings into the tributaries on the Property.¹⁵ Mr. Pike further testified that he had the green trimmings removed from the tributaries and removed the green trimmings back to 15 feet from the tributaries.¹⁶

Based on the foregoing, the evidence reflects the following: (1) Ecology did not unload any green trimmings into or within 200 feet of any tributaries on the Property; (2) Organic Ag spread the green trimmings unloaded by Ecology from their original locations into or near the tributaries; and (3) Mr. Pike removed all green trimmings from the tributaries and moved them back to 15 feet from the tributaries. There is no evidence that Ecology placed any green trimmings directly into the “waters of the state,” and there is no evidence that Ecology deposited green trimmings where they would be discharged into the waters of the state.¹⁷ Accordingly, Ecology cannot be found to be a discharger or responsible party under Cal. Water Code Sec. 13304.

4. Ecology Is Not Liable as a Responsible Party Under the Water Code

Ecology’s only involvement at the Property was to deliver green trimmings under its contract with Burrtec and its business relationship with Organic Ag. Upon arriving at the Property, Organic Ag directed Ecology as to the location where the green trimmings would be unloaded, subject to the physical limitations where Ecology trucks can safely travel. After the green trimmings were unloaded, Organic Ag then spread the materials to other areas of the Property, including the tributaries.

“Under California law, conduct cannot be said to ‘create’ a nuisance unless it more actively or knowingly generates or permits the specific nuisance condition.” *Redevelopment Agency of the City of Stockton v. BNSF Railroad Co.*, 643 F.3d 668, 674 (9th Cir. 2011). In this case, BNSF installed a French drain that allowed contamination to migrate from one location to another. The court, however, found that such conduct did not create liability under the Water Code. *Id.*

Here, Ecology cannot be held liable under the Water Code. Ecology transported green trimmings to a property and unloaded them in locations from which the material would not enter into “waters of the state.” This conduct did not “actively or knowingly generate the specific nuisance condition” because the nuisance condition was only created after Organic Ag spread the green trimmings unloaded by Ecology. The Water Code does not impose liability on a party who supplies materials to a third party, which third party then independently places the material in a location where the material is discharged into “waters of the state.” The Water Code also does not impose liability on a transporter (unlike Cal. Health & Safety Code § 25323.5, referencing liability 42 U.S.C. 9607(a)(4)).

¹⁵ Attached as Exhibit 6 are relevant portions of the Deposition of James Pike, vol. 3, taken on March 15, 2017, p. 297:24 - p. 298:22.

¹⁶ Pike Deposition, p. 298:23 – p. 299:8, Ex. 6.

¹⁷ See Declaration of Martin Hamman, attached as Exhibit 7.

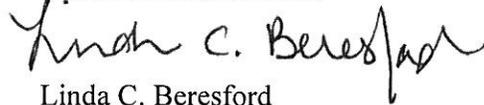
5. Conclusion

Based on the foregoing, Ecology respectfully requests the Prosecution Team to reevaluate its recommendation to the Executive Officer and instead recommend that Ecology should not be named as a “responsible party” or “discharger” under the RTA.

If RWQCB staff does not agree to remove Ecology from the Revised Tentative Addendum to the CAO, Ecology requests the opportunity to present its arguments and evidence at a hearing before the entire Board. Ecology also requests this opportunity as the evidence on which staff relies to name Ecology as a discharger is unclear. Ecology requests the opportunity to cross-examine witnesses to explore the exact evidence on which staff relies to name Ecology as a discharger in this matter.

Sincerely,

ENVIRONMENTAL LAW GROUP LLP
VARCO & ROSENBAUM



Linda C. Beresford

Enclosures: Exhibit 1: Portions of Deposition Transcript of Saul Gracian, March 22, 2017
Exhibit 2: Letters of Understanding, January 17, 2011, and October 24, 2011
Exhibit 3: Second Amended Complaint; *Pike v. Organic Ag, Inc., et al.*
Exhibit 4: Declaration of Saul Gracian
Exhibit 5: Portions of Deposition Transcript of Peter Holladay, March 20, 2017
Exhibit 6: Portions of Deposition Transcript of James Pike, vol. 3, March 15, 2017
Exhibit 7: Declaration of Martin Hamann

cc: Erick Altona (era@lfap.com)
John Griffin (jgriffin@greenhall.com)
Brent Clemmer (clemmer@sbemp.com)
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Roger Mitchell (rmitchell@waterboards.ca.gov)
Greg Reyes (gireyes@rivcocha.org)
(all w/ encls.) (all via e-mail)

EXHIBIT "1"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

)
JAMES PIKE,)
)
Plaintiff,)
)
vs.)No. MCC1401513
)
ORGANIC AG, INC.; PETER)
HOLLADAY, and DOES 1 through)
10,)
)
Defendants.)

Deposition of SAUL GRACIAN taken on behalf of Plaintiff, at 41593 Winchester Road, Temecula, California, beginning at 9:42 a.m. and ending at 11:15 a.m. on Wednesday, March 22, 2017, before RENEE A. PACHECO, Certified Shorthand Reporter No. 11564, RPR, CLR.

1 A Many.

2 Q Do you -- what types of seminars or classes
3 have you attended specific to your line of work?

4 A Transportation, accounting, leadership, mining,
5 construction, project management. Various others I
6 can't recall.

7 Q Where are you currently employed? Ecology;
8 correct?

9 A Ecology Auto Parts.

10 Q What is your position with Ecology Auto Parts?

11 A Manager.

12 Q Do you have a title?

13 A Manager.

14 Q What are your job duties?

15 A Oversee the business.

16 Q The entire business?

17 A Correct.

18 Q Are you an officer of the company?

19 A No.

20 Q What is your business address?

21 A 14150 Vine Place, Cerritos, California, 90703.

22 Q How long have you been the manager of the
23 company?

24 A Going on 18 years.

25 Q Did you have a position with Ecology Auto Parts

1 contracts for the transportation of green waste, as
2 opposed to solid waste?

3 A Yes and no.

4 Q With some companies and not others?

5 A Yes.

6 Q Okay. What companies does Ecology Auto Parts
7 have contracts for the transportation of green waste
8 with?

9 A Several companies.

10 Q Can you name some of them?

11 A Burrtec Waste, Republic Services.

12 Q Anyone else?

13 A TBI.

14 Those are the ones that I can recall right now.

15 Q Does Republic Services own the CBT facilities?

16 A No.

17 Q Do you understand that Ecology Auto Parts made
18 delivery of green waste materials to the Pike property?

19 A Do I understand?

20 Q Yes.

21 A Yes.

22 Q The deliveries made by Ecology to the Pike
23 property, were they made pursuant to a particular
24 transportation contract?

25 A Yes.

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Q Which one?

A I believe the Burrtec Waste.

Q Did Ecology Auto Parts have a contract for transportation of green waste with Organic Ag, Inc.?

A No.

Q Did it have a working relationship with Organic Ag, Inc., where it provided transportation of green waste to Organic Ag's customers?

A Yes.

Q Do you know when that began?

A More than ten years ago.

Q Were you involved in the development of that relationship with Organic Ag?

A Yes.

Q How did that relationship develop?

A They requested us to haul their green waste.

Q So they reached out to you?

A Correct.

Q Do you know why they reached out to Ecology?

A They wanted --

MR. GRIFFIN: Speculation.

THE DEPONENT: They wanted transport.

BY MS. VINACCIA:

Q Do you know who at Organic Ag reached out to Ecology?

1 Q No, it hasn't, or no, you don't know?

2 A No, it hasn't.

3 Q Do you know Ecology became involved with
4 deliveries of material to the Pike property?

5 A We were asked to transport.

6 Q By whom?

7 A Don't recall.

8 Q Do you know if Ecology was delivering materials
9 to the Pike property pursuant to its transportation
10 contract with Burrtec?

11 A Yes.

12 Q It was?

13 A Yes.

14 Q Do you know if Ecology was delivering material
15 to the Pike property also pursuant to its direct
16 business relationship with Organic Ag?

17 A Yes.

18 Q So it was delivering under both relationships
19 to the Pike property?

20 A I believe so, yes.

21 Q Is there a difference between the trucks that
22 would deliver pursuant to the Burrtec contract and the
23 trucks that would deliver to the Pike property pursuant
24 to its direct relationship with Organic Ag?

25 A No.

1 contact was made?

2 A Correct.

3 Q Do you remember which brother it was that you
4 spoke to?

5 A No.

6 Q How does Ecology learn that Organic Ag would
7 like it to begin delivering to a particular client of
8 Organic Ag's?

9 A They would make a phone call or an inquiry as
10 to what the price would be to deliver the material to a
11 specific location or city.

12 Q When Ecology Auto Parts delivers to an Organic
13 Ag site, does -- pursuant to a request by Organic Ag
14 directly, does Organic Ag pay Ecology for the
15 transportation of material?

16 A Correct.

17 Q So Ecology's job is simply the transportation
18 of the material. That's its only involvement in the --
19 in the process?

20 A Yes.

21 Q Does Ecology run any facilities for the
22 processing of solid waste?

23 A No.

24 Q Does it run any facilities for the processing
25 of green waste?

1 Ag that Ecology is delivering to directly under the
2 business relationship between Organic Ag and Ecology?

3 MR. KEARNEY: It's overly broad.

4 THE DEPONENT: Eventually, yes.

5 BY MS. VINACCIA:

6 Q Not necessarily when it starts, though;
7 correct?

8 A Correct.

9 Q And eventually, what -- what point in the
10 process would you find out about it?

11 A Our site supervisors go to the site to make
12 sure that the 80,000-pound vehicles aren't driving on a
13 goat trail or fire road or in three feet of sand.

14 Q And how does that relate to you finding out
15 about the project?

16 A They confirm that the truck has access and is
17 commercial access.

18 Q And then they tell you that it's okay to go
19 forward with this project?

20 A They tell me that the truck has access.

21 Q Do you recall the first time that you found out
22 about the Organic Ag project at the Pike property?

23 A No.

24 Q What do you know about the Organic Ag project
25 at the Pike property?

EXHIBIT "2"

Organic Ag, Inc.



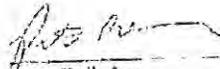
LETTER OF UNDERSTANDING

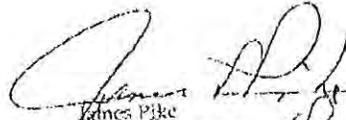
Date: January 17, 2011

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.

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
JAMES PIKE 1-19-11

Phone: 951-221-2212
Fax: 951-221-2213
Website: www.organicag.com

Address: 90 Reed St
Aguanga, CA 92536
E-Mail: info@organicag.com

~~10/25/11~~

Organic Ag, Inc



LETTER OF UNDERSTANDING

Date: October 24, 2011

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.

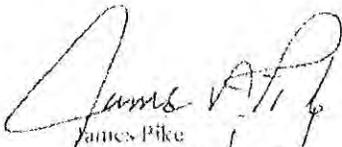

James Pike
10/25/11

EXHIBIT “3”

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8
9 Attorneys for Plaintiffs, James Pike and Riverside County Financial Group, LP

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF RIVERSIDE, SOUTHWEST JUSTICE CENTER

13 JAMES PIKE,

14 Plaintiff,

15 v.

16 ORGANIC AG, INC.; PETER HOLLADAY;
and DOES 1 through 10,

17 Defendants.

CASE NO.: MCC1401513
[UNLIMITED CIVIL]

18 SECOND AMENDED COMPLAINT FOR:

- 19 1. BREACH OF CONTRACT;
- 20 2. BREACH OF ORAL CONTRACT
- 21 3. NEGLIGENCE;
- 22 4. NEGLIGENT INTERFERENCE WITH
- 23 PROSPECTIVE ECONOMIC
- 24 ADVANTAGE;
- 25 5. FRAUD;
- 26 6. FRAUD (PROMISE TO CLEAN
- 27 PROPERTY);
- 28 7. NEGLIGENT MISREPRESENTATION;
8. TRESPASS TO LAND;
9. UNFAIR BUSINESS PRACTICES;
10. FALSE ADVERTISING;
11. PRIVATE NUISANCE;
12. PUBLIC NUISANCE;
13. BREACH OF IMPLIED WARRANTY
- 14 OF MERCHANTABILITY ;
15. BREACH OF IMPLIED WARRANTY
- OF FITNESS; AND
16. STRICT PRODUCTS LIABILITY

Judge: Hon. Raquel Marquez
Dept.: S303
Date Filed: October 22, 2014

1 Plaintiffs, James Pike and Riverside County Financial Group, LP (hereinafter referred to as
2 "Plaintiffs" or "Pike") allege against Defendants Organic Ag, Inc. ("Organic"), Peter Holladay
3 ("Holladay"), Levi Holladay; Burrtec Waste Group, Inc. ("Burrtec") and DOES 1 through 10,
4 inclusive and each of them, as follows:

5 **PARTIES**

6 1. Plaintiff, James Pike is, and at all relevant times mentioned herein was, a resident of
7 the State of California.

8 2. Plaintiff, Riverside County Financial Group, LP is a limited partnership formed in the
9 State of Texas, which owns 156 acres of real property located at 39801 Reed Valley Road, Aguanga,
10 Riverside County, California 92563 (the "Property").

11 3. Plaintiffs are informed, believe, and thereon allege that Defendant Organic Ag, Inc.
12 ("Organic") is, and at all relevant times mentioned herein, was a corporation, incorporated under the
13 laws of the State of California and doing business in the County of Riverside, California.

14 4. Plaintiffs are informed, believe, and thereon allege that Defendant Peter Holladay
15 ("Holladay") is, and at all relevant times mentioned herein was, a resident of County of Riverside,
16 State of California and a principal of Organic, authorized to act on its behalf.

17 5. Plaintiffs are informed, believe, and thereon allege that Defendant Levi Holladay is,
18 and at relevant times mentioned herein was, a resident of County of Riverside, State of California and
19 a principal of Organic, authorized to act on its behalf. Plaintiffs were ignorant of the true name of
20 this Defendant upon the filing of the original complaint and thus designated it by the fictitious name
21 DOE 1. Now having discovered the true name of defendant Levi Holladay, Plaintiffs amend the
22 complaint to substitute the true name of Defendant.

23 6. Plaintiffs are informed and believe and thereon allege that Defendant Burrtec Waste
24 Group, Inc. is a California Corporation whose principal place of business is in the County of
25 Riverside. Plaintiffs were ignorant of the true name of this Defendant upon the filing of the original
26 complaint and thus designated it by the fictitious name DOE 2. Now having discovered the true name
27

1 of defendant to be Burrtec Waste Group, Inc. ("Burrtec"), Plaintiffs amend the complaint to substitute
2 the true name of Defendant.

3 7. Plaintiffs are informed and believe and thereon allege that Defendant Ecology Auto is
4 a company whose business form is currently unknown but is authorized to do business in the County
5 of Riverside. Plaintiffs were ignorant of the true name of this Defendant upon the filing of the original
6 complaint and thus designated it by the fictitious name DOE 3. Now having discovered the true name
7 of defendant to be Ecology Auto ("Ecology"), Plaintiffs amend the complaint to substitute the true
8 name of Defendant.

9 VENUE AND DOE DEFENDANTS

10 8. This Court is the proper court in which to bring this action because the real property
11 where Plaintiffs' harm occurred is located within this Court's jurisdictional boundaries.

12 9. Plaintiffs are informed, believe, and thereon allege that DOES 4 through 10, inclusive,
13 and each of them, are the above named Defendants' agents, employees, contractors, representatives,
14 successors or assigns acting within the course and scope of such agency and with the permission and
15 consent of the above named Defendants.

16 10. The true names and capacities of DOES 4 through 10, inclusive, whether individual,
17 corporate, associate, and/or otherwise are unknown to Plaintiffs, and therefore they sue under such
18 fictitious names. Plaintiffs are informed, believe, and thereon allege that at all relevant times
19 mentioned herein, each DOE Defendant is and was a resident of, or does or did business in, the State
20 of California. Each DOE Defendant is or was in some manner responsible for the events herein
21 referenced; and has proximately caused injury and damages to Plaintiffs. Plaintiffs will seek leave to
22 amend this Complaint to allege the true names and capacities of each DOE Defendant once
23 ascertained.

24 GENERAL ALLEGATIONS

25 11. On or about October 24, 2011, Plaintiff, James Pike, entered into a written contract with
26 Defendant Organic, wherein Organic agreed to deliver and spread green trimmings on the Property.
27 The contract provided that Organic would coordinate the delivery and spreading of green trimmings

1 in a timely manner and monitor the cleanliness of the green trimmings, removing any excess trash. A
2 true and correct copy of the October 24, 2011, "Letter of Understanding" (the "Contract") is attached
3 as Exhibit A and herein incorporated by reference.

4 12. Plaintiffs contracted for the delivery and spreading of green trimmings on the Property
5 to improve the quality of the soil on the Property so that it could be used to cultivate and grow crops.
6 Specifically, Plaintiffs intended to plant and cultivate an olive grove on the Property.

7 13. Plaintiff, Pike, discussed this intended use of the Property and the need for the green
8 trimmings to improve the quality of the soil with Defendants prior to executing the Contract.

9 14. Thereafter, Defendant Organic, pursuant to the terms of the Contract, began
10 coordinating and delivering truckloads of what Plaintiffs believed to be green trimmings and spread
11 those green trimmings throughout the Property.

12 15. After the deposit and spreading of the first few loads of material to the Property,
13 Defendants requested Plaintiffs inspect the material deposited. That material was as had been
14 represented, and was accepted by Pike. Thereafter, the material deposited and spread on the Property
15 was not of the quality represented by Defendants.

16 16. Plaintiffs are informed and believe, and thereon, allege that Defendant Burrtec was one
17 of the companies with which Organic coordinated for the delivery of green trimmings to the property.

18 17. Burrtec advertises itself as a company involved in recovery and repurposing of organic
19 and food waste, including but not limited to the preparation of green trimmings for agricultural
20 applications.

21 18. Plaintiffs are also informed and believe, and thereon, allege that Defendant Ecology
22 was one of the companies with which Organic coordinated for the delivery of green trimmings to the
23 property.

24 19. Ecology holds itself out as a company involved in recovery and repurposing of organic
25 waste, including but not limited to the preparation of green trimmings for agricultural applications.
26
27
28

1 removal. At the conclusion of this meeting, Peter Holladay and Levi Holladay promised to provide
2 additional resources to the clean-up efforts.

3 27. In response to Plaintiffs' multiple requests, Defendant Organic entered the Property and
4 made some limited and wholly inadequate attempts to remove the trash. Defendant Organic was most
5 recently at the Property in late February 2015, continuing its inadequate attempts to remove trash. As
6 of the date of the filing of this First Amended Complaint, a significant amount of trash remains on the
7 Property preventing its use.

8 28. As a result of the deposit of trash on Plaintiffs' property, the condition of the soil has
9 been damaged instead of being enhanced as intended by Plaintiffs.

10 29. Also as a result of the deposit of trash on Plaintiffs' property, Plaintiffs have suffered
11 damage to equipment used on the property to control weed growth and blowing trash. Specifically,
12 a piece of debris caused a large gash ruining a large tractor tire and requiring costly replacement.

13 30. Also, as a result of the deposit of trash on Plaintiffs' property, Plaintiffs have been
14 issued a Notice of Violation by the California Regional Water Quality Control Board, San Diego
15 Region ("San Diego Water Board") alleging that the condition of his property requires remediation
16 because the condition could adversely affect the quality of water in the area. Plaintiffs continue to
17 work with the San Diego Water Board to clean up the property and avoid further liability to the
18 agency.

19 **ALTER EGO ALLEGATIONS**

20 31. Plaintiffs are informed, believe and thereon allege, that there exists at all relevant times
21 herein mentioned there existed, a unity of interest and ownership between Defendants Peter Holladay
22 and Levi Holladay on the one hand and Defendant Organic such that the individuality and
23 separateness between them and Organic a limited liability entity has ceased and that Peter Holladay
24 and Levi Holladay are the alter ego of Defendant Organic. Plaintiffs are informed, believe and thereon
25 allege, that at all times herein mentioned, that Defendant Organic has been and now is a mere shell
26 and naked framework which Defendants Peter Holladay and Levi Holladay used as a conduit for their
27 personal business affairs.

28

1 in an amount that exceeds this court's jurisdictional minimums the total of which is currently
2 unknown but will be proven at trial.

3 40. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
4 loss of property set aside for retirement, or for personal care or family care and maintenance.
5 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
6 to Civil Code § 3345(b)(2).

7 **SECOND CAUSE OF ACTION**
8 **BREACH OF ORAL CONTRACT**
9 **(Against Defendants Organic, Levi Holladay and Does 4-10.)**

10 41. Plaintiffs incorporate the allegations in Paragraphs 1 through 40 inclusive as though set
11 forth herein in their entirety.

12 42. In or around the summer of 2013, Plaintiff Pike and Defendant Levi Holladay entered
13 into an oral agreement wherein Defendant Levi Holladay agreed that Organic would clean up the
14 Property, assuring Pike that all trash would be removed.

15 43. In or around the summer of 2014, James Pike, Marilyn Sue Pike, David Pike met with
16 Defendants Peter Holladay and Levi Holladay to discuss further clean-up measures. At this meeting
17 the Defendants again promised to provide additional resources to the clean-up efforts assuring to Pike
18 once again that all trash would be removed.

19 44. The Defendants breached the oral contract by failing to remove the excess trash and
20 clean-up the Property.

21 45. Pike reasonably relied on the Defendants' oral representations that Organic would
22 remove the excess trash and clean up the Property.

23 46. As a result of Defendants breach of the Contract, Plaintiffs have been damaged in that
24 Defendants' failure to clean up the Property has deprived Plaintiffs of the quiet enjoyment of the
25 Property, has caused property damage, and the institution and maintenance of administrative action
26 against Plaintiffs by the San Diego Water Board. Plaintiffs have been damaged in an amount that
27 exceeds this court's jurisdictional minimums the total of which is currently unknown but will be
28 proven at trial.

1 against them by the San Diego Water Board. Plaintiffs have also suffered whatever value the property
2 has been diminished because of Defendants' allowance of trash to be deposited on the Property.
3 Plaintiffs have also been prevented from using the Property to cultivate an olive grove.

4 52. As a proximate cause of Defendants' negligence, Plaintiffs incurred significant
5 damages currently unascertainable, but will be proven at the time of trial. These damages include,
6 but are not limited to, (1) damage to the Property requiring clean-up (2) loss of reasonable use and
7 enjoyment of the Property; (3) loss of market value of the Property; (4) loss of the ability to grow and
8 sell crops; (5) personal property damage; and (6) having to defend administrative action instituted
9 against them by the San Diego Water Board.

10 53. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
11 loss of property set aside for retirement, or for personal care or family care and maintenance.
12 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
13 to Civil Code § 3345(b)(2).

14 **FOURTH CAUSE OF ACTION**
15 **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**
16 **(Against All Defendants and DOES 4-10.)**

17 54. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 53, inclusive,
18 as though set forth herein in their entirety.

19 55. Plaintiffs and the University of California at Davis ("Davis"), were in an economic
20 relationship whereby Davis agreed to sell olive saplings and related products and services to Plaintiffs
21 that would have resulted in a future economic benefit to Plaintiffs.

22 56. Defendants Organic Ag., Peter Holladay, and Levi Holladay knew that Plaintiffs
23 intended to grow crops on the Property, because Plaintiffs told these Defendants of this intention.

24 57. Plaintiffs contracted for the delivery and spreading of green trimmings to fill ninety
25 (90) acres. Defendants Burrtec and Ecology knew or should have known of Plaintiffs intention to
26 grow crops on the Property, and derive a profit therefrom. Burrtec and Ecology holds themselves out
27 to the public as experts in the agricultural uses of green waste as a soil enhancement for the growth
28 of crops. It would be unreasonable to Burrtec and Ecology not to have known that Plaintiffs intended

1 the green waste as a soil enhancement for growing crops on the Property. Plaintiffs allege that
2 coordinating the distribution and delivery of green waste in an order of this magnitude would/should
3 have alerted Defendants Ecology and Burrtec that Plaintiffs intended to grow crops.

4 58. By virtue of their expertise and the volume of green waste delivered to Plaintiffs'
5 Property, Defendants knew or should have known that Plaintiffs would engage in economic
6 relationships and that such relationships would be disrupted if Defendants failed to monitor the quality
7 of the green trimmings contemplated in the Contract and when they failed to appropriately and
8 immediately clean up the trash upon its discovery.

9 59. A special relationship existed between Plaintiffs and Defendants because Plaintiffs
10 were third party beneficiaries to their transactions with each other, which, directly affected Plaintiffs.
11 The harm to Plaintiffs if Defendants failed to act with reasonable care in monitoring the quality of the
12 green trimmings and prevent trash from being deposited on the Property was easily foreseeable. There
13 is no doubt Plaintiff suffered great injury as a result of Defendant's delivery of trash to the Property.
14 Defendants also owed Plaintiffs and the public a moral and ethical duty not to pollute the Property so
15 as to cause pollution and potential contamination of the ground water. Holding Defendants liable for
16 this conduct will also serve the policy of preventing potential future harm.

17 60. Defendants breached their duty of care when they failed to monitor the quality of the
18 green trimmings and prevent Plaintiffs' Property from being polluted with trash and when they failed
19 to appropriately and immediately clean up the trash upon its discovery.

20 61. As a result of Defendants' wrongful conduct, Plaintiffs' relationship with Davis was
21 disrupted such that Plaintiffs cannot perform under the contract with Davis. Plaintiffs have lost
22 hundreds of thousands of dollars in profits due to his inability to perform the contract with Davis.

23 62. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
24 loss of property set aside for retirement, or for personal care or family care and maintenance.
25 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
26 to Civil Code § 3345(b)(2).
27
28

FIFTH CAUSE OF ACTION

FRAUD

(Defendants Organic, Peter Holladay, Levi Holladay, and DOES 4-10.)

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2
3 63. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 62, inclusive,
4 as though set forth herein in their entirety.

5 64. Defendants represent in brochures and on their website that (1) Organic Ag, Inc. has
6 more than thirty five years of experience spreading green waste and mulch on agricultural lands; (2)
7 Organic Ag, Inc. provides mulch spreading services; (3) mulch and compost made from the harvest
8 of the urban landscape including tree trimmings, lawn clippings, and woody materials can be an
9 integral part of soil management; and (4) these products [mulch and compost] help enhance soil
10 structure and organic content while reducing some of the environmental impacts associated with
11 farming and landscaping. True and correct copies of the brochure provided to Plaintiffs and, the home
12 page of Defendant Organic's website are attached as Exhibit B and herein incorporated by reference.

13 65. During the initial negotiation of the contract, Defendant Peter Holladay specifically
14 represented to Plaintiffs that the quality of the green trimmings would enhance the quality of the soil
15 on the Property for Plaintiffs' intended use of the Property to cultivate and grow olives. Defendant
16 Organic's name constitutes a representation that its products, including the green trimmings to be
17 delivered under the Contract, are in fact organic.

18 66. Immediately after deposit and spreading of the first few loads of clean material,
19 Defendants requested that Plaintiff Pike inspect the material as representative of all the material that
20 would be deposited and spread on the Property. Plaintiff Pike did inspect those first few loads of
21 material, found it to be organic material as Organic and Peter Holladay had represented it would be,
22 and was told by Defendants that all the rest of the material would be of that same quality. Plaintiff
23 Pike reasonably relied on these representations and was not concerned when his health conditions
24 prevented him from inspecting the remaining truckloads of material deposited on the Property.

25 67. However, Plaintiffs now know that Defendants failed to monitor the cleanliness before,
26 during and after delivery of the green trimmings contracted to be delivered and spread on the Property.
27 Defendants intentionally misrepresented that the trimmings would be organic, and failed to disclose
28 the amount of trash mixed in with the green trimmings.

1 68. Plaintiffs allege that these representations by Defendants were false and that when
2 Defendants made these representations, Defendants knew they were false, or made these
3 representations recklessly and without regard for their truth.

4 69. Defendants intended to induce Plaintiffs' reliance on these representations so Plaintiff,
5 Pike, would execute and perform the Contract.

6 70. Plaintiffs reasonably relied on the Defendants' representations and allowed Defendants
7 to deposit the "green trimmings" onto Plaintiffs' Property.

8 71. The representations by the Defendants were material to Plaintiffs. Had Defendants not
9 made these representations, Plaintiffs would not have assented to the terms of the Contract, nor would
10 Plaintiffs have allowed Defendants to deposit and spread the material on the Property.

11 72. Plaintiffs have sustained damages in the amount according to proof at the time of trial.
12 Plaintiffs' reliance on Defendants' representations were a substantial factor in causing the damages
13 that Plaintiffs sustained.

14 73. The conduct and actions of the Defendants were despicable and were performed with
15 malice, fraud and oppression. Consequently, Plaintiffs are entitled to punitive damages pursuant to
16 Civil Code § 3294C.

17 74. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
18 loss of property set aside for retirement, or for personal care or family care and maintenance.
19 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
20 to Civil Code § 3345(b)(2).

21 **SIXTH CAUSE OF ACTION**
22 **FRAUD (PROMISE TO CLEAN PROPERTY)**
23 **(Against Defendants Organic, Peter Holladay, Levi Holladay and Docs 4-10.)**

24 75. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 74, inclusive,
25 as though set forth herein in their entirety.

26 76. Defendants Peter Holladay and Levi Holladay on at least four separate occasions made
27 representations that Organic would clean up the Property assuring Pike that all trash would be
28 removed.

1 84. Defendants intended to induce Plaintiffs' reliance on these representations so Plaintiffs
2 would delay in the filing of this action against Defendants.

3 85. Plaintiffs reasonably relied on the Defendants' representations and delayed the filing of
4 this action until ultimately Plaintiffs realized that Defendants' representations were false.

5 86. The representations made by Defendants were material to Plaintiffs. Had Defendants
6 not made these representations, Plaintiffs would have not delayed in the filing of this action.

7 87. Plaintiffs have sustained damages in the amount according to proof at the time of trial.
8 Plaintiffs' reliance on Defendants' representations were a substantial factor in causing the damages
9 that Plaintiffs sustained.

10 88. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
11 loss of property set aside for retirement, or for personal care or family care and maintenance.
12 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
13 to Civil Code § 3345(b)(2).

14 89. The conduct and actions of the Defendants were despicable and were performed with
15 malice, fraud and oppression. Consequently, Plaintiffs are entitled to punitive damages pursuant to
16 Civil Code § 3294.

17 **SEVENTH CAUSE OF ACTION**
18 **NEGLIGENT MISREPRESENTATION**

19 **(Against Defendants Organic, Peter Holladay, Levi Holladay and Does 4-10.)**

20 90. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 89, inclusive,
21 as though set forth herein in their entirety.

22 91. Plaintiffs allege that Defendants made representations that the material to be delivered
23 to the Property under the Contract would be green trimmings.

24 92. Defendant Organic's name constitutes a representation that its products, including the
25 green trimmings to be delivered under the Contract, are in fact organic.

26 93. Defendant Ecology's name is itself a representation that its products have a positive
27 effect on the ecosystem in which they are used.

1 94. Defendant Burrtec's internet advertising indicates that it is an expert in organic and
2 food waste recycling.

3 95. Defendants made representations that the cleanliness of the green trimmings would be
4 monitored.

5 96. Plaintiffs are informed, believe and thereon allege that when Defendants made these
6 representations, they had no reasonable ground for believing them to be true because Defendants
7 either knew or with the exercise of reasonable diligence should have known that there would be
8 substantial amounts of trash mixed in with the green clippings.

9 97. Defendants made these representations intending to induce Plaintiffs to act in reliance
10 on these representations.

11 98. Had Plaintiffs known the actual facts, they would not entered into the Contract with
12 Defendant for the delivery and spreading of green trimmings on the Property.

13 99. Plaintiffs' reliance on Defendants' representations was justified because Plaintiffs were
14 assured that the cleanliness of the trimmings would be monitored and Organic Ag's name is a
15 representation that its products are in fact organic.

16 100. As a direct and proximate result of the Defendants' misrepresentations, Plaintiffs
17 suffered significant property damage. Plaintiffs have lost the use and enjoyment of his land and
18 property value as a result of the Defendants' conduct. Plaintiffs have been unable to cultivate the
19 Property as an olive grove and been unable to participate in an economically advantageous contract
20 with Davis. Plaintiffs have suffered personal property damage, and been forced to defend an
21 administrative action against them by the San Diego Water Board. Plaintiffs have been damaged in
22 an amount that exceeds this court's jurisdictional minimums, the total of which is currently unknown
23 but will be proven at trial.

24 101. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
25 loss of property set aside for retirement, or for personal care or family care and maintenance.
26 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
27 to Civil Code § 3345(b)(2).

28

EIGHTH CAUSE OF ACTION
TRESPASS TO LAND
(All Defendants and DOES 4-10.)

1
2 102. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 101,
3 inclusive, as though set forth herein in their entirety.

4 103. Plaintiff, Riverside Financial, is (and all times relevant hereto was) the owner and
5 possessor of the Property.

6 104. Defendants' failure to monitor the cleanliness of the green trimmings and failure to
7 appropriately and immediately clean-up the trash deposited on the Property within those green
8 trimmings caused severe property damage.

9 105. The continued presence of the trash on the Property constitutes an unreasonable
10 interference with Plaintiffs' use and enjoyment of the Property. The Defendants' continued failure to
11 remove the trash and clean-up the Property constitutes a continuing trespass that has caused, and
12 continues to cause, substantial harm to Plaintiffs.

13 106. As a direct and proximate result of the Defendants' continuing trespass, Plaintiffs have
14 been damaged as follows: (1) damage to the Property requiring clean-up (2) loss of reasonable use
15 and enjoyment of the Property including loss of business and lost profit; (3) loss of market value of
16 the Property; (4) daily damages for each day the trespass continues; (5) and other damages to be
17 proven at trial. In addition hereto, Plaintiffs are entitled to have the Property restored to its original
18 state, as requested herein.

19 107. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
20 loss of property set aside for retirement, or for personal care or family care and maintenance.
21 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
22 to Civil Code § 3345(b)(2).

23
24 **NINTH CAUSE OF ACTON**
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, et seq.
(Against All Defendants and Does 4-10.)

25 108. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 107,
26 inclusive, as though set forth herein in their entirety.

1 109. Plaintiffs are informed, believe, and thereon allege that Defendants committed unlawful
2 business practices as set forth herein. The Defendants' actions offended established public policies.
3 The Defendants' actions were also immoral, unethical, oppressive, unscrupulous, unlawful and
4 injurious to consumers. And the gravity of the harm outweighs the utility of the Defendants' conduct
5 alleged herein, as there was no reasonable justification or motive for their acts and/or omissions.

6 110. The Defendants' failure to monitor the quality of the green trimmings and resulting
7 deposit and spreading of trash on Plaintiffs' Property was unlawful and a violation of local and state
8 law, and constitutes unlawful business practices within the meaning of Business and Professions Code
9 Section 17200 *et seq.* Defendants violated the following laws: Riverside County Ordinance No. 689,
10 Riverside County Code §§ 8.12.010 & 13.12.060, and California Water Code §§ 13260 & 13264 *et*
11 *seq.*

12 111. The unlawful conduct herein alleged, is also part of Defendants Burrtec and Ecology's
13 general business practices. These practices exist because Defendants Burrtec and Ecology expect that
14 consumers will rely on their expertise and not inspect the green trimmings prior to delivery.

15 112. The unlawful conduct as herein alleged, is part of Defendant Organic Ag., Peter
16 Holladay and Levi Holladay's general business practices. The practices exists in part because these
17 Defendants' expect that few adverse consequences will flow from their misrepresentations to potential
18 customers regarding the quality of material, including substantial amounts of trash contained within
19 the green trimmings, Defendants would obtain and spread on customers' property.

20 113. The Defendants owed Plaintiffs certain specific statutory duties as set forth within
21 California Business and Professions Code § 17200, *et seq.* Defendants also owed Plaintiffs and the
22 public a moral and ethical duty not to pollute the Property and potentially contaminate the ground
23 water.

24 114. Defendants' statutory duties require them to refrain from any practice that is unlawful,
25 offends an established public policy, is immoral, unethical, oppressive, unscrupulous, or substantially
26 injurious to consumers.

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1 115. Defendants breached their statutory duties pursuant to Business and Professions Code
2 § 17200, *et seq.* by unlawfully delivering and spreading trash at the Property in violation of local and
3 state law as alleged above herein.

4 116. Plaintiffs allege that the only way to ensure that Defendants cease these unlawful
5 business practices is for the court to issue an injunction ordering Defendants to cease these unlawful
6 practices and to return the Property to the condition it was prior to the dumping of several thousand
7 truckloads of green waste containing large amounts of trash.

8 117. As a direct and proximate result of the acts and omissions of the Defendants, and each
9 of them, Plaintiffs have suffered property damage along with monetary damages, and costs in an
10 amount currently incalculable, to be proved at trial.

11 118. As a direct and proximate result of the acts and omissions of the Defendants, Plaintiffs
12 have been forced to obtain counsel, and is entitled to attorneys' fees and costs pursuant to California
13 Code of Civil Procedure section 1021.5, and any other applicable law.

14 119. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
15 loss of property set aside for retirement, or for personal care or family care and maintenance.
16 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
17 to Civil Code § 3345(b)(2).

18 **TENTH CAUSE OF ACTION**
19 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17500, *et seq.***
20 **(Against Defendants Organic, Peter Holladay, Levi Holladay, and DOES 4-10.)**

21 120. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 119,
22 inclusive, as though set forth herein in their entirety.

23 121. Defendant Organic provided Plaintiffs advertising material stating that its operation
24 helped the environment by putting organic material back onto agricultural lands and keeping it out of
25 landfills. The brochure states that the mulch Organic deposits will enhance the organic content of the
26 soil.

1 122. Defendant Organic owns and operates a website which contains advertisements and
2 general information about the company. Defendant Organic's website can be found on the internet
3 at the following web-address: www.organicspreading.com.

4 123. On Defendant Organic's website, Organic published an advertisement that contained
5 the following representations: (1) Organic Ag, Inc. has more than thirty five years of experience
6 spreading green waste and mulch on agricultural lands; (2) Organic Ag, Inc. provides mulch spreading
7 services; (3) mulch and compost made from the harvest of the urban landscape including tree
8 trimmings, lawn clippings, and woody materials can be an integral part of soil management; and (4)
9 these products [mulch and compost] help enhance soil structure and organic content while reducing
10 some of the environmental impacts associated with farming and landscaping. True and correct copies
11 of the Organic brochure and the home page of Defendant Organic's website are attached as Exhibit
12 B and herein incorporated by reference.

13 124. Defendant Organic's choice of name is itself an advertisement which represents that its
14 products are organic.

15 125. Plaintiffs are informed, believe and thereon allege that the purpose of these
16 advertisements was to induce any person who read it to contract/hire Defendant Organic to deliver
17 and spread green waste and mulch as described in the advertisement.

18 126. Plaintiffs are informed, believe and thereon allege that the Defendants' representations
19 in the advertisements were known, or should have been known by exercising reasonable care, to be
20 untrue and misleading, and were made to deceive Plaintiffs and any other person who might read the
21 advertisements.

22 127. Plaintiffs believed and relied upon the representations made in the advertisements, more
23 specifically the statements describing the materials which the green waste was composed of and the
24 enhancing effect the green waste has on soil structure and the environment.

25 128. The representations which Defendant Organic made in its advertisements were false
26 and misleading in that Defendant Organic deposited substandard material including substantial
27 amounts of trash on the Property severely damaging the soil.

1 129. As a direct and proximate result of the Defendants' false representations and Plaintiffs'
2 reliance on them, Plaintiffs have been damaged in an amount that exceeds this court's jurisdictional
3 minimums, the total of which is currently unknown but will be proven at trial.

4 130. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
5 loss of property set aside for retirement, or for personal care or family care and maintenance.
6 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
7 to Civil Code § 3345(b)(2).

8 **ELEVENTH CAUSE OF ACTION**
9 **PRIVATE NUISANCE – CIVIL CODE § 3479**
10 **(All Defendants and DOES 4-10.)**

11 131. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 130,
12 inclusive, as though set forth herein in their entirety.

13 132. The Defendants' failure to monitor the quality of the green trimmings caused damage
14 to the soil on the property and has interfered with Plaintiffs' comfortable enjoyment of the Property.

15 133. An ordinary person would be reasonably annoyed or disturbed by the conditions which
16 exist at the Property due to the Defendants' actions alleged herein.

17 134. The seriousness of the harm resulting from the conditions at the Property caused by the
18 Defendants outweighs the social utility of the Defendants' conduct.

19 135. Plaintiffs did not consent to the Defendants' placing trash on the Property, and was led
20 to believe that the green trimmings would be organic.

21 136. The Defendants' failure to monitor the quality of the green trimmings, as well as their
22 failure to remove all the trash, is a substantial factor in causing Plaintiffs harm and constitutes an
23 unreasonable interference with Plaintiffs' use and enjoyment of the Property.

24 137. The Defendants' continued failure to remove the trash and clean-up the Property
25 constitutes a continuing nuisance that has caused, and continues to cause, substantial harm to
26 Plaintiffs.

27 138. As a result of the nuisance created and maintained by the Defendants, Plaintiffs have
28 been damaged as follows: (1) damage to the Property requiring clean-up (2) loss of reasonable use

1 and enjoyment of the Property including loss of business and profit; (3) loss of market value of the
2 Property; (4) daily damages for each day the nuisance is not abated; (5) and other damages in an
3 amount to be proven at trial.

4 139. The wrongful conduct of Defendants, and the irreparable harm that will be caused if the
5 nuisance is not abated entitle Plaintiffs to a mandatory injunction requiring Defendants to abate the
6 nuisance and return the Property to the condition that existed prior to Defendants' wrongful dumping
7 of substandard material on the Property.

8 140. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
9 loss of property set aside for retirement, or for personal care or family care and maintenance.
10 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
11 to Civil Code § 3345(b)(2).

12 **TWELFTH CAUSE OF ACTION**
13 **PUBLIC NUISANCE – CIVIL CODE §§ 3480, 3493**
14 **(All Defendants and DOES 4-10.)**

15 141. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 140,
16 inclusive, as though set forth herein in their entirety.

17 142. The Defendants' failure to monitor the quality of the green trimmings and their failure
18 to remove all trash, has resulted in substantial amounts of trash being scattered throughout the
19 surrounding neighborhood. Surrounding neighbors have complained to Plaintiffs that they discovered
20 plastic bags and other debris throughout their properties blown there from Plaintiffs' Property.

21 143. The seriousness of the harm resulting from the conditions at the Property caused by the
22 Defendants outweighs the social utility of the Defendants' conduct.

23 144. The Defendants' failure to monitor the quality of the green trimmings, and their failure
24 to remove all the trash, created conditions at the Property which have affected a substantial number
25 of people at the same time, including nearby landowners.

26 145. Plaintiffs suffered harm different from the harm suffered by the general public in that
27 Plaintiffs intended to grow and sell a crop grown on the land and can no longer do so because of the
28

1 condition of the soil at the Property. Until the trash is removed and the soil is restored to its prior
2 condition, Plaintiffs are and continue to be damaged.

3 146. Because of the nuisance created and maintained by the Defendants, Plaintiffs have been
4 damaged as follows: (1) damage to the Property requiring clean-up (2) loss of reasonable use and
5 enjoyment of the Property including business and profit; (3) loss of market value of the Property; (4)
6 daily damages for each day the nuisance is not abated; and (5) other damages in an amount to be
7 proven at trial.

8 147. The wrongful conduct of Defendants, and the irreparable harm that will be caused if the
9 public nuisance is not abated, entitle Plaintiffs to a mandatory injunction requiring Defendants to
10 abate the nuisance and return the Property to the condition that existed prior to Defendants' wrongful
11 dumping of substandard material on the Property.

12 148. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
13 loss of property set aside for retirement, or for personal care or family care and maintenance.
14 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
15 to Civil Code § 3345(b)(2).

16 **THIRTEENTH CAUSE OF ACTION**
17 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
18 **(Against Defendants Organic, Peter Holladay, Levi Holladay and Does 4-10.)**

19 149. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 148,
20 inclusive, as though set forth herein in their entirety.

21 150. Plaintiffs are informed, believe and thereon allege, that Defendants are, and at all
22 relevant times mentioned herein were, merchants with respect to the goods of the kind that Defendants
23 delivered to Plaintiffs.

24 151. In the Contract between Plaintiffs and Defendants was an implied warranty that the
25 goods would be merchantable.

26 152. Defendants breached the implied warranty of merchantability in that they delivered
27 green trimmings with substantial amounts of trash, which could not pass without objection in the trade
28 under the Contract description.

1 167. Plaintiffs allege that Defendants knew and intended that the green waste would be
2 purchased and used without inspection for defects by Plaintiffs.

3 168. Plaintiffs are informed, believe and thereon allege that Defendants knew or should have
4 known that the green waste was unsafe for its intended use by reason of defects in its manufacturing
5 process, compounding, inspection, advertising, promotion, delivery and distribution, and that the
6 product could cause property damage.

7 169. Plaintiffs contracted with Defendants for the delivery of green waste on October 24,
8 2011, and thereafter sustained the injuries and damages.

9 170. Prior to the delivery and spreading of green waste at the Property, Plaintiffs could not
10 determine the condition of the green waste and were not aware of any defects at any time prior to the
11 injuries suffered by them.

12 171. Plaintiffs are informed, believe and thereon allege that despite the Defendants'
13 knowledge that the green waste was defective and unsafe for its intended purpose, Defendants
14 nevertheless marketed, promoted, advertised, compounded, inspected, delivered and distributed
15 defective green waste to Plaintiffs. The green waste which Defendants marketed, promoted,
16 advertised, compounded, inspected, distributed and delivered to Plaintiffs' Property contained both
17 manufacturing defects and design defects. The defective product failed to perform as safely as an
18 ordinary consumer would have expected it to perform when used or misused in an intended or
19 reasonably foreseeable way and such failure was a substantial factor in causing harm to Plaintiffs.

20 172. As a proximate result of the manufacturing and design defects of the product which
21 carried such defects when they left the possession of Defendants, Plaintiffs have been damaged as
22 follows: (1) damage to the Property requiring clean-up (2) loss of reasonable use and enjoyment of
23 the Property including loss of business and lost profit; (3) loss of market value of the Property; and
24 (4) other damages to be proven at trial.

25 173. The Defendants' conduct caused Plaintiff Pike, a senior citizen, to suffer a substantial
26 loss of property set aside for retirement, or for personal care or family care and maintenance.

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1 Consequently, Defendants are subject to civil penalties and Plaintiffs are entitled to damages pursuant
2 to Civil Code § 3345(b)(2).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray for judgment against all Defendants and DOES 4 through 10,
5 as follows:

6 ON THE FIRST CAUSE OF ACTION:

- 7 1. For actual damages, including the amount of the full clean-up and soil remediation costs
8 and all other actual damages in an amount according to proof at the time of trial;
- 9 2. For all consequential damages in an amount according to proof at the time of trial; and
- 10 3. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2).

11 ON THE SECOND CAUSE OF ACTION:

- 12 4. For all actual damages, including the amount of the full clean-up and soil remediation
13 costs and all other actual damages in an amount according to proof at the time of trial;
- 14 5. For all consequential damages in an amount according to proof at trial; and
- 15 6. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2).

16 ON THE, THIRD, SEVENTH, ELEVENTH, TWELFTH, THIRTEENTH, AND
17 FOURTEENTH CAUSES OF ACTION:

18 For all compensatory and special damages, including interest thereon, according to proof at
19 trial; and

20 For all damages and civil penalties pursuant to Civil Code § 3345(b)(2).

21 ON THE FOURTH CAUSE OF ACTION:

22 7. For all compensatory and special damages, including interest thereon, according to
23 proof at trial;

24 8. For all economic damages including lost profits; and

25 9. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2).

26 ON THE FIFTH CAUSE OF ACTION:

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1 10. For all compensatory and special damages, including interest thereon, according to
2 proof at trial;

3 11. For all consequential damages;

4 12. For punitive damages to punish Defendants for their despicable actions that were
5 performed with malice, fraud and oppression; and

6 13. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2).

7 ON THE SIXTH CAUSE OF ACTION:

8 14. For all compensatory and special damages, including interest thereon, according to
9 proof at trial;

10 15. For all consequential damages;

11 16. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2);

12 17. For all punitive damages to punish defendants for their despicable actions that were
13 performed with malice, fraud and oppression; and

14 ON THE EIGHTH CAUSE OF ACTION:

15 18. For all compensatory and special damages, including interest thereon, according to
16 proof at trial;

17 19. For a mandatory injunction ordering Defendants to clean-up and remove all trash on
18 the Property and restore the soil to its original condition; and

19 20. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2).

20 ON THE NINTH CAUSE OF ACTION:

21 21. For an injunction pursuant to Cal. Bus. & Prof. Code § 17203 ordering Defendants to
22 cease all unlawful, unfair or fraudulent business acts or practices;

23 22. For a mandatory injunction requiring Defendants to restore the Property to its original
24 condition;

25 23. For restitution and disgorgement of profits acquired by Defendants through unfair trade
26 practices;

27 24. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2); and

28

1 25. Attorneys' fees and costs of litigation.

2 ON THE TENTH CAUSE OF ACTION:

3 26. For all compensatory and special damages, including interest thereon, according to
4 proof at trial;

5 27. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2); and

6 28. For attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5.

7 ON THE FIFTEENTH CAUSE OF ACTION

8 29. For all compensatory damages including interest thereon, according to proof at trial;
9 and

10 30. For all damages and civil penalties pursuant to Civil Code § 3345(b)(2).

11 ON ALL CAUSES OF ACTION:

12 31. Costs of suit incurred;

13 32. For available interest; and

14 33. For such other and further relief as the Court deems just and proper.

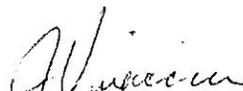
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16 DATED: 1/8/16

LOUNSBERY FERGUSON ALTONA & PEAK, LLP

17

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By: 
ERICK R. ALTONA
JACQUELINE S. VINACCIA
MATTHEW C. STARR
Attorneys for Plaintiffs James Pike
and Riverside County Financial Group, LP

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EXHIBIT "4"

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10 ATTORNEYS FOR ECOLOGY AUTO PARTS, INC.

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

18 IN THE MATTER OF:
19 REVISED TENTATIVE ADDENDUM TO
20 CLEANUP AND ABATEMENT ORDER
21 NO. R9-2013-0122 AGAINST JAMES PIKE

) PLACE ID: 793882 MELBOURN
)
) DECLARATION OF SAUL GRACIAN
) IN SUPPORT OF ECOLOGY AUTO
) PARTS, INC.'S OPPOSITION REVISED
) TENTATIVE ADDENDUM
)

22 I, Saul Gracian, hereby declare as follows:

23 1. I am a Manager at Ecology Auto Parts, Inc. As Manager, I have responsibility for
24 overseeing all trucking operations of the business. Included among my responsibilities are
25 managing business and contractual relationships with other companies for the transportation of
26 green waste, as well as overseeing the execution of work under those relationships. I am in
27 charge of all trucks that leave facilities which process green waste materials, including those
28 trucks that delivered Green Trimmings to the property located at 39801 Reed Valley Road,
Aguanga, California 92563 (the "Property"), which is the subject of Cleanup and Abatement
Order ("CAO") R9-2013-0122. I know the following of my own personal knowledge. If called
as a witness, I could and would competently testify to the matters discussed herein.

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EXHIBIT “5”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

-----)
JAMES PIKE,)
)
Plaintiff,)
)
vs.) No. MCC1401513
)
ORGANIC AG, INC.; PETER)
HOLLADAY, and DOES 1 through)
10,)
)
Defendants.)
-----)

DEPOSITION OF PETER HOLLADAY
Temecula, California
Monday, March 20, 2017

Reported by:
RENEE A. PACHECO, RPR, CLR
CSR No. 11564
Job No. 2563216
PAGES 1 - 241

1 Q Did Ecology spread any of the material at the
2 property?

3 A No.

4 Q Did Organic Ag instruct Ecology where to
5 deliver the material to the property?

6 A Yes.

7 Q Did you inform anyone at Ecology about
8 Mr. Pike's intentions to grow olive trees at the
9 property?

10 A I don't recall any conversations I had with
11 Ecology over that.

12 Q Did you inform anyone at Ecology about
13 Mr. Pike's relationship with UC Davis?

14 A I don't -- I don't recall discussing anything
15 about UC Davis.

16 Q That's all I have. Thank you.

17

18 FURTHER EXAMINATION

19 BY MS. VINACCIA:

20 Q Mr. Holladay, just a few follow-ups.

21 A Uh-huh.

22 Q Do you recall Mr. Pike ever requesting that you
23 provide material to his property thicker than what you
24 normally would deliver?

25 A Requesting it -- say the question again.

Page 229

EXHIBIT "6"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

JAMES PIKE, et al.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. MCC1401513
)	
ORGANIC AG, INC.; PETER HOLLADAY)	
and DOES 1 through 10,)	
)	
Defendants.)	
)	
_____)	
AND RELATED CROSS-ACTIONS)	
_____)	

DEPOSITION OF JAMES PIKE
VOLUME III, PAGES 214 - 317
WEDNESDAY, MARCH 15, 2017, 9:10 A.M.
ESCONDIDO, CALIFORNIA

Reported by Lorie Rhyne, CSR No. 12905
CLS Job No. 66012

CENTEXTLEGAL.COM - 855.CENTEXT

1 A. No, sir, I did not.

2 Q. So that issue was resolved?

3 A. It never came back.

4 Q. Did you ever have any issues with code
5 enforcement at the property?

6 A. I think so. On the houses that were there,
7 they said they were not permitted.

8 Q. When was that?

9 A. It would have been about the same year.

10 Q. How was that issue resolved if it was?

11 A. And a septic tank as well. They inspected
12 the septic tank and found it to be all right. There
13 was a mobile home there that was put in in 1983 is my
14 understanding. It's still there. They said it wasn't
15 permitted, and Dan Pike said it was permitted. And
16 they finally said they couldn't find it in the records,
17 and they dropped the case.

18 Q. Okay.

19 A. And a barn, too. They said it wasn't. It
20 was there since 1937.

21 Q. Any other issues with county code
22 enforcement relating to the property?

23 A. None that I'm aware of.

24 Q. Now, you testified that -- strike that.

25 You talked earlier about the waterways, that

1 you performed some work in the waterways. What do you
2 mean by "waterways"? Can you describe what you're
3 talking about?

4 A. Yes. I'll do the best I can.

5 The property, if I may describe it, it is
6 1/4 mile in width. It's 1 mile in length. There is a
7 mountain behind the two homes that are left. It climbs
8 about 700 feet above this flat land of the surface
9 right there (indicating). And from those houses that
10 are currently there where we call now "the flat land,"
11 it drops 75 feet from there to the street. From the --
12 there's -- from that 700 foot of the mountain or
13 720 feet of the mountain, the water comes down.

14 There's a channel of water. It runs the length of the
15 property to two culverts that go underneath the street.

16 Then there are three -- one, two -- three
17 other tributaries that would run down for when it
18 rains. It goes into that main stream. Organic AG
19 filled those up with the mulch, and we took those and
20 cleaned those tributaries and the main stream out and
21 went down to the sand that was there before in the
22 dirt.

23 Q. And how did -- Organic AG cleaned -- strike
24 that.

25 How did you clean the tributaries in the

1 main stream?

2 A. I had a company come in with skip loaders,
3 and I rented a bulldozer with a big blade on it and our
4 tractors to pull that away and clean the area -- that's
5 the best I know how to describe it -- and put it
6 15 feet -- I think we told them to put it 15 feet back,
7 clear the area. So there would be no mulch of any kind
8 in that area of where the waterways were.

9 Q. Were you able to determine how thick the
10 mulch was that was placed in the waterways?

11 A. I don't recall in the waterways.

12 Q. Do you have any estimate?

13 A. Over the other areas, it was about 19 inches
14 in depth.

15 Q. And what about -- when you're saying "the
16 other areas," what are you referring to?

17 A. The fields.

18 Q. What about the waterways?

19 A. Again, I don't recall. Probably the same
20 depth.

21 Q. And what did you do with the material that
22 you removed from the waterways?

23 A. Put it on the rest of the land, just scraped
24 it up, cleaned it up so it would be -- the waterways
25 would be clear, just dressed it back up, if that's a

EXHIBIT “7”

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6 Attorneys for BURRTEC WASTE INDUSTRIES, INC.
AND ECOLOGY AUTO PARTS, INC.

10 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
11 SAN DIEGO REGION

13 IN THE MATTER OF:) PLACE ID: 793882 MELBOURN
14)
15 REVISED TENTATIVE ADDENDUM TO) DECLARATION OF MARTIN
16 CLEANUP AND ABATEMENT ORDER) HAMANN IN SUPPORT OF BURRTEC
17 No. R9-2013-0122 AGAINST JAMES PIKE) WASTE INDUSTRIES, INC.'S AND
18) ECOLOGY AUTO PARTS, INC.'S
19) OPPOSITION TO REVISED
20) TENTATIVE ADDENUM

19 I, Martin Hamann, hereby declare as follows:

- 20 1. I know of the following information of my own personal knowledge. If called as
21 a witness, I could and would competently testify to the matters discussed herein.
- 22 2. I am a principal hydrogeologist for SoundEarth Strategies, an environmental
23 consulting firm in Irvine, California. I have held this position for approximately two years.
- 24 3. I have approximately 29 years of environmental consultant experience. I am
25 registered in the State of California as a Professional Geologist (CA P.G. 5482), Certified
26 Hydrogeologist (CA C.H.G. 203) and Qualified Storm Water Pollution Prevention Plan
27 Developer (CA Q.S.D. G0582). I have been recognized as an expert in hydrogeology and
28 environmental matters for various matters in the State of California. I have worked on hundreds

1 of environmental investigations in the State of California as well as other parts of the world and
2 have the requisite experience to provide opinions on the matters presented in this case.

3 4. I visited the property located at 39801 Reed Valley Road, Aguanga, California
4 92563 (the "Property"), which is the subject of Cleanup and Abatement Order ("CAO") R9-
5 2013-0122, on October 18 2016 and February 14, 2017.

6 5. It is my understanding that in 2013, individuals on behalf of Mr. Pike and Organic
7 Ag removed Green Trimmings and other materials that the Regional Water Quality Control
8 Board ("RWQCB") has defined as "waste" from the waterways on the Property. The CAO
9 defines the "tributaries to Wilson Creek" as "waters of the state" at issue in the CAO.

10 6. It is my understanding that no other substantive removal actions have occurred at
11 the Property since the efforts undertaken in 2013 to remove material from the Wilson Creek
12 tributaries located on the Property.

13 7. I inspected the Property on October 18, 2016 and February 14, 2017. During that
14 inspection, I personally evaluated the conditions of the Green Trimmings and their proximity to
15 the tributaries to Wilson Creek. I observed that all of the Green Trimmings were at least fifteen
16 feet from the Wilson Creek tributaries. There was no evidence of Green Trimmings or trash
17 either in the Wilson Creek tributaries or within fifteen feet of the Wilson Creek tributaries during
18 my inspection of the Property.

19 8. Based on my observations at the Property and my experience, it is my opinion
20 that Green Trimmings or other alleged waste material placed 200 feet or farther away from the
21 Wilson Creek tributaries would not have reasonably been washed or blown into the Wilson
22 Creek tributaries. During the 2016-2017 rainy season, San Diego County and the Property
23 experienced the most significant rain season since 2013. If Green Trimmings or other waste did
24 not wash or blow into the Wilson Creek tributaries, or did not wash or blow within fifteen feet of
25 the Wilson Creek tributaries during this past year of significant storms, it is my opinion that such

26 ///

27 ///

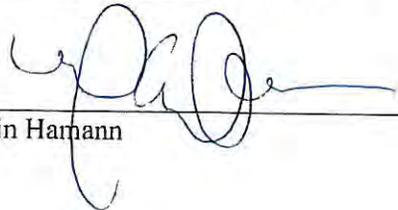
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material would not have been blown or washed into the Wilson Creek tributaries from more than 200 feet away.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 24th day of May, 2017 at IRVINE, California.



Martin Hamann

Attachment 9



EDWARD G. BROWN, JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL QUALITY

2017 JUN -9 PM 3:02

San Diego Regional Water Quality Control Board

TO: David W. Gibson
Executive Officer / Head of the Advisory Team

FROM: 
James G. Smith
Assistant Executive Officer / Head of the Prosecution Team

DATE: June 9, 2017

SUBJECT: Prosecution Team Response to Ecology Auto Parts, Inc. and Burrtec Waste Industries, Inc.'s Comments on Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122, Pike/Aguanga. PIN: CW-793882

On May 26, 2017, Ecology Auto Parts, Inc. (Ecology) and Burrtec Waste Industries, Inc. (Burrtec) each submitted comments on Revised Tentative Addendum No. 1 to Cleanup and Abatement Order No. R9-2013-0122 (CAO) to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board). Ecology and Burrtec object to their proposed designation as a responsible party in the CAO.

Ecology Auto Parts, Inc.

Ecology claims that it did not discharge material within 200 feet of the unnamed tributary to Wilson Creek (Declaration of Gracian). Additionally, Gracian states that it was physically impossible to dump waste into the tributary due to loose dirt and steep slopes in the vicinity of the tributary which would have resulted in trucks tipping over or getting stuck. Based upon San Diego Water Board staff observations during site visits, we disagree. Although the site has a slope to it, it is anything but steep and is considered to be fairly flat. Additionally, during the dry season most people would not realize if they were standing in the tributary or not. The entire site is only 1,200 feet wide (North to South) with the tributary splitting the width in half in the eastern portion. Therefore it is highly likely that the waste deposits could have been made directly into the tributary, within 200 feet of it, or where it probably could enter into the tributary, "waters of the state."

On page 6 of the May 26, 2017, submission, counsel for Ecology states, "Ecology transported green trimmings [waste] to a property and unloaded them ..." This would give rise to arranger CERCLA¹ liability, and Water Code section 13304 is undoubtedly broader than federal environmental authority. The argument that it was logistically difficult for Ecology trucks to drive near tributaries does not rule out the likelihood that materials were deposited where they could enter into waters of the state, and contradicts San Diego Water Board staffs' description of the site. Further, the contractual relationship between Ecology and Organic Ag does not prevent Ecology from being named as a responsible party, even if it may have an indemnity claim against Organic Ag. Again, the San Diego Water Board does not attribute liability among parties, but looks at the actions of each party relative to the site at issue.

Burrtec Waste Industries, Inc.

Burrtec also submitted comments on May 26, 2017, despite having submitted prior comments. While the Prosecution Team would ask that the May 26, 2017, submittal be excluded from the administrative record for this matter, there is nothing newly substantive in this submission that is different from Ecology's arguments, refuted above. The Prosecution Team disagrees with Burrtec's conclusion that "the Water Code does not impose liability on a transporter." (page 5) In many ways, Water Code section 13304 is broader than both the Hazardous Substance Account Act and CERCLA, and in this instance Burrtec did not merely transport materials from point A to point B, but placed them on the property in question. The Prosecution Team, through its own investigation and observations about the property, disagrees with the conclusion that the depositions made by the hauling companies was so exact as to avoid placing materials in locations that give rise to liability.

Recommendation

The Prosecution Team has nothing further to add, and recommends that the administrative record on this matter be closed. If anything further is needed by the Advisory Team or the San Diego Water Board in consideration of this matter, please contact all parties. The Prosecution Team recommends that the Revised Tentative Addendum be adopted as recommended.

¹ Comprehensive Environmental Response Compensation & Liability Act, 42 U.S.C. 9601 et seq.

JGS:jem:ftm

Copies via email to:

1. Erick Altona, Lounsbery, Ferguson, Altona & Peak, LLP, era@lfap.com
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4. Brent Clemmer, Slovak, Baron, Empey, Murphy & Pinkney, LLP, clemmer@sbemp.com
5. Richard Crockett, Burrtec Waste Industries, Inc., richard@burrtec.com
6. Regan Furcolo, Walsh, McKean, Furcolo, LLP, rfurcolo@wmflp.com
7. John Griffin, Green & Hall, LLP, jgriffin@greenhall.com
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14. Olufisayo Osibodu, San Diego Water Board osibodu@waterboards.ca.gov
15. Roger Mitchell, San Diego Water Board, rmitchell@waterboards.ca.gov
16. Greg Reyes, Riverside Area Local Solid Waste Enforcement, gireyes@rivcocha.org

Primary Indexing Number (PIN): CW-793882

Attachment 10

**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"¹ 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 13267,² Investigations; inspections, Chapter 4,

¹ As defined in Water Code section 13050(e).

² 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 13260³ 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,⁴ contamination or nuisance.⁵

³ 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.

⁴ “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).

⁵ “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

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:⁶
 - 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:

⁶ 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.⁷ 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:

⁷ 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 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

RAWHIDE RD

RD

RUNSIN RD

ANDY CIR

REED VALLEY RD

BEGONIA ST

CENTENNIAL ST

CENTENNIAL ST

LAKE VISTA DR



0

1,467 Feet





Attachment 2 NOV



EDMUND G. BROWN, JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

June 3, 2013

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

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

Certified Mail – Return Receipt Requested

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

In reply refer to / attn:
793882:RMitchell

Subject: Notice of Violation No. R9-2013-0089, Parcels Nos. 571280042¹ 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.

Sincerely,

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

¹ 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

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

(via email) Leslie Graves, State Water Resources Control Board, Land Disposal Program Manager
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: 571-280-042¹

and

Prairie Avenue Gospel Center, Inc.
C/O Dan Pike
5965 Waterfront Place
Long Beach, CA 90803
APN: 571-280-014²

**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.³ A complete *General Information Form for Waste Discharge Requirements* (Form 200),⁴ must contain sufficient information for the San Diego Water Board to prescribe waste discharge requirements (WDRs).

¹ 39801 Reed Valley Road, Aguanga CA. 92536

² No physical street address on record.

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

⁴ 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 5⁵ – Waste haulers at Site No. 2



Photograph 6⁵ – 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.

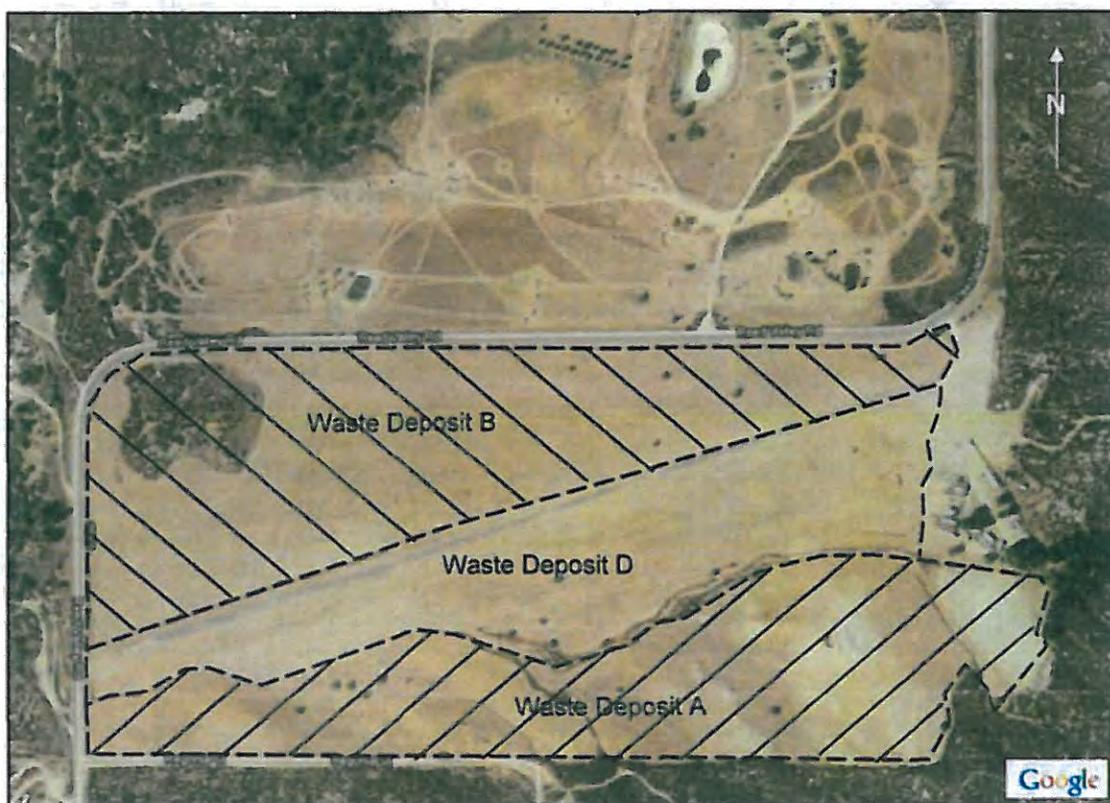


Figure 1 – Aerial view of Site No. 1 (~152 acres).

⁵ Photographs provided by Reed Valley complainants.



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



Figure 2 – Aerial view of Site No. 2.



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 nuisance⁶ in violation of Waste Discharge Prohibitions in the San Diego Basin Plan.

⁶ Pursuant to Water Code, section 13050(m).

The Water Code section 13260 requires that you file a ROWD⁷ with the San Diego Water Board. The ROWD must contain, but may not be limited, to: a complete Form 200,⁸ the application fee⁹ 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

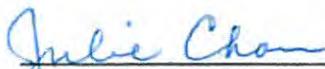
These violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of up to \$5,000 per day of violation (Water Code section 13350) and/or any of the following enforcement actions:

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.



Julie Chan, Chief
Cleanup and Land Discharge Branch

JAC:jro:rm

Enclosure: Unpermitted Waste Discharge Location Map

⁷ As required by Water Code, sections 13260 and 13264.

⁸ http://www.waterboards.ca.gov/publications_forms/forms/docs/form200.pdf

⁹ 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



Attachment 11

**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 45275 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

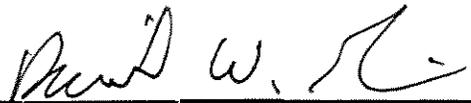
deposit of green waste and green waste spreading activities violated Water Code section 13260³ because ~~the Dischargers~~ Mr. Pike and PAGC failed to file a report of waste discharge (ROWD) with the San Diego Water Board and receive Waste Discharge Requirements prior to the deposit of green waste and 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,⁴ contamination or nuisance.⁵ 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:



DAVID W. GIBSON
Executive Officer