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

September 3, 2010

Bob Marino, General Manager of Operations
DG Fairhaven Power LLC - a subsidiary of
DG Energy Solutions LLC
97 Bay Street
Samoa, California 95564

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

Dear Mr. Marino:

NOTICE

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

Northern California River Watch (“River Watch”) hereby places DG Fairhaven Power LLC (hereinafter referred to as “the Discharger”,) on notice that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board’s Basin Plan, as exemplified by violations of permit conditions or limitations in the Discharger’s National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0024571 and violations of General Permit No. CAS000001 for Discharges of Storm Water Associated with Industrial Activities, which regulates the Discharger’s stormwater discharges.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this NOTICE is the Regional Water Quality Control Board, North Bay Region ("RWQCB"). The RWQCB has issued NPDES Permit No. CA0024571, which regulates the Discharger's point source discharges to waters of the United States.

This NOTICE also addresses the Discharger's failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges, its illegal discharges of contaminated stormwater from its facilities as further described in this NOTICE, its discharges of non-storm water pollutants from those facilities in violation of effluent limitations, and its violations of the procedural requirements of NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ, WDID No. 1B12S016487. issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p), (hereinafter "the General Permit").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified the NPDES Permit for the Discharger's facility and the General Permit and has specifically identified the applicable permit standard, limitation or condition being violated. A violation of either Permit is a violation of the CWA.

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

Most often, the Permit limitation being violated is self-explanatory and an examination of its language is sufficient to inform the Discharger, especially since the Discharger is responsible for complying with that Permit condition. In addition, River Watch has set forth narratives below describing with particularity the activities leading to violations and incorporating by reference the Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

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

The person or persons responsible for the alleged violations is DG Fairhaven Power LLC - a subsidiary of DG Energy Solutions LLC, identified as the Discharger and those of its employees responsible for compliance with the Permits.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in Permits regulating the Discharger's activities and also in records created and/or maintained by or for the Discharger which relate to the Discharger's power generation facility and related activities as further described in this NOTICE.

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

River Watch has examined both RWQCB and the Discharger's records for the period from August 25, 2005 through August 25, 2010. The range of dates covered by this NOTICE is from August 25, 2005 through August 25, 2010. River Watch will from time to time update this NOTICE to include all violations which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous and therefore each day constitutes a violation.

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

The full name, address, and telephone number of the person giving notice is Northern California River Watch, referred to in this NOTICE as "River Watch," a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 500 North main Street, Suite 110, Sebastopol, CA 95472, Telephone 707-824-4372.

HISTORY OF OPERATIONS

The Discharger owns and operates a 17 megawatt, woodwaste-fired, steam-electric power generation facility, the Fairhaven Power Company plant (hereinafter "FPP,") located at 97 Bay Street, in Samoa, an unincorporated community in Humboldt County, California, adjacent to Humboldt Bay. The FPP burns wood waste to fuel a steam turbine in order to generate electricity. The discharger currently discharges process water, consisting of boiler blowdown, cooling tower blowdown, and demineralized back flushing wastewater to the Pacific Ocean via the Evergreen Pulp, Inc., Samoa Pulp Mill ocean outfall.

Additional wastes produced by the FPP include:

- Particulates removed from boiler flue gases by a dust collector and electrical precipitator, known as fly ash;
- Ash from the boiler, known as bottom ash;
- Drainage from wood fuel storage areas;
- Drainage from ash storage areas; and,
- Sanitary sewage from employee restrooms.

The Discharger has a history of failing to prevent pollutants generated by the FPP from entering storm water runoff from the facility, in violation of the General Permit. Waste bottom ash from the boiler is currently being stored on site without proper containment, and has not been properly characterized to determine compliance with the Storm Water Permit. The storage of waste bottom ash at the FPP is a management practice with a long history of non-compliance with the NPDES Permit and Storm Water Permit. Bottom ash piles remain uncovered and unprotected from contact with storm water, with hay bales as the only best management practices implemented to prevent pollutant transport to the adjacent dunes.

Washed bottom ash is also being stored on site with insufficient storm water containment in violation of the Storm Water Permit and in violation of Discharge Prohibition A.1 of the NPDES Permit. The 2007 Report of Waste Discharge included a proposal to discharge wash water from a proposed bottom ash separator system (Wash Water), which would add a new waste stream to the effluent discharge. Without first notifying the RWQCB, the Discharger installed and began operation of a bottom ash separator system. The separator system washed the bottom ash with fresh water, separated the aggregate material from the metals, and discharged residual Wash Water into the gross effluent stream.

On August 6, 2008, the RWQCB informed the Discharger that the discharge of Wash Water into the effluent stream was in violation of the Discharger's NPDES Permit by adding a new, unpermitted source of waste into the effluent stream. On the same day the Discharger ceased discharging Wash Water. Currently, the Discharger stores Wash Water in a containment basin. In a recent report and updated proposal of a bottom ash separator system, the Discharger failed to

address bottom ash Wash Water disposal or stormwater best management practices associated with the bottom ash separator system, including filtrate containment prior to reprocessing.

The Discharger's most recent Stormwater Pollution Prevention Plan ("SWPPP,") dated March 17, 2010, proposes to pump the Wash Water through a series of filters into a holding tank whence it will be discharged into the oil/water separator and join the effluent stream. However, it is not clear how this relates to the proposal to create a closed loop system whereby the Wash Water is recycled and used in the bottom ash separator system to separate the reusable fuel from the bottom ash by spraying it with recycled Wash Water, a process which, according to RWQCB staff member Kason Grady, will concentrate pollutants thus presenting a greater threat to water quality.

There is also a history of discharges of pollutants in the Discharger's effluent discharge to the Pulp Mill outfall exceeding effluent limits in the Discharger's NPDES Permit and/or water quality objectives ("WQO") in the California Toxicity Rule or CCR Title 22. The violations include discharges of bis(2-ethylhexyl) phthalate, PCBs and dioxin and congeners in concentrations exceeding WQOs.

The Discharger has proposed a Supplemental Environmental Project which would change the discharge location for the Discharger's effluent from the Pulp Mill outfall to a constructed wetlands on the Discharger's property. The proposed wetland would be contiguous with Humboldt Bay, such that the discharge should be regulated as a discharge to a surface water of the United States.

In the Application/Report Of Waste Discharge ("ROWD") for the revised Supplemental Environmental Project, the Discharger's consultant designates the receiving water for the new outfall as the groundwater underlying the proposed wetland. The ROWD then claims that an analysis of the effluent demonstrates the effluent water is of higher quality than "the proposed groundwater receiving waters" (ROWD, p.4). However, current data demonstrates that the groundwater beneath the FPP exceeds chemical constituent WQOs for Aluminum, Arsenic, Barium, Chromium (III), Lead, Mercury, bis(2-ethylhexyl) phthalate, and Copper, all of which have been found at some detectable level in the Discharger's effluent and/or stormwater discharge. Thus, the Discharger is proposing to justify the discharge of the effluent into the proposed wetland where it will percolate into groundwater polluted by the cumulative discharges of pollutants from the FPP, and thereby further contaminate the groundwater by adding to constituent levels already exceeding WQOs.

Order No. R1-2010-0010 REQUIRING TECHNICAL INFORMATION, issued by the RWQCB to the Discharger on January 13, 2010, contained the following requirements:

"Analytical results of storm water runoff samples analyzed for all constituents that exceed WQOs for groundwater on site and for all Dioxin Congeners. If storm water

runoff contains sources of those pollutants, DG Fairhaven shall update its SW3P, as necessary, to include revised BMPs that effectively prevent storm water and authorized non-storm water discharges from further impacting groundwater for those constituents.” (Order p.7).

The analytical results of storm water runoff referenced in the Discharger’s Response to the RWQCB’s Order dated March 17,2010, showed detectable levels of all constituents exceeding WQOs for groundwater on site. Notwithstanding these results and the terms of that Order, the Discharger responded that all COCs were below laboratory RDLs, (although still detectable) with the exception of barium and various dioxin-related congeners; and, that none of the analytical results exceeded WQOs; therefore, BMPs to prevent storm water and authorized non-storm water discharges from further impacting groundwater for those constituents were not added. (Response p.3).

Under C.1. of the General Permit: “RECEIVING WATER LIMITATIONS”, the following prohibitions are stated:

1. Storm water discharges and authorized non-storm water discharges to any surface or ground water shall not adversely impact human health or the environment.
2. Storm water discharges and authorized non-storm water discharges shall not cause or **contribute to an exceedance** of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan.” (Emphasis added).

Clearly the Discharger is in violation of the General Permit’s prohibition against contributing to exceedances of water quality standards, and the Discharger’s response to the RWQCB’s Order is not in compliance with the requirements of that Order.

The Discharger’s ROWD states that regional groundwater is not currently proposed to be used for municipal and domestic water supplies (ROWD p.8). However, the RWQCB has adopted a Water Quality Control Plan (“Basin Plan”) which designates all surface and groundwater within the North Coast region as capable of supporting domestic water supply. The Discharger has not submitted the requisite application to de-designate this beneficial use. According to Kason Grady, RWQCB case worker for the site, the ROWD incorrectly identifies the TEQ values for the effluent and storm water samples as inaccurate depictions of the actual dioxin congener concentrations, for reasons detailed in a July 28, 2010 email from Mr. Grady to Julian Kane of SCS Engineers, the Discharger’s consultant -- all of which indicates that the Discharger is attempting to satisfy regulatory requirements without adopting measures necessary to adequately protect human health and the environment.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES permit for its effluent discharge and into compliance with the General Permit in order to protect human health and the environment.

1. The addition to the Discharger's SWPPP and practical implementation of BMPs that effectively prevent storm water and authorized non-storm water discharges from further impacting groundwater for all constituents which exceed WQOs for groundwater on site and for all dioxin congeners;
2. The implementation of measures to protect surface and groundwater at the FPP site and/or surface and groundwater affected by discharges from the site, to comply with domestic water supply standards;
3. The implementation of Best Management Practices determined by the RWQCB to effectively contain all pollutants from ash piles at the Discharger's FPP site from entering storm water runoff;
4. Representative sampling results of effluent and storm water discharges by the Discharger based on TEQ calculations approved by the RWQCB;
5. The treatment of Wash Water from the Discharger's bottom ash separator to reduce COCs to concentration levels which comply with domestic water supply standards; and,
6. The development of a quarterly monitoring inspection program by the Discharger for land application of fly ash and/or bottom ash from the Discharger's FPP site. The Discharger shall include results of the monitoring inspections in its self monitoring reports submitted to the RWQCB.

VIOLATIONS

I. STORM WATER-GENERAL PERMIT VIOLATIONS

From August 25, 2005 through August 25, 2010 the Discharger has violated the requirements of the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges, Water Quality Order No. 97-03-DWQ, WDID No. 1B12S016487, issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p). The Discharger has not fully developed and/or adequately implemented a SWPPP for its operations as evidenced by the fact that the groundwater beneath the Discharger's FPP site and facility is contaminated by

Aluminum, Arsenic, Barium, Chromium (III), Lead, Mercury, bis(2-ethylhexyl) phthalate, and Copper in concentrations exceeding WQOs -- all constituents present in the Discharger's storm water runoff.

The CWA prohibits storm water discharges without a permit (33 U.S.C. §1342; 40 C.F.R. §122.26). The General Permit prohibits the discharge to waters of the United States, of material, other than storm water, which causes or threatens to cause pollution, contamination and nuisance. The General Permit prohibits the discharge of storm water to surface or groundwater that adversely impacts human health or the environment. The Discharger's discharge from the FPP site and facility contains constituents, referenced above, which adversely impact the environment, including the groundwater beneath the facility and Humboldt Bay, with which the groundwater is hydraulically contiguous, both jurisdictional waters of the United States. These violations of the Act have been ongoing from August 25, 2005 through August 25, 2010. The Discharger will continue to be in violation of the General Permit each day that it discharges contaminated storm water from this facility which causes or threatens to cause pollution, contamination or nuisance or which adversely impacts human health or the environment.

II. POINT SOURCE DISCHARGE-NPDES PERMIT VIOLATIONS

Discharge Prohibitions

Violations Description

- | | |
|-----|--|
| 30 | Discharge of priority pollutants, specifically bis(2-ethylhexyl) phthalate and PCBs (Order No. R1-2002-0076, Effluent Limitation B.2.) |
| 400 | Discharges of pollutants from the washed and unwashed ash piles at the Discharger's facility. Any day with sufficient rainfall to cause runoff from the facility would result in discharges from the ash piles, point sources under the CWA, to the dunes abutting the site and either directly overland or indirectly via groundwater to Humboldt bay. (Order No.R1-2002-0076) , Discharge Prohibition A.1) |
| 40 | Discharge of Dioxin and congeners in the Discharger's effluent exceeding WQOs. (Order No.R1-2002-0076) , Discharge Prohibition A.1) |

Discharge Prohibition A.1: "The discharge of any waste not specifically regulated by this Permit is prohibited."

Effluent Limitation B.2.: "There shall be no detectable amounts of any of the 126 priority pollutants (40 CFR Part 423, Appendix A) contained in chemicals added for cooling tower maintenance, except for those noted above."

CONTACT INFORMATION

River Watch has retained legal counsel in this matter. All communications should be addressed to:

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CONCLUSION

The violations as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed communities. The members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. The members' health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this NOTICE.

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

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

Very truly yours,


Jerry Bernhaut

JB:lmh

cc: Administrator
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