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November 1, 2011

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

Hugh Grant, President and CEO
Monsanto Company
800 North Lindbergh Blvd.
St. Louis, MO 63167

Site Manager/Owner
1778 Monsanto Way
Martinez, CA 94553

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

Dear Mr. Grant, Owner, Site Manager and Responsible Parties:

NOTICE

The Clean Water Act ("CWA" or "Act") at Section 505(b), [33 U.S.C. § 1365(b)], requires that sixty days prior to the initiation of a civil action under CWA § 505(a), a citizen must give notice of his/her intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") both local and federal, and to the State in which the violations occur. If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the owner or managing agent, with a copy sent to the registered agent of the corporation.

Notice is hereby given that Northern California River Watch ("River Watch") intends to bring suit in Federal District Court against Monsanto Company ("Monsanto") by reason of Monsanto's continuing violations of "an effluent standard or limitation," permit, condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under 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 Monsanto's illegal discharge of pollutants from a point source to waters of the United States in violation of a National Pollution Discharge Elimination System ("NPDES") permit at the site located at 1778 Monsanto Way in Martinez, California.

This Notice also addresses Monsanto's ongoing violations of the substantive and procedural requirements of CWA § 402(p) and NPDES General Permit No. CAS000001 and CA0004910, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General Permit"). The Act prohibits storm water discharges without a NPDES permit. (See 33 U.S.C. § 1342; 40 C.F.R. § 122.26).

The activities leading to these CWA violations are more fully described below in each of the sections that highlight the unauthorized discharges at the Monsanto site located at 1778 Monsanto Way in Martinez, California. The dates of these violations correspond with the dates of each initial unauthorized release, although following each release, the downgradient surface waters may not have been immediately impacted, but may have been contaminated at some later dates consistent with the rate of offsite plume migration through conduits or other preferential pathways, or via surface and/or groundwater migration during normal site operations, rain events and/or during onsite flooding due to excessive rain.

The violations set forth herein are alleged to be continuing in nature in that the sources of contamination impacting surface waters have not been eliminated. Pursuant to CWA § 309(d), [33 U.S.C. § 1319(d)], each of the violations described herein subjects the violator to a penalty of up to \$32,500.00 per day for each of the violations occurring within the five year period prior to the initiation of a citizen enforcement action. In addition to civil penalties to be paid to the United States Treasury, River Watch intends to seek injunctive relief in the interests of preventing further violations pursuant to CWA §§ 505(a) and 505(d) [33 U.S.C. §§ 1365(a) and (d)], and such other relief as is permitted by law. CWA § 505(d) permits prevailing parties to recover costs and reasonable attorney fees.

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

In keeping with notice requirements, River Watch alleges Monsanto has violated "effluent standards or limitations" by allowing petroleum hydrocarbons, petroleum constituents and other toxic chemicals, such as phenols, above State of California Maximum Contaminant Levels to be released and discharged from the Martinez facility into waters of

the United States, and specifically into Hastings Slough and into the surface waters of Suisun Bay as further investigation may disclose, without the benefit of any NPDES or other permit which authorizes such discharges. (See CWA § 301(a)).

This Notice also addresses Monsanto's failure to comply with the terms and conditions of California's General Permit (see CWA § 402(p)), its discharges of non-storm water pollutants from the facility in Martinez, California in violation of effluent limitations, its illegal discharges of contaminated storm water from that facility, and its apparent violations of the procedural requirements of the General Permit.

2. The activity alleged to constitute a violation

River Watch has set forth narratives herein describing discharges to hydrologically-connected groundwater and surface waters as the activities leading to statutory violations, and describing with particularity specific incidents which may or may have not been reported in public reports and other public documents in Monsanto's possession or otherwise available for review. River Watch incorporates by reference the records cited from which descriptions of specific incidents were obtained.

3. The person or persons responsible for the alleged violation

The person or persons or entity responsible for the alleged violations is Monsanto Company, as the owner and/or operator or partial operators of the Martinez facility identified herein. This Notice includes both the named entity as well as all of its managers and other employees responsible for compliance with the CWA and compliance with any applicable state and federal regulations and permits.

4. The location of the alleged violations

The location or locations of the various violations are identified in records either created or maintained by or for Monsanto, including the records cited further in this Notice and the description of specific incidents referenced herein, for the site and facility located at 1778 Monsanto Way, Martinez, California.

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

River Watch has examined State Water Resource Control Board and Regional Water Quality Control Board records for at least the period from November 1, 2006 to November 1, 2011. The range of dates covered by this Notice is between these dates. River Watch will

from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

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

The entity giving notice is Northern California River Watch, P.O. Box 817, Sebastopol, CA 95472, referred to throughout this Notice as “River Watch”. River Watch is a non-profit corporation organized under the laws of the State of California, 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 has retained legal counsel with respect to the violations by Monsanto raised in this Notice. All communications should be addressed to:

Jack Silver, Esquire
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BACKGROUND

A. Setting and Historic Use of Monsanto Avon Property - 1778 Monsanto Way, Martinez, California

This site is situated on property formerly used by the Monsanto Chemical Company commencing in 1953 to produce a variety of chemicals including sulfuric acid (1953 to 1982,) phenol (1953 to 1963) phenolsulfonic acid (1961 to 1967) platinum catalysts (1970 to 1979) and sulfuric acid catalysts (1970 to 2005). Benzene was also used and stored at the site until at least 1963 in an area to the north of the existing catalyst plant. Benzene facilities were used in the production of phenol. In 2005 Monsanto Chemical Company sold the chemical producing facilities to MECS, Inc. which continues to produce sulfuric acid catalysts at the site. Monsanto, however, retains responsibility for groundwater conditions at the site and continues to own the underlying real property.

The facility is located adjacent to wetlands in direct surface water communication with Suisun Bay. During operations at this location, Monsanto utilized two principal areas for on-site disposal and storage of production wastes: 1) two unlined solar evaporation ponds and 2) a salt cake storage area at the north end of the property.

In 1984 Monsanto initiated an investigation of soil and groundwater quality as affected by its plant operations, which consisted of monitoring wells, 6,000 feet of exploratory trenches adjacent to the solar ponds and salt cake areas, and benthic invertebrate and sediment studies in Hastings Slough, approximately 400 ft. to the northwest (downgradient) of the property. Observation wells were installed intending to monitor shallow, intermediate and deep water bearing zones. Depth to groundwater at the site ranges between 3 and 23 feet.

B. Present Day Use

Documents available for review by River Watch at this time, which cover the past 10 years of work conducted at the site, indicate that efforts since approximately 2000 have been limited to only monitoring of hydrocarbon levels and other chemicals found at the site. No records have been located which establish that site excavation has ever been conducted to eliminate contaminants and achieve some measure of source control. At the present time there are no extraction processes in place and none planned. There is no apparent interest in site remediation, despite the proximity of downgradient surface waters, and despite levels of hydrocarbon constituents in groundwater that remain dangerously high.

As of the last published groundwater monitoring data (October 2009), benzene levels alone are in the range of 140,000 µg/l. TPHg levels last tested in 2007 were found as high as 340,000 µg/l at MW-33S. Sulfate levels in groundwater was found as high as 2,200 mg/l in 2009 (2,200,000 µg/l).

C. Summary of Violations Resulting in Surface Water Contamination

Contaminated groundwater from this facility in Martinez discharges to Hastings Slough, a surface water source directly connected to Suisun Bay, and protected by several state and federal environmental laws. Currently, the former solar evaporation ponds (unlined), former salt cake storage area, and former benzene facilities contain toxic chemical contaminants which leach into groundwater and surface waters, and migrate to the banks of Hastings Slough, eventually reaching Suisun Bay.

Even after chemical dumps such as on this site are closed, they continue to discharge contaminants for many years, especially if rain is permitted to contact and flow through the chemicals and into the soil in which the chemicals are embedded. The closure of Monsanto's historic chemical dump areas and facilities in Martinez has not prevented rain from entering the dump piles and former evaporation ponds and storage areas. River Watch contends Monsanto has no NPDES permit which allows this infiltration and the resultant discharges into underlying groundwater, and/or across the existing dump piles and into adjacent surface

waters. The contaminated soils and groundwater from the Martinez facility leach contamination into groundwater that is hydraulically connected to adjacent surface waters less than 400 feet downgradient. River Watch also believes the groundwater in this vicinity is tidally influenced, which tends to draw contaminants into protected surface waters with every outgoing tide.

D. Point Source Discharges

Former point sources at the Monsanto site in Martinez include the former unlined solar evaporations ponds, the former salt cake storage areas and the former benzene processing facility. Current point sources include the remaining solid and hazardous wastes (including high levels of benzene, phenols, sulfate and TPHg) which continue to discharge across the site from the former ponds and storage and processing facilities. As noted above, these toxic substances are not being actively remediated and continue to represent ongoing pollution affecting the health and safety of humans and environmental flora and fauna in the local vicinity. Discharges for the point sources identified herein are on-going and continuous.

E. Storm Water Discharges

River Watch contends the current condition of the Monsanto site in Martinez allows rain water and rain events to carry contaminated soils and surface water into such channels as Hastings Slough, becoming a further source of migrating contamination. River Watch is aware of no comprehensive storm water or sewer water system at this site that effectively channelizes rain waters from these heavy rain events into a filtering system to prevent any further surface or groundwater contamination from runoff. At the present time, storm water runoff appears capable of carrying toxic chemical compounds into Hastings Slough and adjacent bays. Discharges due to storm events for the point sources identified herein are on-going and continuous.

F. Ongoing Non-Compliance with Oversight

Monsanto owns the underlying real property at the 1778 Monsanto Way site in Martinez and continues to be legally responsible for its remediation. However, remediation efforts appear to be limited to passive monitoring of existing contamination levels. Levels of petroleum hydrocarbons and petroleum constituents, including benzene, and levels of other toxic chemicals historically used at this site, will continue to negatively affect the environmental health of this area unless proactive remediation is conducted without further delay.

River Watch contends that although Monsanto has known about the serious ongoing conditions of this site for some time, its past and present efforts to neutralize or eliminate the threat those conditions present have been piecemeal and inadequate. For decades the site has been discharging deleterious chemicals into surrounding groundwater and surface waters – which qualify as waters of the United States. As a direct result of Monsanto’s inaction with respect to its remediation responsibilities, River Watch’s use and enjoyment of this area of the coast and Suisun Bay and its environs have been adversely affected.

From November 1, 2006 through November 1, 2011, Monsanto has violated the CWA by failing to acquire a NPDES permit and for discharging pollutants into waters of the United States without a NPDES permit. Each and every discharge is a separate violation of the CWA.

These enumerated violations are based upon review of the Regional Water Quality Control Board’s files and GeoTracker files for this site as well as other files publicly available. In addition to all of the above violations, this Notice covers any and all violations evidenced by Monsanto’s records and monitoring data for the site in Martinez which Monsanto has submitted (or failed to submit) to the Regional Water Quality Control Board and/or other regulatory agencies during the period from November, 2006 through the date of this Notice. This Notice also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Monsanto to the Regional Water Quality Control Board, to GeoTracker, or to other regulatory agencies.

The violations set forth in this Notice affect the health and enjoyment of River Watch and its members, who reside, work and recreate in the affected area. River Watch and its members use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, property rights, use and enjoyment of this area is specifically impaired by Monsanto’s violations of the CWA as described herein.

G. Requested Injunctive Relief

On the basis of the current condition of this site, River Watch believes the following investigatory and remediation work must be implemented at the Martinez site without delay:

1. Complete site delineation (including vertical contaminant delineation) for the purpose of enabling a comprehensive evaluation of the extent of underlying contamination so that adequate remediation work may proceed. This should include an evaluation of the potential for migration into the surface waters of Hastings Slough and Suisun Bay;

2. Initiation of an effective remediation strategy either by over-excavation, or by means of other methods, such as bioremediation, which have a strong likelihood of achieving state mandated Maximum Contaminant Levels or pre-existing background levels within a reasonable time frame, and are designed to eliminate the current threat to the environment and human health;
3. Initiation of vapor intrusion testing in any buildings or work areas (if any) above the plume to determine whether nearby employees at the site and/or third parties are being exposed to injurious levels of hydrocarbon, benzene or other toxic vapors;
4. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite; and,
5. Current residual mass calculations which will allow the measurement of remediation progress once remediation processes are initiated.

CONCLUSION

River Watch believes this Notice sufficiently states the grounds for filing suit under the statutory and regulatory provisions of the CWA as to the Martinez site identified in this Notice and referenced above. At the close of the notice periods or shortly thereafter, River Watch intends to file a suit against Monsanto under provisions of the CWA for each of the violations as alleged herein, and with respect to the existing conditions at this site.

During the 60-day notice period however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Monsanto wishes to pursue such discussions in the absence of litigation, we would encourage you to initiate such discussions immediately so that the parties might be on track to resolving the issues raised in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhbm

cc: Administrator
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