

Northern California Environmental Defense Center

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May 21, 2004

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Owner/Operator
Canyon Rock Company
7310 Highway 116
Forestville, CA 95436

Owner/Operator
River Ready Mix
12620 Bodega Highway
Sebastopol, CA 95472

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

Dear Owner/Operator:

I am writing on behalf of Northern California River Watch (hereafter, "River Watch") with regard to the discharges of pollutants from facilities of Canyon Rock Company and River Ready Mix (hereafter, collectively "Canyon Rock") into Green Valley Creek and the Russian River and its tributaries, and into wetlands, all navigable waters of the United States, in violation of the Federal Water Pollution Control Act (hereafter, "Clean Water Act").

This NOTICE addresses Canyon Rock's failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), its un-permitted discharges of contaminated storm water from its facilities, its discharges of non-storm water pollutants from its facilities in violation of effluent limitations, and its violations of the procedural requirements of National Pollutant Discharge Elimination System (hereafter, "NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No.91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereafter, "General Permit").

River Watch also places Canyon Rock on notice that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit against Canyon Rock in Federal District Court for Canyon Rock'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 Clean Water § 505(a)(1), 33 U.S.C. § 1365(a)(1), 33 U.S.C. § 401(a) and (b), 33 U.S.C. § 1342(a) and (b), the Code of Federal Regulations, and the Basin Plan, as exemplified by Canyon Rock’s illegally discharging into waters of the United States without a NPDES permit for point source as opposed to non-point source discharges.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intent to sue. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur, and the registered agent of the alleged violator. River Watch believes that this NOTICE provides proper notice of Canyon Rock’s violations as required by the Clean Water Act.

BACKGROUND

Canyon Rock owns and operates a hillside quarry and cement manufacturing and processing facility at 7525 Highway 116 in Forestville, California, in the Russian River watershed (hereafter, “the Site”) Industrial process water that contains cement, oil, grease, iron, and TPHg in high amounts are discharged for many months of the year from the Site through discrete conveyances to waters of the United States. Discharges of pollutants from washing out the inside of cement trucks, for example, go directly into Green Valley Creek. Green Valley Creek is recognized as one of the last remaining productive coho salmon spawning tributaries on the Russian River. It runs approximately 2,000 linear feet along the Site property line. Coho Salmon have been listed by the federal government as threatened with extinction. Green Valley Creek is also habitat to Western Pond Turtles a California species of concern, and fresh water shrimp.

A cement recycling operation also takes place on the Site wherein concrete from demolition of gas stations, buildings, etc. is collected, crushed, processed and sold as road material. All the run off from these numerous operations is discharged directly into adjacent wetlands and into Green Valley Creek. Green Valley Creek and the Russian River are navigable waters of the United States that provide important habitat for shorebirds, waterfowl, migratory birds and endangered species. Green Valley Creek and the Russian River are Clean Water Act § 303(d) impaired for sediment and nutrients. Canyon Rock’s discharges contribute to a violation of applicable water quality standards each and every time it discharges to Green Valley Creek, its wetlands, and the Russian River.

VIOLATIONS

A. Discharging Without a NPDES Point Source Permit in Violation of 33 U.S.C. 1342 § 402 (a) and 402(b)

Except as allowed in Special Condition (D.1.1) of the General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. This NOTICE addresses Canyon Rock's failure to obtain a point source NPDES permit for its discharges of unauthorized non-storm water pollutants from a point source to waters of the United States in violation of CWA 33 U.S.C. 1342 § 402 (a) and 402(b).

The law requires that unauthorized non-storm water discharges (even when commingled with storm water) be eliminated or covered by a separate NPDES Permit. Canyon Rock is discharging pollutants to waters of the United States via discrete conveyances without a separate NPDES permit. Settling ponds that receive unauthorized non-storm water industrial process water, cement from inside cement trucks, dust, oil and grease, etc., year round are connected to surface waters and wetlands. Pollutants flow directly to surface waters and wetlands via culverts and pipes or commingle with pond water and discharge to surface waters and wetlands via culverts and pipes. The Site discharges contact water, process water, dust, sediment, grease, oil, heavy metals and other pollutants directly into adjacent wetlands, Green Valley Creek, and the Russian River from a drainage pipe and pond system during storm events (detailed in Section B below) and non-storm events. Because pollutants discharge to the wetlands and surface waters via discrete conveyances, the discharges constitute discharges of pollutants from a point source.

Clean Water Act 33 U.S.C. § 401(a) and (b) prohibit the discharge of any pollutant from a point source to waters of the United States without a NPDES point source permit. Canyon Rock has no NPDES permit allowing it to discharge unauthorized non-storm water from a point source to these waters of the United States and is therefore in violation of the Clean Water Act for each day it so discharges.

Canyon Rock has discharged unauthorized non-storm water into Green Valley Creek, adjacent wetlands, and the Russian River in violation of the Clean Water Act each and every day from May 21, 1999 to May 21, 2004. River Watch further alleges that these violations are continuing.

B. Discharging Polluted Storm Water in Violation of NPDES General Storm Water Permit 33 U.S.C. 1342 § 402(p)

Canyon Rock has filed a notice of intent ("NOP") to be covered by California's General Storm Water Permit. This permit prohibits discharges of material other than stormwater

(non-storm water discharges) that are not authorized by the General Permit (Clean Water Act 33 U.S.C. 1342 § 402(p)). Canyon Rock maintains that discharges of unauthorized non-storm water do not occur; however, the sampling results indicate that Canyon Rock has a long history of discharging polluted storm water many months of the year to adjacent wetlands, Green Valley Creek, and the Russian River. By discharging non-storm water and by discharging pollutants during non-storm events, Canyon Rock is in violation of the General Permit.

C. Violations of Effluent Limitations and Guidelines

Canyon Rock is subject to storm water effluent limitations, new source performance standards, and/or toxic pollutant effluent standards (40 CFR Subchapter N). The cement manufacturing and processing facility has effluent limitation guidelines specified by 40 CFR Parts 411, 436, 440 and 443. Canyon Rock only tests for nine constituents in its discharges to surface waters (TSS, pH, specific conductance, total oil and Grease, BTEX, MTBE, THP, iron, and TOC). Of those nine constituents, five of them regularly exceed allowable levels. The pH is regularly over Basin Plan limits (8.5 pH units). In December of 2002, discharges had a pH of over 9. In January of 2003, discharges had a pH of 9.35. In April of that year, discharges had a pH of 9.31. Total suspended solids were measured at 830 mg/l. Specific conductance is as high as 600 umho/cm.

In the year 2001, Canyon Rock hired consultants Prunuske Chatham, Inc. to test for other constituents including heavy metals, TPHg, and TPHd, turbidity and TSS in Canyon Rock's discharges. Of those nine constituents, five of them regularly exceed allowable levels. The pH is regularly over Basin Plan limits (8.5 pH units). In December of 2002, discharges had a pH of over 9. In January of 2003, discharges had a pH of 9.35. In April of that year, discharges had a pH of 9.31. Total suspended solids were measured at 830 mg/l. Specific conductance is as high as 600 umho/cm. In March of 2001, Canyon Rock's consultants detected unauthorized heavy metals such as chromium, copper, nickel, barium, zinc, and vanadium in high amounts in storm water discharges. Once detection of these pollutants occurred, Canyon Rock was required to eliminate these pollutants from its discharges and to continue testing to assure that the pollutants were eliminated.

Numerous discharges reported by Canyon Rock have exceeded the limits of its permit. Oil and grease have been detected in high amounts in storm water discharges. Records indicate that oil and grease were detected at 2.17 and 1.87 mg/liter. MTBE was detected at 30.1 μ /l in January of 2002. The limit for MTBE is 5 μ /l. Self monitoring reports show that iron as high as 28800 mg/l has been detected in discharges. TPHd is routinely detected in discharges, e.g. In April 1999, TPHd was 170 μ /l. In November of 1999, Canyon Rock violated North Coast turbidity standards. The Site discharges increase turbidity in Green Valley Creek significantly over the 20 percent increase allowed.

Canyon Rock discharges contact water, process water, dust, sediment, grease, and oil and other pollutants directly into wetlands, Green Valley Creek, and the Russian River from its drainage, pipe and pond system.

Cement manufacturing is subject to storm water effluent limitations guidelines. According to 40 CFR Part 411, Canyon Rock is required to comply with effluent limitation guidelines for iron and total suspended solids. As explained above, Canyon Rock routinely exceeds these limitations.

D. Failure to Implement Best Management Practices (BMPs), Best Available Technology (BATs) or Best Conventional Pollutant Control Technology \ (BCTs)

Canyon Rock does not implement BMPs by using BATS or BCTs. For example, the Site is graded towards Green Valley Creek and the adjacent wetlands instead of being graded into the high wall as recommended by the Regional Water Quality Control Board. Canyon Rock has not installed control valves on its settling ponds to properly control flows during storm events. Canyon Rock does not use filters to control petroleum hydrocarbons that discharge to surface waters and the adjacent wetlands. Canyon Rock has not separated its cement washout water and process water from the quarry run off as requested many times by the Regional Water Quality Control Board. Improvements to the Site's pond capacity occur only when quarrying activities open up additional areas for pond expansion. Canyon Rock's failure to implement BMPs, BATs, and BCTs causes the resulting contaminated storm water to flow directly to Green Valley Creek many months out of the year. This activity has been ongoing since the Site began operations.

Canyon Rock is violating the General Permit by:

- (1) allowing materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States;
- (2) causing or threatening to cause pollution, contamination, or nuisance; exceeding the specified effluent limitations;
- (3) discharging storm water containing a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302;
- (4) failing to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BATs for toxic and non-conventional pollutants and BCTs for conventional pollutants;
- (5) failing to develop and implement a SWPPP which complies with the requirements in Section A and Section B.6. of the General Permit and which includes BMPs that achieve BAT/BCT constituting compliance with this requirement;

- (6) discharging storm water and non-storm water to surface or ground water which adversely impact human health or the environment;
- (7) causing or contributing 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 as discussed above;
- (8) failing to submit a report to the Regional Water Quality Control Board that describes the BMPs currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards; and,
- (9) failing to update its SWPPP and Monitoring and Reporting Program to reflect changes in BMPs, BATs and BCTs.

Between May 21, 1999 to May 21, 2004, Canyon Rock has violated its General Permit for each day it has discharged pollutants during non-storm events and for each day it has discharged pollutants in excess of the General Permit limits. Canyon Rock has also been in continuous violation of its General Permit each and every day from May 21, 1999 to May 21, 2004 for failure implement BMPs as outlined above. These violations are continuing.

CONTACT INFORMATION

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and ground water in Northern California. River Watch is organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465, telephone (707) 874-2579. River Watch has an e-mail address at rvrwatch@sonic.net. Its web site is northerncaliforniariverwatch.org.

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

Kimberly Burr, Esq.
Jack Silver, Esq.
Northern California Environmental Defense Center
Post Office Box 5469
Santa Rosa, CA 95402-5469 Tel. 707-528-8175

Northern California 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

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file a citizen suit under Section 505(a) of the Clean Water Act against Canyon Rock for violations at the Site.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE. However, if Canyon Rock wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next 20 days 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 complaint in federal court if discussions are continuing when that period ends.

Very truly yours,

Kimberly Burr

KB:lmh

cc: Michael Leavitt, Administrator
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