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

August 3, 2009

Head of Operations
City of Arcata
Wastewater Treatment Facility
600 South G Street
Arcata, California 95521

Agency Manager
Fieldbrook Glendale Community Service District
4584 Fieldbrook Road
McKinleyville, CA 95519

City Manager/Administrator
City of Arcata
736 F Street
Arcata, CA 95521

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

Dear Head of Operations and Agency Manager

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 the City of Arcata and Fieldbrook Glendale Community Service District, hereinafter collectively referred to as "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.

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 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 of the City of Arcata Wastewater Treatment facility and specifically identified the applicable permit standard, limitation or condition being violated. A violation of the 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 describing with particularity the activities leading to violations and has incorporated by reference the Discharger's

own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding the NPDES 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 are the entities identified collectively in this NOTICE as the Discharger and those of its employees responsible for compliance with the NPDES Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's Permit and also in records created and/or maintained by or for the Discharger which relate to the Discharger's wastewater treatment plant 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 records and the Discharger's records for the period from August 1, 2004 through August 1, 2009. The range of dates covered by this NOTICE is from August 1, 2004 through August 1, 2009. 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 entity giving notice is Northern California River Watch, 500 North Main Street, Suite 110, Sebastopol, CA 95472 Telephone and Facsimile 707-824-4372, referred to in 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 to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175 / Fax 707-528-8675

The violations of the Discharger as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected areas. The members of River Watch use the affected area for recreation, hiking, photography, nature walks sports, water, fishing, swimming, boating and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by the violations of the CWA described herein.

DISCHARGER'S OPERATIONS

The Discharger owns or operates the City of Arcata Wastewater Treatment Facility located at 600 South G Street, Arcata, California ("Facility"). The Facility serves the City of Arcata and the Glendale area and discharges treated domestic, commercial and industrial waste from secondary treatment processes into Humboldt Bay, a water of the United States, at outfall 001. Secondary treated wastewater is also discharged to the Arcata Marsh Wildlife Sanctuary ("AMWS"), also a water of the United States. The Facility's primary treatment includes mechanical bar screens, grit removal, two clarifiers two anaerobic digesters, sludge drying beds and a sludge composting operation. The Facility is designed for a dry weather flow of 2.3 million gallons per day ("mgd") and a maximum hydraulic capacity of 5.0 mgd. Flows in excess of 5.0 mgd bypass the primary system and are routed directly to the oxidation ponds. The Facility and associated collection system are regulated under Waste Discharge Order No. R1-2004-0036, NPDES Permit No. CA0022713.

The Facility has an extensive history of effluent limit violations, most notably for total suspended solids ("TSS"), both for exceeding 7-day and 30-day average limits and for failure to achieve 85% removal of TSS. The Facility also has a history of violations of limits for priority pollutants, including copper and cyanide and for exceeding the limit in its Permit for total coliform. According to the report and findings of the 2008 Pretreatment Compliance Inspection for the City of Arcata conducted by Tetra Tech on behalf of the RWQCB, the Discharger has failed to correct a number of deficiencies in the pretreatment program mandated by its Permit, including assessing the necessity of adding Humboldt State University and Mad River Hospital to its pretreatment program; evaluating its local limits; completing revisions to its multi-jurisdictional agreement with the Community of Glendale; revising its legal authority to take required measures; and, adopting an enforcement response plan. The file review also revealed the lack of a statement of civil and criminal penalties in reviewed permits, inadequate standards, lack of documented compliance inspections for significant industrial users in 2008, failure to conduct re-sampling within 30 days of first noticing a violation, and failure to take any enforcement action against Cypress Grove for oil and grease violations in 2008.

The Discharger's wastewater collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. The structural defects in the Discharger's collection systems, which allow I/I into the sewer lines, result in a build-up of pressure which causes sewage system surface overflows. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm

drains which are connected to adjacent surface waters such as wetlands, creeks and Humboldt Bay. Some surface overflows discharge directly overland into surface waters.

Underground leakages caused by pipeline cracks and other defects result in discharges to these adjacent surface waters via underground hydrological connections. Humboldt Bay, tributary creeks including James Creek and adjacent wetlands, including the AMWS, are waters of the United States. Surface waters and groundwater become contaminated with fecal coliform exposing people to human pathogens. Failures of the Discharger's chronic collection system pose a substantial threat to public health.

The RWQCB is in the process of preparing a new permit for the Arcata Wastewater Treatment Facility. The Discharger has been the subject of RWQCB enforcement actions in 2006 and 2007, assessing mandatory minimum penalties for effluent limit violations and discretionary penalties for sewage collection system overflows. The City of Arcata filed a lawsuit against the RWQCB in Humboldt County Superior Court on February 13, 2008, seeking to vacate some mandatory minimum penalties and modify certain provisions of the current and expired NPDES Permits.

A settlement was reached under which the majority of penalties were deferred to a compliance project and the RWQCB agreed to certain permit revisions. A point of major contention which was not resolved is the status of the AMWS. The City of Arcata argues the AMWS is an internal part of the treatment system.. The RWQCB insists the AMWS is a water of the United States subject to effluent limits and monitoring separate from the Humboldt Bay outfall. River Watch agrees with the RWQCB's position and intends to seek declaratory relief from the court on this issue. River Watch also intends to seek an independent compliance audit of the Facility.

The Discharger's illegal discharge of untreated wastewater and of treated wastewater exceeding effluent limits is a significant contribution to the degradation of Humboldt Bay and tributary waters, with serious adverse effects on beneficial uses. Members of River Watch residing in the area have a vital interest in bringing operations at the Facility and associated collection system into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES permit, and to prioritize remedial measures to reflect the biological impacts of the Discharger's ongoing non-compliance:

1. A reduction of collection system I/I through a an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs.

2. A mandatory, private sewer lateral inspection and repair program triggered by sale of property or based on geographical, age and/or composition factors. In the alternative, a voluntary program whereby property owners participate in the inspection and repair of their private sewer lateral in coordination with repair of the main line to which the lateral is attached, at a group rate discount negotiated by the Discharger with the contractor repairing the main line. To be most effective, such a program should include a grant or low interest loan program sponsored by the Discharger.
3. Compliance with monitoring and reporting requirements, especially regarding all sewage systems overflows which reach storm drains or discharge directly to state waters, including a more detailed account of sewer system overflows and remedial actions.
4. Creation of website capacity to track information regarding sewer system overflows. In the alternative, a link from the Discharger's website to the State Water Resources Control Board's CIWQS SSO Public Reports website. Provision of notification to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.
5. The development of an effective pretreatment program which corrects all deficiencies noted in the above-referenced compliance report.
6. Performance of human marker sampling on creeks, wetlands and areas of Humboldt Bay adjacent to sewer lines to test for sewage contamination from underground exfiltration.

VIOLATIONS

From August 1, 2004 through August 1, 2009, the Discharger has violated the requirements of its NPDES Permit, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Discharger's NPDES Permit. Said violations are evidenced and reported in the Discharger's Daily Monitoring Reports, its testing data compiled in compliance with its Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in the Discharger's possession, and as evidenced by unpermitted discharges due to failures in the Discharger's collection system. Furthermore these violations are continuing.

The violations, established in Daily Monitoring Reports, raw data and records of the RWQCB, include but are not limited to the following categories in the Permit:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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1800	Collection system overflows caused by underground exfiltration. This is a case in which untreated sewage is discharged from the collection system prior to reaching the Facility. Underground discharges are alleged to have been continuous throughout the 5 year period from August 1, 2004 through August 1, 2009.
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(Order No. R1-2004-0036, Discharge Prohibitions A.3, A.5).

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the Facility reported in Daily Monitoring Reports, video inspection of the collection system, and testing of waterways adjacent to sewer lines, including creeks, wetlands and Humboldt Bay, for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.

125	Sewage System Overflows, as evidenced in the State Water Resources Control Board's SSO Reporting Program Database Records, including the overflow of 1,950 gallons on February 23, 2009 at Highway 101 and the overflow of 50 gallons on December 2, 2008 at Na Samoa Boulevard. – each of which emptied into a storm drain which ultimately discharged to waters of the State. Also, unrecorded overflows witnessed by local residents.
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(Order No.R1-2004-0036 , Discharge Prohibitions A.3, A.5):

Discharge Prohibitions A.3: "Creation of a pollution, contamination or nuisance, as defined by section 13050 of the California Water Code is prohibited."

Discharge Prohibitions A.5: " The discharge of untreated or partially treated waste (receiving a lower level of treatment than described in Finding No. 3) from anywhere within the collection, treatment or disposal facility is prohibited."

1800	Failure to implement and enforce the Discharger's Pretreatment Program in compliance with provisions in the Discharger's NPDES Permit. These violations are continuous for the period from August 1, 2004 through August 1, 2009, so that each day is a separate violation.
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(Order No.R1-2004-0036, Provisions E. 1, E.2, E.3, detailing the requirements and regulations governing the Discharger's pretreatment program.

Effluent Limitations

<u>Violations</u>	<u>Description</u>
22	Limit TSS (Order No. R1-2004-0036, Effluent Limitation B.1.)
12	TSS Removal (Order No. R1-2004-0036, Effluent Limitation B.3)
5	Limit Total Coliform (Order No. R1-2004-0036, Effluent Limitation B.2)
7	Limit Cyanide (Order No. R1-2004-0036, Effluent Limitation B.1.)
4	Limit Copper (Order No. R1-2004-0036, Effluent Limitation B.1.)

Monitoring Requirements

<u>Violations</u>	<u>Description</u>
70	Failure to monitor, report or adequately describe violations. The majority of these violations occur due to failure to report violations of Discharge Prohibitions A.3 and A.5 of Order No.R1-2004-0036 , as well as failure to adequately describe reported violations.

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 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 noted 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:lhmm

cc: Northern California River Watch

cc: Lisa Jackson, Administrator
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