

# Law Office of Jack Silver

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## **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

July 5, 2007

Head of Operations for the  
Sausalito-Marín City Sanitary District  
#1 Fort Baker Road  
Sausalito, CA 94965-3101

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

Dear Head of Operations:

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 Sausalito-Marín City Sanitary District, 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 Basin Plan, as exemplified by violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permit.

### **INTRODUCTION**

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, San Francisco 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 Sausalito-Marín City Sanitary District 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 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 are the entities identified collectively as the Discharger and those of its employees responsible for compliance with the 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 and the Discharger's records for the period from July 1, 2002 through July 1, 2007. The range of dates covered by this NOTICE is from July 1, 2002 through July 1, 2007. 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 appears near the end of this NOTICE under CONTACT INFORMATION.

### **DISCHARGER'S OPERATIONS**

The Discharger owns and operates the Sausalito-Marín City Sanitation District Wastewater Treatment Plant located at #1 Fort Baker Road, Sausalito, California ("the Plant"). The Discharger owns and operates 8 pump stations and 10 miles of sewer lines in the unincorporated area, including 5.5 miles of sewer line in unincorporated Marin City. Additional wastewater is conveyed to the Plant from 3 satellite collection systems, including the City of Sausalito, Tamalpais Community Services District and Golden Gate National Recreational Area. Each satellite system is operated independently from the Discharger and conveys wastewater to a discrete location into the Discharger's collection system. Each satellite system is responsible for its own maintenance and capital improvements.

Treated wastewater is discharged from the Plant at a discharge point 300 feet offshore into Central San Francisco Bay. The Plant and associated collection system are regulated under Order No.: 00-060, NPDES Permit No.: CA0038067, and by Order No.: R2-2003-0109, NPDES Permit No.: CA0038067, amending the Permit to substitute enterococci for total coliform as a bacterial effluent limit.

The Plant has an extensive history of effluent limit violations, most notably for total suspended solids ("TSS") and biochemical oxygen demand ("BOD"). The Plant has a maximum wet weather design flow of 6 million gallons per day ("mgd") which is periodically exceeded due to

infiltration into the collection system. When high influent flows exceed the capacity of the fixed film reactors to provide biological treatment, this phase of treatment is bypassed by a portion of the flow which is then blended with effluent which has received full treatment. The Discharger's Permit allows for the bypassing of individual treatment processes provided that the combined discharge is fully treated and the partially treated wastewater complies with effluent and receiving water limits in the Permit. A March 10, 2006 Inspection Report raised questions about the adequacy of reporting partial bypass events and recommended that the RWQCB evaluate compliance with blending requirements whenever the daily flow reported in a monthly discharge monitoring report (DMR) is greater than 6 mgd.

The Plant experiences significant salt water intrusion due to tidally influenced infiltration. A performance study of the Plant conducted in 2005 concluded that high chloride concentrations in the influent may contribute to BOD and TSS violations by stressing biological treatment and impairing settlement of solids. The Discharger alleges that the sewer lines where tidal influenced infiltration occurs, are located in the satellite systems owned and operated by the City of Sausalito and the Tamalpais Community Services District. In addition to high levels of infiltration, there are numerous overflows from these satellite collection systems documented in sewage system overflow ("SSO") reports in RWQCB records. There are also overflows from the Discharger's collection system documented in SSO reports in RWQCB records. A number of the reported overflows from the Discharger's collection system reached storm drains which discharge into state waters, in violation of the discharge prohibitions in the Discharger's Permit. River Watch members residing in the area of the Plant and other local residents have reported observing sewage spills which were not reported to the RWQCB. River Watch members have also related incidents where they reported SSOs into state waters to the Discharger's staff, only to be told the overflows were not significant enough to justify a containment and clean up response.

Regulatory inspectors have given an overall unsatisfactory rating to the Discharger's implementation of its self monitoring program and records and reporting requirements. According to a compliance evaluation inspection performed by Tetra Tech, Inc. on December 13, 2005, under contract with the United States EPA, a number of the Discharger's reports of exceedances of effluent limits failed to include an explanation of cause or corrective measures, as required by the Discharger's Self Monitoring Program. In the same inspection report, the consultant noted the improper collection of coliform samples and inconsistencies between data reported in DMRs and analytical results.

The RWQCB has prepared a tentative Cease and Desist Order ("CDO") concurrent with a Tentative Order reissuing waste discharge requirements. The Discharger has submitted an infeasibility study regarding its ability to comply with effluent limits for toxic pollutants in the new Permit. The CDO requires the Discharger to comply with interim limits, based on past performance or limits in previous permits, where feasible. The Order recognizes "considerable uncertainty in determining effective measures ... necessary to achieve compliance" (Tentative CDO, p.2). The Order allows time to explore source control measures before implementing

upgrades to the Plant. In prior communications, the Discharger's staff had downplayed the need for source control based on the alleged minimal presence of industrial users in the service area. The CDO lists potential sources of the subject pollutants in Table 2 of the Tentative Order. The common regulatory practice is to provide interim limits without any allowance for infeasibility, where infeasibility to meet final limits has been demonstrated. Here, allowing for infeasibility to meet interim limits reflects the Discharger's historically poor performance and tendency to minimize violations. River Watch intends to seek an independent compliance audit of the Discharger's operations at the Plant as injunctive relief in a settlement agreement or court order.

The Discharger's illegal discharge of untreated wastewater and of treated wastewater exceeding effluent limits is a significant contribution to the degradation of the San Francisco Bay and tributary waters, with serious adverse effects on beneficial uses. River Watch members residing in the area have a vital interest in bringing the Discharger's operations at the Plant 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 inflow and infiltration through a an aggressive collection system management, operation and maintenance ("CMOM") program, coordinated with the satellite systems conveying wastewater to the Plant, with clear time lines for prioritized repairs.
2. Mandatory private sewer lateral inspection and repair programs in each collection system jurisdiction, triggered by sale of property or based on geographical, age and/or composition factors. River Watch understands that the Discharger has no effective authority over the satellite systems. River Watch intends to serve concurrent Notices of Violations on the satellite districts and anticipates a joint, cooperative resolution of concerns raised in the Notices.
3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to state waters.
4. Creation of web site capacity to receive private party reports of SSOs. 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. Installation of a headworks.

6. Development of a pre treatment/source control program.
7. Performance of human marker testing on creeks adjacent to sewer lines to test for sewage contamination from underground exfiltration.

### VIOLATIONS

From July 1, 2002 through July 1, 2007, the Discharger has violated the requirements of the Discharger's NPDES Permits, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Discharger's NPDES Permits. Said violations are evidenced and reported in the Discharger's DMRs, its testing data compiled in compliance with its Permits 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 collection system of the Plant. Furthermore these violations are continuing. The violations, established in DMRs, 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>
<b>1800</b>	Collection system overflows caused by underground exfiltration. This is a case in which untreated sewage is discharge from the collection system prior to the untreated sewage reaching the Plant. Underground discharges are alleged to have been continuous throughout the 5 year period from July 1, 2002 to July 1, 2007. ( Order No. 00-060, Discharge Prohibitions A.2, A.4).

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 Plant reported in DMRs, video inspection of the collection system, and testing of waterways adjacent to sewer lines, including creeks and wetlands, for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.

<b>125</b>	SSOs, as evidenced in San Francisco Bay Water Board SSO Reporting Program Database Records (from Dec.1, 2004 to May 2, 2007), including the overflow of 450 gallons on December 13, 2006 at Marinship near Harbor View Drive, the overflow of 300 gallons on November 15, 2006 at 19 Park Circle Drive, and the overflow of 700 gallons at #1 Fort Baker Road on December 31, 2005 – 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. 00-060, Discharge Prohibition A.2: "The Bypass or overflow of untreated wastewater to Waters of the State, either at the treatment plant or from the discharger's collection system or

pump stations tributary to the treatment plant, is prohibited, except as provided under conditions stated in 40 CFR 122.42 (m)(4) and (n).”

Order No. 00-060, Discharge Prohibition A.4: “ Discharges of water, materials or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain or waters of the State are prohibited.”

### **Effluent Limitations**

<u>Violations</u>	<u>Description</u>
65	Limit TSS ( Order No. 00-060, Effluent Limitation B.1. b)
26	Limit on biochemical oxygen demand (Order No. 00-060 Effluent Limitation B.1. a)
15	Limit on settleable matter. (Order No.-00-060 Effluent Limitation B.1.d)
4	Limit on enterococci bacteria (Order No. R2-2003-0109, 3.b)

### **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.2 and A.4 of Order No. 00-060, as well as failure to adequately describe reported violations, as noted in inspection reports.

### **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 groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA 95472, telephone 707-824-4372.

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

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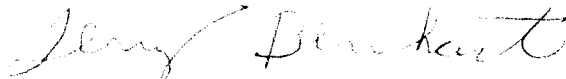
## CONCLUSION

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 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 § 505(a) of the Clean Water Act against the Discharger for violations at the Plant 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

cc:

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