

CERTIFIED MAIL --  
RETURN RECEIPT REQUESTED

July 6, 2001

Managing Agent/Owner  
Covelo Community Services District  
P.O. Box 65  
Covelo, CA 95428

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

Dear Managing Agent and/or Owner:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act") requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. §1365(a), §505(a) of the Clean Water Act, a citizen must give notice of his/her intent to sue 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.

Northern California River Watch ("River Watch") hereby places the Covelo Community Services District ("Covelo") on notice that following the expiration of sixty (60) days from the date of this NOTICE OF INTENT TO FILE SUIT, we intend to bring suit in Federal District Court against Covelo for its 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 §505(a)(1) of the Clean Water Act, 33 U.S.C. §1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Covelo's failure to comply with the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0023574 ("Permit"), attached to and fully incorporated into this Notice, issued by the Regional Water Quality Control Board - North Coast Region ("RWQCB") pursuant to §402 of the Clean Water Act, 33 U.S.C. §1342, at Covelo's wastewater treatment facility identified in the attached Permit, located in Mendocino County, California.

#### BACKGROUND

The Clean Water Act 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 several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the NPDES, 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). Private parties may bring citizen's 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), 33 U.S.C. § 1365(f)(1).

The Clean Water Act provides that, in any given state or region, authority to administer the NPDES permitting system can be delegated by the federal Environmental Protection Agency ("EPA") to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. 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 matter is the RWQCB.

Covelo owns, maintains, and operates a wastewater treatment, refuse and disposal facility ("the Facility") that serves the unincorporated City of Covelo and adjacent areas. The Facility is permitted to discharge into Grist Creek a tributary of the Eel River. The Facility has chronic pollution problems associated with, among other things, its antiquated collection system, undersized facility, old equipment and inconsistent maintenance schedule.

Pursuant to §301(a) of the Clean Water Act, 33 U.S.C. §1311(a), the EPA and the State of California have formally concluded that violations by Covelo of its NPDES Permit, are prohibited by law. Beneficial uses of the Pacific Ocean in the vicinity of the Facility are being affected in a prohibited manner by these violations. Pursuant to § 304 of the Clean Water Act, 33 U.S.C. §1311, the EPA and the State have identified Covelo's Facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

From July 1, 1996, through July 1, 2001, Covelo has violated requirements of its NPDES, the Basin Plan and the Code of Federal Regulation as those requirements are referenced in Covelo's Permit for discharge limitations, effluent limitations, receiving water limitations, monitoring and reporting requirements and unpermitted discharges due to failures in the collection system, as evidenced and reported by Covelo in its monthly self monitoring reports ("SMRs") or daily monitoring reports ("DMRs"), its own testing data compiled in compliance with its Permit or other orders of the RWQCB, and other documentation filed with the RWQCB. Since at least November 1998 Covelo has failed to monitor, report, or submit information including SMRs to the RWQCB or the EPA in violation of its NPDES Permit. Furthermore these violations are continuing. The violations, established in Covelo's SMRs, raw data, records of the unincorporated City of Covelo, the County of Mendocino, and of the RWQCB, include but are not limited to the following categories starting on page 4 of Covelo's Permit:

#### A. Discharge Prohibitions

##### Violations Description

52 Discharge of raw sewage due to collection system wastewater overflows.

24 Treatment plant bypasses.

33 Discharge of partially treated waste.

#### B. Effluent Limitations

##### Violations Description

720 BOD - failure to monitor or report

720 Suspended Solids - failure to monitor or report

720 Settleable Solids - failure to monitor or report

102 Coliform - failure to monitor or report

720 pH - failure to monitor or report

720 Chlorine - failure to monitor or report

#### C. Receiving Water Limitations

##### Violations Description

11,520 Failure to monitor or failure to report monitoring of receiving waters as specified in section C1-C16 (pg. 5-6 of NPDES Permit) attached.

#### D. Solids Disposal

720 Failure to comply with sludge and solids requirements of the NPDES permit.

E. Monitoring and Reporting - Covelo has failed to conduct any monitoring and has failed to report as required by its NPDES permit since at least November 1998. These violations are identified above.

#### F. Miscellaneous

Section 12.a. - Reporting Requirements - Covelo has failed to give the RWQCB notice of planned physical alterations or additions to the permitted facility.

Section 18. - Change in Discharge - Covelo has failed to give the RWQCB notice of "a material change in the character, location, or volume of a discharge."

These enumerated violations are based upon review of the RWQCB files for Covelo as well as monitoring data submitted by Covelo to the RWQCB. In addition to all of the above violations, this NOTICE OF INTENT TO FILE SUIT covers any and all violations of Permit No. CA0023574 evidenced by Covelo's RWQCB records and monitoring reports which Covelo has submitted (or failed to submit) to the RWQCB and/or the EPA during the period July 1, 1996 through July 1, 2001. This NOTICE OF INTENT TO FILE SUIT 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 Covelo to the RWQCB.

Pursuant to §309(d) of the Clean Water Act, 33 U.S.C. §1319(d), each of the above described violations of the Clean Water Act subjects the violator to a penalty of up to \$27,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Clean Water Act pursuant to §505(a) and §505(d), 33 U.S.C. §1365(a) & (d), and such other relief as is permitted by law. Lastly, §505(d) of the Clean Water Act, 33 U.S.C. §1365(d), permits prevailing parties to recover costs and fees.

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 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465, telephone number is 707-874-2579.

The violations of Covelo as set forth in this NOTICE OF INTENT TO FILE SUIT effect the health and enjoyment of members of River Watch who reside and recreate in the City of Covelo area. The members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Covelo's violations of the Clean Water Act.

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

Jack Silver, Esq.  
SILVER & SILVER  
902 Stevenson Street  
Santa Rosa, CA 95404  
Tel. 707-527-8811

River Watch believes this NOTICE OF INTENT TO FILE SUIT 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 Covelo for violations at the Facility.

During the 60-day Notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE OF INTENT TO FILE SUIT. However, if you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Sincerely,

Jack Silver  
JS

cc:  
Christie Todd Whitman, Administrator  
U.S. Environmental Protection Agency  
401 M Street, N.W.  
Washington, D.C. 20460

Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105-3901  
Executive Director

State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Roy O'Connor  
Calif. Regional Water Quality Control Board  
North Coast Region  
5550 Skylane Blvd., Suite A  
Santa Rosa, California 95403

Board of Directors  
Covelo Community Services District  
P.O. Box 65  
Covelo, CA 95428