

CERTIFIED MAIL --  
RETURN RECEIPT REQUESTED

June 30, 2000

Bruce Gehrke  
City of Fortuna Municipal Wastewater Plant  
621 11th Street  
Post Office Box 545  
Fortuna, California 95540

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

Dear Mr. Gehrke:

Section 505(b) of the Federal Water Pollution Control Act (hereafter, "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 (hereafter, "River Watch") hereby places the City of Fortuna (hereafter, "the City") 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 the City 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 the City's failure to comply with the conditions and limitations of its National Pollutant Discharge Elimination System (hereafter, "NPDES") Permit No. CA0022730

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issued by the Regional Water Quality Control Board - North Coast Region (hereafter, "RWQCB") pursuant to §402 of the Clean Water Act, 33 U.S.C. §1342, at the City's wastewater treatment facility located in Humboldt 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 (hereafter, "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 these cases is the RWQCB.

The City of Fortuna owns, maintains, and operates wastewater treatment, refuse and disposal facilities (hereafter, "the Facility"). The Facility is a major discharger as defined by the EPA. The Facility discharges both into the Eel River and Strongs Creek. The Facility

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has chronic pollution problems associated with, among other things, its antiquated collection system, undersized facility, 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 the City of its NPDES Permit, are prohibited by law. Beneficial uses of most portions of the Eel River Basin Area 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 the City's Facility as a point source, the discharges of which contribute to violations of applicable water quality standards.

Over the past five years, the City has violated requirements of its NPDES permit for discharge limitations, effluent limitations, receiving water limitations, monitoring and reporting requirements as reported by the City in its monitoring reports and other documentation filed with the RWQCB, and unpermitted discharges due to failures in the collection system. Furthermore these violations are continuing. The violations, established in the City's monitoring data, raw data, records of the City and of the RWQCB, include but are not limited to the following:

**A. Discharge Prohibitions**

Violations      Description

- 105**              Discharge of raw sewage due to collection system wastewater overflows.
- 10**                Treatment plant bypasses.
- 15**                Prohibition of discharge of non-disinfected wastewater.
- 1350**             Discharge flow limit due to failure to monitor and report river flow.

**B. Effluent Limitations**

Violations      Description

- 70**                Daily maximum limit on total Coliform organisms.

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- 10** Biological Oxygen Demand (“BOD”).
- 1350** pH due to failure to measure and/or limits established in the Basin Plan for the North Coast.
- 5** Settleable solids.
- 25** Chlorine residual limits.

**C. Receiving Water Limitations**

Violations      Description

- 1350** pH limits as per limits set in the Basin Plan for the North Coast.
- 1350** Turbidity levels for failure to monitor or report.
- 1350** Prohibition on floating material, odor, taste, discoloration, bottom deposits, biostimulants, bioaccumulation of pesticides, fungicides, wood treatment chemical, or other toxic pollutants for failure to monitor or report.

**D. Reporting and Monitoring Violations**

Violations      Description

- 110** Failure to measure due to equipment malfunctions.
- 600** Failure to properly monitor and report levels of mercury, chromium (VI), lead, arsenic, cadmium, mercury, molybdenum, nickel, selenium, zinc and failure to provide a basis for not monitoring pursuant to 40 CFR 131.36.
- 55** Filing monthly self-monitoring reports late.

These enumerated violations are based upon review of monitoring data submitted by the City to the RWQCB. In addition to all of the above violations, this notice covers any and all violations of Permit No. CA0022730 evidenced by the City's monitoring reports which the City has submitted to the RWQCB and/or the EPA during the period May 1995 through the present. 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 the City to the RWQCB.

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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 P.O. Box 3591, Santa Rosa, CA, 95402 , telephone number is 707-632-6070.

The violations of the City 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 Eel River watershed area. The members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, hiking, photography, nature walks and the like. The effected watershed is the major source of drinking water in many of the homes of River Watch members. Their health, use and enjoyment of this natural resource is specifically impaired by the City'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:

Kimberly Burr, Esq.  
Northern California Environmental Defense Center  
11220 Occidental Road  
Sebastopol, CA 95472  
Telephone: 707-887-7433  
Facsimile: 707-887-0847

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River Watch believe 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 the City 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 complaint if discussions are continuing when that period ends.

Sincerely,

Kimberly Burr

KB:lh

cc:

Carol M. Browner, Administrator  
U.S. Environmental Protection Agency  
401 M Street, N.W.  
Washington, D.C. 20460

City Attorney  
City of Fortuna  
100 Fortuna Avenue  
Fortuna, CA 95540

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