

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

February 5, 2001

Connie Jackson
Ted Steinhardt
Fort Bragg Municipal Improvement District No. 1
416 N. Franklin Street
Fort Bragg, California 95437

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

Dear Ms. Jackson & Mr. Steinhardt:

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 Fort Bragg Municipal Improvement District No. 1 (“Fort Bragg”) 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 Fort Bragg 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 Fort Bragg’s failure to comply with the conditions and limitations of its National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0023078 (“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 Fort Bragg's wastewater treatment facility identified in the attached Permit and 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 these cases is the RWQCB.

Fort Bragg owns, maintains, and operates wastewater treatment, refuse and disposal facilities that serve the City of Fort Bragg and adjacent areas ("the Facility"). The Facility is a major discharger as defined by the EPA. The Facility is permitted to discharge into the Pacific Ocean. 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 Fort Bragg 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 Fort Bragg's Facility as a point source, the discharges of which contribute to violations of applicable water quality standards.

From February 1, 1996, through February 1, 2001, Fort Bragg has violated requirements of its NPDES, the Basin Plan and the Code of Federal Regulation as those requirements are referenced in Fort Bragg's Permit for discharge limitations, effluent limitations, receiving water limitations, monitoring and reporting requirements as reported by Fort Bragg 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 or in their possession, and unpermitted discharges due to failures in the collection system. Furthermore these violations are continuing. The violations, established in Fort Bragg's SMRs, raw data, records of the City of Fort Bragg, the County of Mendocino, and of the RWQCB, include but are not limited to the following categories starting on page 3 of Fort Bragg's Permit:

A. Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
125	Discharge of raw sewage due to collection system wastewater overflows.
37	Treatment plant bypasses.
73	Discharge of partially treated waste.

B. Effluent Limitations

<u>Violations</u>	<u>Description</u>
35	Maximum limit on total Coliform organisms.
41	Biological Oxygen Demand ("BOD").
27	Non-filterable residue (suspended solids)
61	Settleable Soilds
11	Failure to achieve 85% removal BOD
6	Failure to achieve 85% removal non-filterable residue

C. Receiving Water Limitations

<u>Violations</u>	<u>Description</u>
1340	Failure to monitor or failure to report monitoring of receiving waters as specified in section C1-C15 (pg. 8-9 of Permit).

F. Provisions

<u>Violations</u>	<u>Description</u>
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- 60** Failure to adequately report non-compliance as per Section F(12)(g) of Permit (pg. 17)
- 325** Failure to monitor or report as required by Permit.

These enumerated violations are based upon a review of monitoring data submitted by Fort Bragg 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. CA0023078 evidenced by Fort Bragg's monitoring reports which Fort Bragg has submitted to the RWQCB and/or the EPA during the period February 1, 1996, through February 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 Fort Bragg 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 Fort Bragg 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 Fort Bragg 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 Fort Bragg'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.
Northern California Environmental Defense Center
2312 Bethards Dr.

Santa Rosa, CA 95404
Telephone/Fax: 707-545-4270

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 Fort Bragg 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,

Jack Silver

JS:la
cc:

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

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

Edward Anton, Acting Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100
Adam Lindgren
City Attorney
City of Fort Bragg

416 No. Franklin St.
Fort Bragg, CA 95437