

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

May 30, 2003

Mark Dellinger
Special Districts Administrator
Lake County Sanitation District
230a Main Street
Lakeport, California 95453

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

Dear Mr. Dellinger:

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 occurred and the registered agent of the alleged violator.

Northern California River Watch ("River Watch") hereby places the Lake County Sanitation District (hereafter "the District") on notice that following the expiration of sixty (60) days from the date of this NOTICE River Watch intends to bring suit in Federal District Court against the District 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 incidents of non-compliance listed below.

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 which has been issued a permit pursuant to the National Pollution Discharge Elimination System ("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 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), 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 to a

Lake County Sanitation District
Notice of Intent to File Suite - Clean Water Act
Page 2
May 30, 2003

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 case is the Regional Water Quality Control Board (“RWQCB”).

The Lake County Sanitation District, owns and operates two wastewater treatment, reuse and disposal facilities - the Northwest Regional Wastewater System (“NRWS”) and the Southeast Regional Wastewater System (“SRWS”). Both facilities have chronic pollution problems associated with, among other things, antiquated collection systems, a lack of effluent storage capacity, inadequate treatment capacity and inconsistent maintenance and reporting. Collection system bypasses, leakages caused by pipeline ruptures, and overflows caused by blockages all result in the discharge of raw sewage into gutters, canals and storm drains which are connected to tributaries to Clear Lake, and which flow overland directly into Clear Lake. Clear Lake and its tributaries are waters of the United States. Both of these facilities employ pressurized sewage transfer pipelines, so that large volumes of sewage are discharged when leakages or overflows occur. Surface waters, become contaminated with fecal Coliform, exposing people to human pathogens. The District’s chronic collection system failures pose a substantial threat to public health. Neither of the NRWS nor the SRWS has a NPDES Permit.

NORTHWEST REGIONAL WASTEWATER SYSTEM

The NRWS treatment facility is located at 1155 Whalen Way in Lakeport, Lake County, California. RWQCB Order 98-206 identifies the facility as being located "in Section 25,26,35 and 36, T15N, R10W, MDB&M, with surface water drainage to Lyons Creek, then to Clear Lake". The facility receives domestic and commercial wastewater from communities along the northern and eastern shores of Clear Lake, including Nice, Paradise, Valley, Kono Tayee, Lucerne, Upper Lake and North Lakeport. Treatment at the facility consists of secondary treatment with clarification and disinfection. Treated effluent is stored in a 281 million gallon unlined reservoir and subsequently transmitted, through a sequence of pressurized pipelines and pump stations, to the SRWS treatment plant's storage reservoir, for ultimate discharge into the Southeast Geyser's Pipeline for reuse in the Geysers Geothermal Project. Spray irrigation to pasture land and wetland irrigation via buried pipeline is reserved for use on a contingency basis. The facility is regulated under Waste Discharge Requirements ("WDR") Order No. 5-01-111, adopted by the RWQCB on May 11, 2001. A copy of WDR Order No. 5-01-111 is attached to and fully incorporated into this NOTICE. Prior to the adoption of WDR Order No. 5-01-111, the facility was regulated under WDR Order No. 98-206, adopted by RWQCB on October 23, 1998. A copy of WDR Order No. 98-206 is also attached to and fully incorporated into this NOTICE. The District has no NPDES permit for discharging from this facility.

The NRWS facility has a history of documented overflows from the effluent storage reservoir during above average rainfall. There is also a history of major discharges from the facility's collection system, caused by ruptured pipelines and surcharged manholes due to inflow and infiltration during periods of heavy rainfall. The spill reports also indicate inadequate cleanup and notification practices. The facility's collection system inflow and infiltration problems have caused discharges of raw sewage and treated effluent to surface waters in violation of the prohibition of Clean Water Act with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, Clean Water Act ' 301(a), 33 U.S.C. ' 1311(a).

One incident of particular note involved a release of an estimated 10,000 gallons of raw sewage from a rupture in the transmission line running from Pump Station #1 to the NRWS treatment facility. The untreated sewage spilled onto property at the intersection of 5670 Lakeshore Boulevard and Hill Road. That property is owned by Kitty and Bruce Loberg. The District constructed a drainage ditch and holding pond on the Loberg property in order to contain the spilled sewage until it could be vacuumed and hauled away. The Lobergs allege there was inadequate remediation of the site after the discharged sewage was removed, in violation of the agreement between the Lobergs and the District by which the Lobergs consented to the use of their property to contain the spill. The affected area was covered without compacting the fill and the drainage watercourse was left as is, without cleanup. The District has failed to certify that all hazardous materials from the spill have been removed, as required in the agreement with the Lobergs.

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 District at the NRWS treatment plant are prohibited by law. Beneficial uses of Clear Lake, Lyons Creek, and other tributaries to Clear Lake 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 the NRWS

treatment plant as a point source, the discharges from which contribute to violations of applicable water quality standards.

From May 30, 1998 through May 30, 2003, the District has violated the Clean Water Act, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its NRWS treatment plant without a NPDES permit. Said violations are evidenced and reported by staff at the facility in the plant's monthly self monitoring reports (ASMRs @) or daily monitoring reports (ADMRs @), its own testing data compiled in compliance with its WDRs or other Orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. Furthermore these violations are continuing.

The violations, established in the District's SMRs, raw data and records of the RWQCB, include but are not limited to the following categories in the District's Permit:

Discharge Prohibitions

Violations Description

- 80** Collection system stoppages and overflows.
- 30** Storage reservoir overflows.

SOUTHEAST REGIONAL WASTEWATER SYSTEM

The SRWS treatment facility is located at 2485 Old Highway 53, Clear Lake, Lake County, California. RWQCB Order 96-166 identifies the facility as being located "in Sections 9,10,15 and 16, T13N, R7W, MDB&M, with surface drainage to Burns Valley Creek, which is a tributary to Clear Lake". The facility receives domestic and commercial wastewater from communities in the Clearlake and Lower Lake areas. Wastewater is treated in an activated sludge process. Treated effluent is stored in an effluent storage reservoir and subsequently transmitted to the Southeast Geyser Pipeline for reuse in the Geysers Geothermal Project. Pasture irrigation disposal is reserved for use on a contingency basis. The facility is regulated under WDR Order No. 96-166, a copy of which is attached to and fully incorporated into this NOTICE. The District has no NPDES permit for discharging from this facility.

The NRWS facility has a history of documented overflows from the effluent storage reservoir during above-average rainfall. There is also a history of major discharges from the facility's collection system, caused by ruptured pipelines and surcharged manholes due to inflow and infiltration during periods of heavy rainfall. The spill reports also indicate inadequate cleanup and notification practices. The facility's collection system inflow and infiltration problems have caused discharges of effluent to surface waters in violation of the prohibition of the Clean Water Act with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, Clean Water Act '301(a), 33 U.S.C. '1311(a).

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 District at the SRWS treatment plant are prohibited by law. Beneficial uses of Clear Lake, Burns Valley Creek and other tributaries to Clear Lake 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 the SRWS treatment plant as a point source, the discharges from which contribute to violations of applicable water quality standards.

From May 30, 1998 through May 30, 2003, the District has violated the Clean Water Act, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its SRWS treatment plant without a NPDES permit. Said violations are evidenced and reported by staff at the facility in the plant's monthly SMRs or DMRs, its own testing data compiled in compliance with its WDRs or other Orders of the RWQCB, and other documentation filed with the RWQCB or in its possession. Furthermore these violations are continuing.

The violations, established in the District's SMRs, raw data and records of the RWQCB, include but are not limited to the following categories:

Discharge Prohibitions

- | <u>Violations</u> | <u>Description</u> |
|-------------------|--------------------------------------------|
| 120 | Collection system stoppages and overflows. |
| 20 | Storage pond overflows. |

These enumerated violations are based upon review of monitoring data, correspondence, and other documentation submitted by the District to the RWQCB as well as investigations conducted by the RWQCB and River Watch. In addition to all of the above violations, this NOTICE covers any and all violations evidenced by

Lake County Sanitation District
Notice of Intent to File Suite - Clean Water Act
Page 5
May 30, 2003

monitoring reports which the District has submitted to the RWQCB and/or the EPA during the period May 30, 1998 through May 30, 2003. This NOTICE 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 District 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.

Lake County Sanitation District
Notice of Intent to File Suite - Clean Water Act
Page 6
May 30, 2003

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 the District as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the City of Clearlake and the surrounding area. The members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the District'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 Law Offices
902 Stevenson St.
Santa Rosa, CA 95404
Telephone 707-527-8811
Facsimile 707-527-5443

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 District for violations at the facilities 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 District wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days 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.

Sincerely,

Jack Silver
cc:

Christie Todd Whitman, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Celeste Cantü, Executive Director

Lake County Sanitation District
Notice of Intent to File Suite - Clean Water Act
Page 7
May 30, 2003
State Water Resources Control Board
P.O. Box 100

Office of County Counsel
Lake County
255 North Forbes Street
Lakeport, CA 95453