

1 Jack Silver, Esq. SBN#160575
Law Office of Jack Silver
2 P.O. Box 5469
Santa Rosa, CA 95402
3 Tel. (707) 528-8175
Fax. (707) 542-7139

4 Attorney for Plaintiff
5 Northern California River Watch

6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 NORTHERN CALIFORNIA
11 RIVER WATCH, a non-profit
Corporation,

12 Plaintiff,

13 v.

14 CITY OF SANTA ROSA; DOES
15 1-10, INCLUSIVE,

16 Defendants.
17 _____/

CASE NO: C04 4195 EMC

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**
(Environmental - Clean Water Act
33 U.S.C. §1251 et seq.)

18 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
19 "PLAINTIFF") by and through its attorney, and for its Complaint against Defendants, CITY OF SANTA
20 ROSA and DOES 1 - 10, INCLUSIVE, (hereafter, "DEFENDANT"), states as follows:

21 **NATURE OF THE CASE**

22 1. This is a citizens' suit for relief brought by PLAINTIFF under the Federal Water Pollution Control
23 Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. §1251 et seq., specifically Section
24 505, 33 U.S.C. § 1365, to stop DEFENDANT from repeated and ongoing violations of the CWA. These
25 violations are detailed in the Notice of Violations and Intent to File Suit (hereafter, "NOTICE") made part of
26 the pleadings of this case as Exhibit A to this Complaint.
27
28

1 2. DEFENDANT is routinely violating the terms of its National Pollution Elimination Discharge System
2 (“NPDES”) Permit, Permit number CA0022764 (hereafter, “PERMIT), adopted by the Regional Water
3 Quality Control Board, North Coast Bay Region (hereafter, “RWQCB”), the Water Quality Control Plan
4 for the North Coast Region (hereafter, “Basin Plan”), EPA regulations codified in the Code of Federal
5 Regulations (hereafter, “CFR”) and toxics standards promulgated by the State Water Resources Control
6 Board (hereafter, “SWRCB”).

7 3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of
8 civil penalties, and other relief for DEFENDANT’S violations of the terms of its PERMIT.

9 4. Under 33 U.S.C § 1251(e), Congress declared its goals and policy in regard to public participation
10 in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

11 *Public participation in the development, revision, and enforcement of any*
12 *regulation, standard, effluent limitation, plan or program established by the*
13 *Administrator or any State under this chapter shall be provided for,*
encouraged, and assisted by the Administrator and the States.

14 **PARTIES**

15 5. PLAINTIFF, Northern California River Watch is a 501(c)(3) non-profit, public benefit corporation
16 duly organized under the laws of the State of California, with headquarters located in Occidental, California.
17 PLAINTIFF is dedicated to protect, enhance and help restore the rivers, creeks and tributaries of Northern
18 California. Many of PLAINTIFF’s
19 members live in Sonoma County. PLAINTIFF is organized under the laws of the State of California, its
20 address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465.

21 6. Many of the PLAINTIFF’s members live in Sonoma County. PLAINTIFF’s members have interests
22 which are or may be adversely affected by DEFENDANT’s violations. Said members use the Laguna de
23 Santa Rosa and Russian River watershed areas for domestic water supply, agricultural water supply,
24 recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Furthermore, the relief
25 sought in this Complaint will redress the injury in fact, likelihood of future injury and interference with the
26 interests of PLAINTIFF’s members.

1 7. DEFENDANT, CITY OF SANTA ROSA is a governmental entity. DEFENDANT's population
2 is approximately 140,000. Its administrative offices are located at 100 Santa Rosa Avenue, Santa Rosa,
3 California 95404.

4 8. DEFENDANTS DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and
5 entities, who are, or were, responsible for, or in some way contributed to, the violations which are the
6 subject of this Complaint or are, or were, responsible for the maintenance, supervision, management,
7 operations, or insurance coverage of DEFENDANT's Facilities. The names, identities, capacities, and
8 functions of DEFENDANTS DOES 1 - 10, Inclusive are presently unknown to PLAINTIFF.
9 PLAINTIFF shall seek leave of court to amend this Complaint to insert the true names of said DOES
10 Defendants when the same have been ascertained.

11 JURISDICTIONAL ALLEGATIONS

12 9. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA, 33
13 U.S.C. § 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own behalf
14 against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation . . . or (B)
15 an order issued by the Administrator or a State with respect to such a standard or limitation." For purposes
16 of Section 505, "the term 'citizen' means a person or persons having an interest which is or may be
17 adversely affected."

18 10. Members and supporters of PLAINTIFF reside in the vicinity of, derive livelihoods from, own
19 property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the Russian River
20 watershed area and associated natural resources into which the DEFENDANT discharges wastewater, or
21 by which its operations adversely affect members' interests, in violation of its PERMIT. The health,
22 economic, recreational, aesthetic and environmental interests of PLAINTIFF's members may be, have
23 been, are being, and will continue to be adversely affected by DEFENDANT's unlawful violations of its
24 PERMIT. PLAINTIFF contends there exists an injury in fact to its members, causation of that injury being
25 DEFENDANT's complained of conduct, and a likelihood that the requested relief will redress that injury.

26 11. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), PLAINTIFF gave
27 NOTICE of the violations alleged in this Complaint more than sixty (60) days prior to commencement of this
28

1 lawsuit, to: (a) DEFENDANT, (b) the United States Environmental Protection Agency (hereafter, "EPA"),
2 and (c) the SWRCB.

3 12. Pursuant to Section 309(g)(6)(B) of the CWA, 33 USC §1319(g)(6)(B), NOTICE of the alleged
4 violations was given sixty (60) days prior to filing the complaint, and the complaint has been filed within one
5 hundred twenty (120) days of the date NOTICE was given.

6 13. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in this District
7 because DEFENDANT's treatment facilities, which are the subject of and the source of the violations
8 complained of in this action, are located within this District.

9 **GENERAL ALLEGATIONS**

10 14. DEFENDANT owns and operates a wastewater treatment plant, located in Sonoma County near
11 the town of Santa Rosa. The plant provides treatment for domestic wastewater from the cities of Santa
12 Rosa, Sebastopol, and Rohnert Park as certain adjacent areas.

13 15. All illegal discharges and activities complained of occur in the Laguna de Santa Rosa, the Russian
14 River and/or their tributaries, all of which are waters of the United States.

15 16. The RWQCB has determined that the Russian River watershed area and affected waterways are
16 beneficially used for: drinking water, water contact recreation, non-contact water recreation, fresh water
17 habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial
18 service supply, navigation, and sport fishing.

19 17. DEFENDANT owns and operates wastewater treatment, reuse and disposal facilities (hereafter,
20 "FACILITY"). The FACILITY discharges both directly and indirectly into the waterways referenced
21 above.

22 18. Pursuant to Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the EPA and the State of California
23 have formally concluded that discharges by DEFENDANT of the type complained of in the NOTICE, are
24 prohibited by law. Beneficial uses of most portions of the specified waterways are being affected in a
25 prohibited manner by the illegal discharges and activities of DEFENDANT. Also, pursuant to Section 304
26 of the CWA, 33 U.S.C. §1311, the EPA and the State have identified the FACILITY as a point source, the
27 discharges from which contribute to violations of applicable water quality standards. Both the Laguna de
28

1 Santa Rosa and the Russian River are 303(d) listed as impaired for nutrients and sediment. The Laguna de
2 Santa Rosa is specifically listed as impaired for phosphate.

3 **STATUTORY AND REGULATORY BACKGROUND**

4 19. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a
5 “point source” into the navigable waters of the United States, unless such discharge is in compliance with
6 applicable effluent limitations as set by the EPA and the applicable State agency. These limits are to be
7 incorporated into a NPDES permit for that point source specifically. Additional sets of regulations are set
8 forth in the Basin Plan, the CFR and other regulations promulgated by the EPA and the SWRCB. Section
9 301(a) prohibits discharges of pollutants or activities not authorized by, or in violation of effluent standard or
10 limitation or an order issued by the EPA or a State with respect to such a standard or limitation including a
11 NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. DEFENDANT’S
12 FACILITY is a point source under the CWA.

13 20. The effected waterways detailed in this Complaint and in the NOTICE are navigable waters of the
14 United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7)

15 21. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits, subject to
16 specified conditions and requirements, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17 22. The RWQCB adopted NPDES Permit No. CA0022764, prescribing limitations and conditions for
18 the FACILITY. This PERMIT authorizes DEFENDANT to discharge limited quantities of wastewater and
19 pollutants into the Russian River watershed.

20 23. The PERMIT also prescribes conditions to ensure compliance with the CWA. It requires
21 DEFENDANT to establish and maintain records; to install, use and maintain monitoring equipment; to
22 regularly monitor and sample pollutants in its discharges; and, to report in specified ways on a regular basis
23 to the RWQCB regarding the FACILITY’S discharge of pollutants. The reports include mandatory monthly
24 Self Monitoring Reports (hereafter, “SMRs”) also called Discharge Monitoring Reports (hereafter,
25 “DMRs”).

26 **DEFENDANT’S VIOLATIONS**

27
28

1 24. DEFENDANT's discharges from the FACILITY have violated its PERMIT on numerous
2 occasions and those violations are continuing. The violations are established in DEFENDANT's monitoring
3 data and SMRs as well as data sent to the RWQCB by DEFENDANT.

4 25. The enumerated violations are detailed in the NOTICE, incorporated herein by reference, and
5 below.

6 26. The types of violations are described with particularity by using the designations as set forth in
7 DEFENDANT's PERMIT and detailed in the NOTICE.

8 27. The location of the discharges are the discharges points as described in the PERMIT and incorporated
9 by reference.

10
11 **CAUSE OF ACTION**

12 **Violation of CWA 33 U.S.C. § 1251 et seq.**

13 28. PLAINTIFF realleges and incorporate by reference herein the allegations of Paragraphs 1 through
14 27 as though fully set forth herein including all allegations in the attached NOTICE incorporated by
15 reference.

16 29. DEFENDANT has violated and continues to violate the CWA as evidenced by its violations of the
17 terms of its PERMIT as well as applicable State and Federal standards.

18 30. DEFENDANT's violations are ongoing and will continue after the filing of this Complaint.
19 PLAINTIFF alleges herein all violations which may have occurred or will occur prior to trial, but for which
20 data may not have been available or submitted or apparent from the face of the reports or data submitted by
21 DEFENDANT to the RWQCB or to PLAINTIFF prior to the filing of this Complaint. PLAINTIFF will
22 file additional amended complaints to address violations of DEFENDANT's PERMIT, as well as State and
23 Federal violations that may occur after the filing of this Complaint. Each of DEFENDANT's violations in
24 excess of its PERMIT limits, or State and Federal standards, have been and are separate violations of the
25 CWA. DEFENDANT has violated and continues to violate an "effluent standard or limitation" under
26 Section 505(a)(1) of the CWA, 33 U.S.C. §1365(a)(1).

1 31. PLAINTIFF is informed and believes and on such information and belief alleges and avers that
2 without the imposition of appropriate civil penalties and issuance of appropriate equitable relief,
3 DEFENDANT will continue to violate its PERMIT limits as well as State and Federal standards with
4 respect to the enumerated discharges and releases. PLAINTIFF is informed and believes and on such
5 information and belief alleges that the relief requested in this Complaint will redress the injury to PLAINTIFF
6 and its members, prevent future injury and protect the interests of PLAINTIFF and its members, which
7 interests are or may be adversely affected by DEFENDANT's violations of its PERMIT, or State and
8 Federal standards.

9
10 **RELIEF REQUESTED**

11 WHEREFORE, PLAINTIFF prays that this Court grant the following relief:

- 12 1. Declare DEFENDANT to have violated and to be in violation of the CWA;
- 13 2. Issue an injunctive order requiring DEFENDANT to immediately operate its FACILITY in
14 compliance with the CWA and the applicable effluent and receiving water limitations in its PERMIT as well
15 as State and Federal standards;
- 16 3. Order DEFENDANT to pay civil penalties of \$27,500.00 per violation per day for its violations of
17 the CWA;
- 18 4. Order DEFENDANT to pay PLAINTIFF's reasonable attorneys' fees and costs (including expert
19 witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,
- 20 5. Grant such other and further relief as may be just and proper.

21 /s/

22 DATED: September 30, 2004

23 _____
24 Jack Silver, Esq.
25 Attorney for Plaintiff
26 Northern California River Watch
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28