

July 15, 2004

Wm. Scott Stinebaugh
Deputy Director - Utilities Operations
Utilities Department, Subregional Wastewater Reclamation System
City of Santa Rosa
4300 Llano Road
Santa Rosa, California 95407

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

Dear Mr. Stinebaugh:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA") requires that sixty (60) days prior to the initiation of a civil action under § 505(a) of the Clean Water Act, 33 U.S.C. §1365(a), citizens must give notice of their intent to sue to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur and the registered agent for the alleged violator.

Northern California River Watch ("River Watch") hereby places the City of Santa Rosa ("City") on notice that after the expiration of sixty (60) days from the date of this **NOTICE**, River Watch intends to bring suit in Federal District Court against the City for the City's continuing violations of "an effluent standard or limitation" 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), by failing to comply with the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit No. CA0022764 ("Permit") issued by the Regional Water Quality Control Board, North Coast Region ("RWQCB") pursuant to CWA § 402.

The City's Laguna wastewater treatment facility located in the County of Sonoma, California, has violated requirements of its NPDES permit as detailed below. The violations are established in the City's monitoring data, raw data, records of the City, self-

monitoring reports and records located at other agencies including the RWQCB, Sonoma County Health Department, police and fire departments.

BACKGROUND

The City owns, maintains, and operates wastewater treatment, refuse and disposal facilities. The City's treatment facility is a major discharger as defined by the Environmental Protection Agency ("EPA"). This facility discharges both directly and indirectly into the Russian River and its tributaries. The City is the largest privately owned treatment works ("POTW") discharger in North Coast Region 1. By permit the City is allowed to discharge treated sewage to tributaries of the Russian River equal to five (5) percent of the River's daily flow. These discharges often make up more than fifty (50) percent of the actual receiving waters such as the Laguna de Santa Rosa which is an extensive water body listed by the EPA as impaired for sediment and nutrients including phosphate. Nutrients, including phosphate, are discharged from the City's various ponds and irrigated lands and sediment is released during reclamation operations.

Pursuant to Clean Water Act § 301(a) , 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 Russian River Basin Area are being affected in a prohibited manner by these violations. Pursuant to Clean Water Act § 304, 33 U.S.C. § 1311, the EPA and the State have identified the City's treatment facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

The City's NPDES Permit includes Receiving Water Limitations that implement the water quality objectives contained in the Water Quality Control Plan for the North Coast Region ("Basin Plan"). The NPDES Permit also includes a Monitoring and Reporting Program that is used to help measure compliance within the limitations contained in the NPDES Permit. Violations of either the Receiving Water Limitations or the Monitoring and Reporting Program are violations of the Permit.

Currently, the City's NPDES Permit recognizes numerous different locations within the system where discharges to surface waters may occur. The majority of the treated wastewater discharged from the Laguna Subregional Storage and Disposal System is discharged from various ponds in the system. The Discharge and Receiving Water Monitoring Program adopted for the City and contained in the Regional Water Board Order was established to be an appropriate and meaningful discharge and receiving water monitoring program. The program was designed to apply to multiple discharge points under many probable discharge scenarios.

The Monitoring and Reporting Program in the City's NPDES Permit requires that monitoring of the receiving water is to be performed upstream and downstream of the point of discharge at specified locations, at approximately the same time the wastewater being discharged to the receiving water is monitored. Comparing the results of the different monitored constituents from the discharged wastewater and from the receiving waters upstream and downstream of the discharge is the current means of measuring compliance with the NPDES Permit conditions.

The violations enumerated below are evidenced in the City's own records including but not limited to its self monitoring reports, monitoring data, compliance documents, correspondence, e-mails, laboratory notebooks, recordings, tapes, computers and the like as well as records from other agencies including but not limited to the RWQCB, Sonoma County Health, police and fire departments.

The City has violated the requirements of its NPDES permit, the Basin Plan and the applicable Code of Federal Regulations ("CFRs") for discharge limitations, effluent limitations, receiving water limitations, and monitoring and reporting requirements as reported by the City in its discharge monitoring reports ("DMR") and other documentation filed with the RWQCB or generated by other agencies. Furthermore, these violations are continuing.

The RWQCB adopted a revised Water Quality Control Plan for the North Coast Region Basin (Basin Plan) on May 23, 1996. This updated and consolidated Plan represents the RWQCB's master water quality control planning document. The revised Basin Plan was subsequently approved by the State Water Resources Control Board ("SWRCB") and the Office of Administrative Law. A summary of the regulatory provisions is contained in Title 23 of the California Code of Regulations, Section 3912. The Basin Plan identifies beneficial uses and water quality objectives for waters of the State in the Region, including surface waters and ground waters. The Basin Plan also identifies effluent limitations and discharge prohibitions intended to protect beneficial uses. The Basin Plan and all of its limitations have been incorporated into the City's Permit.

In 2001 the City and River Watch entered into a settlement agreement whereby River Watch agreed not to file suit against the City based upon NPDES permit violations, occurring prior to May 16, 2004. Although this **NOTICE** identifies violations occurring

over the past two years, if a suit is filed River Watch will only bring the action for violations occurring after May 16, 2004.

VIOLATIONS

The CWA requires that any notice to a discharger regarding an alleged violation of an effluent standard or limitation, or a violation of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified the City's NPDES Permit with specificity. It has also used the actual language of the Permit to describe the various violations.

2. *The activity alleged to constitute a violation.*

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are the City and those of its employees who are responsible for compliance with the City's Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the City's Permit and in records either created or maintained by or for the City which relate to the City's POTW and related activities.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined the City's records for the past two years. Therefore, the range of dates covered by this **NOTICE** is from July 15, 2002 through July 15, 2004.

River Watch will from time to time update this **NOTICE** to include all violations which occur after the date of this **NOTICE**. Some of the violations are continuous, therefore each day is a violation. The remainder of the violations and dates of violation are evidenced in the City's own records or the records of other agencies including the RWQCB, Sonoma County Health Department and police and fire departments.

6. *The full name, address, and telephone number of the person giving notice.*

This information can be found at the end of this **NOTICE**.

The following violations occurred between July 15, 2002 and July 15, 2004 and are evidenced in records of the City and the RWQCB identified in this **NOTICE**. The listings below are organized around the City's Permit using the same headings as in the Permit itself.

1. The Laguna de Santa Rosa is listed by the CWA § 303(d) as impaired for nutrients including phosphate. The City is the single, largest contributing source of phosphate to the Laguna de Santa Rosa. By discharging a prohibited quantity of phosphate the City is causing contamination and a nuisance as defined by California Water Code ("CWC") Section 13050. By discharging a prohibited quantity of phosphate, the City is adversely affecting beneficial uses as those uses are defined in the CWA, the CWC, the Basin Plan and in CFRs. Phosphate is a biostimulant. The phosphate discharged by the City causes a nutrient load which exceeds the budget for the Laguna. This eutrophication results in algal blooms and the proliferation of surface plants. The algae and surface plants reduce, and in some cases destroy, the quality of the habitat for salmonids. The surface plants are known to harbor mosquitos including species which carry disease. One of the problems with phosphate is that it accumulates in the bottom deposits. Thus, when the bottom deposits are disturbed it causes prohibited amounts of phosphate to be discharged into the Laguna. In some case the discharges by the City actually cause resuspension of phosphate. Each and every day the City discharges, these discharges violate the following provisions of the Permit:

- a. A(2) DISCHARGE PROHIBITIONS - Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 5411]
- b. C(7) RECEIVING WATER LIMITATIONS - The discharge shall not cause bottom deposits in the receiving waters to the extent that such deposits cause nuisance or adversely affect beneficial uses.
- c. C(8) RECEIVING WATER LIMITATIONS - The discharge shall not contain concentrations of biostimulants which promote objectionable aquatic or algal growths to the extent that such growth causes nuisance or adversely affect beneficial uses of the receiving waters.
- d. C(13) RECEIVING WATER LIMITATIONS - This discharge must not cause a violation of any applicable water quality standards for receiving waters adopted by the

Regional Water Board or the State Water Board as required by the Federal Clean Water Act (CWA) and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to Section 303 of the CWA, or amendments thereto, the Regional Water Board will revise and modify this Permit in accordance with such more stringent standards.

2. The City has numerous ponds in which it stores and releases treated wastewater. A mass balance analysis reveals that these ponds are not integral and leak into the surrounding ground, groundwater and adjacent waters of the United States including the Laguna de Santa Rosa. Leaking ponds are neither described nor regulated in the City's Permit. Leaking ponds create a pollution, contamination or nuisance as defined by CWC Section 13050. As the ponds leak continually the City is discharging during the discharge prohibition period of May 15th through September 30th. Therefore, the City is violating the following Permit conditions each and every day the ponds contain wastewater:

a. A(1) DISCHARGE PROHIBITIONS - The discharge of any waste not specifically regulated by this Permit is prohibited.

b. A(2) DISCHARGE PROHIBITIONS - Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 54111]

c. A(7) DISCHARGE PROHIBITIONS - The discharge of waste from the Laguna Subregional Facilities to the Russian River or its tributaries during the period May 15 through September 30 each year is prohibited.

During the discharge season, each day it is estimated that the ponds leak in amounts sufficient to cause the City to exceed its 5% limit. When the estimated leakage is added to the discharge figures, the City is violating the following Permit limitation:

d. A(8) During the period of October 1 through May 14, discharges of advanced treated wastewater shall not exceed five percent of the flow of the Russian River as measured at Hacienda Bridge (USGS gauge No. 11-4670.00).

The City neither monitors nor reports these prohibited releases, therefore each day these releases occur the City is violating its MONITORING AND REPORTING PROGRAM.

3. The City has an extensive collection system which is part of the Laguna Subregional Facilities. Discharges from the collection system occur continually due to breaks in the pipes carrying sewage. Discharges of raw or partially treated sewage create a health risk

to the environment and to the public. A mass balance analysis indicates that losses of raw sewage occur in the system on a daily basis. This analysis is also supported by the inflow and infiltration (“I&I”) data which shows an increase of flow during winter months indicating an influx of groundwater into the collection system due to breaks in the piping. Although some of the I&I may be coming from illegal connections to the collection system, many of these illegal connections have been eliminated. Most of these illegal discharges occur to land which is not owned or under agreement to use by the City. These discharges violate the following provisions of the Permit:

- a. A(2) DISCHARGE PROHIBITIONS - Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 5411]
- b. A(3) DISCHARGE PROHIBITIONS - There shall be no discharge of advanced treated water or any wastewaters to land which is not owned or under agreement to use by the permittee.
- c. A(6) DISCHARGE PROHIBITIONS - The discharge of untreated or partially treated waste from the Laguna Subregional Facilities is prohibited.

The City only reports a portion of these discharges. Only those discharges that are released to surface streets seem to appear in the City’s records and Wastewater Overflow Reports. To the extent the City does not monitor or report other prohibited releases each day these unreported releases occur, the City is violating its MONITORING AND REPORTING PROGRAM.

4. The City maintains an extensive reuse program which includes approximately 6,236 acres of urban and agricultural land that is irrigated with treated sewage. Many of these lands lie adjacent to waters of the United States including the Laguna de Santa Rosa. Some of the irrigated properties include dairies and City property where animal and human waste is land spread. The treated sewage and solid wastes are high in nutrients. Treated sewage is often applied in excess of the natural capacity of the land to assimilate the nutrients creating an excess nutrient load which is washed from the fields during rains. The deposition of these wastes often occur at a time of the year when full assimilation and breakdown of the nutrients is incomplete prior to the first rains, or so called “first flush.” During first flush excessive amounts of nutrients are washed from these fields into the Russian River, Laguna de Santa Rosa and other waters of the United States. Subsequent rains also carry prohibited amounts of nutrients to the effected waterways. Testing of discharge from these fields reveals a high content of phosphates and nitrogenous compounds. These discharges do not seem to be regulated. Each day it rains in excess of 0.5 inches, nutrient laden rain is discharged from the

land irrigated by the City in violation of the following Permit conditions:

- a. A(2) DISCHARGE PROHIBITIONS - Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health and Safety Code, Section 5411]
- b. A(3) DISCHARGE PROHIBITIONS - There shall be no discharge of advanced treated water or any wastewaters to land which is not owned or under agreement to use by the permittee.
- c. A(7) DISCHARGE PROHIBITIONS - The discharge of waste from the Laguna Subregional Facilities to the Russian River or its tributaries during the period May 15 through September 30 each year is prohibited.
- d. D(1) WATER RECLAMATION REQUIREMENTS - Reclaimed water shall be managed in conformance with regulations contained in Title 22, Division 4, Chapter 3, California Code of Regulations.
- e. D(2) WATER RECLAMATION REQUIREMENTS - The use of reclaimed water that results in unreasonable waste of water is prohibited.
- f. D(3) WATER RECLAMATION REQUIREMENTS - The use of reclaimed water that creates a condition of pollution or nuisance is prohibited.
- g. D(5) WATER RECLAMATION REQUIREMENTS - Reclaimed water shall be applied in such a manner so as not to exceed vegetative demand or field capacity.

5. The majority of the City's discharges to surface waters occur from its various ponds. In comparison to the waters into which they discharge, the ponds are relatively stagnate, lower in dissolved oxygen ("DO"), higher in temperature and vary in pH and turbidity. The RWQCB North Coast Region does not allow for mixing zones. Therefore the discharges must not lower the DO, raise the temperature or turbidity or alter the pH of the receiving waters more than a specified amount at the point of discharge. In addition to specific numeric limitations, the City's Permit contains narrative standards (see Permit C. RECEIVING WATER LIMITATIONS 4 - 10). By law it is the City's burden to prove it is in compliance with the conditions of its Permit. Therefore, each day the City discharges it must have the data to prove it is in compliance with the requirements of its Permit. To the extent the City fails to possess such data it is in violation of the CWA for failure to monitor and/or report.

On examining the City's records River Watch could not find any evidence of compliance with RECEIVING WATER LIMITATIONS 4- 10 as well as numeric limitations for

a majority of the ponds from which the City discharges to receiving waters. In addition to violations for failure to monitor and/or report each day the City discharges from its ponds and its discharges violate the following Permit conditions, the City is in violation of the following Permit provisions:

- a. C(1) RECEIVING WATER LIMITATIONS - The discharge shall not cause the dissolved oxygen concentration of the receiving waters to be depressed below 7.0 mg/l. In the event that the receiving waters are determined to have dissolved oxygen concentration of less than 7.0 mg/l, the discharge shall not depress the dissolved oxygen concentration below the existing level.
- b. C(2) RECEIVING WATER LIMITATIONS - The discharge shall not cause the pH of the receiving waters to be depressed below 6.5 nor raised above 8.5. Within this range, the discharge shall not cause the pH of the receiving waters to be changed at any time more than 0.5 units from that which occurs naturally. If the pH of the receiving water is less than 6.5, the discharge shall not cause a further depression of the pH of the receiving water. If the pH of the receiving water is greater than 8.5, the discharge shall not cause a further increase in the pH of the receiving water.
- c. C(3) RECEIVING WATER LIMITATIONS - The discharge shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.
- d. C(4) RECEIVING WATER LIMITATIONS - The discharge shall not cause the receiving waters to contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.
- e. C(5) RECEIVING WATER LIMITATIONS - The discharge shall not cause the receiving waters to contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.
- f. C(6) RECEIVING WATER LIMITATIONS - The discharge shall not cause aesthetically undesirable discoloration of the receiving waters.
- g. C(7) RECEIVING WATER LIMITATIONS - The discharge shall not cause bottom deposits in the receiving waters to the extent that such deposits cause nuisance or adversely affect beneficial uses.

h. C(8) RECEIVING WATER LIMITATIONS - The discharge shall not contain concentrations of biostimulants which promote objectionable aquatic or algal growths to the extent that such growths cause nuisance or adversely affect beneficial uses of the receiving waters.

i. C(9) RECEIVING WATER LIMITATIONS - The discharge shall not cause the receiving waters to contain toxic substances in concentrations that are toxic to, degrade, or that produce detrimental physiological responses in humans or animals or cause acute or chronic toxicity in plants or aquatic life.

j. C(10) RECEIVING WATER LIMITATIONS -The following temperature limitations apply to the discharge to the receiving waters:

i. When the receiving water is below 58°F, the discharge shall cause an increase of no more than 4°F in the receiving water, and shall not increase the temperature of the receiving water beyond 59°F. No instantaneous increase in receiving water temperature shall exceed 4°F at any time.

ii. When the receiving water is between 59°F and 67°F, the discharge shall cause an increase of no more than 1°F in the receiving water. No instantaneous increase in receiving water temperature shall exceed 1°F at any time.

iii. When the receiving water is above 68°F, the discharge shall not cause an increase in temperature of the receiving water.

k. C(11) RECEIVING WATER LIMITATIONS - The discharge must not cause bioaccumulation of pesticide, fungicide, wood treatment chemical, or other toxic pollutant concentrations in bottom sediments or aquatic life to levels which are harmful to human health.

l. C(12) RECEIVING WATER LIMITATIONS - The discharge must not cause the receiving waters to contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water that cause nuisance or that otherwise adversely affect beneficial uses.

m. C(13) RECEIVING WATER LIMITATIONS - This discharge must not cause a violation of any applicable water quality standards for receiving waters adopted by the Regional Water Board or the State Water Board as required by the Federal Clean Water

Act (CWA) and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to Section 303 of the CWA, or amendments thereto, the Regional Water Board will revise and modify this Permit in accordance with such more stringent standards.

These enumerated violations are based upon review of monitoring data submitted by the City to the RWQCB and other documents as described above. In addition to all of the above violations, this **NOTICE** covers any and all violations of Permit No. CA0022764 evidenced by any of the records previously identified. This **NOTICE** also covers any and all violations by the City 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 or generated by other agencies.

Northern California River Watch is a 501(c)(3) 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. It is organized under the laws of the State of California. Its address is 74 Main Street, Suite D, Occidental, CA. Its mailing address is P.O. Box 1360, Occidental, CA 95465. Its phone is 707-874-2579.

The violations of the City as set forth in this **NOTICE** effect the health and enjoyment of members of River Watch who reside and recreate in the Russian 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 members' homes. 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 it in this matter. All communications should be addressed to:

Jack Silver, Esquire
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Phone 707-528-8175

This **NOTICE** sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends file a citizen's suit under Clean Water Act § 505(a) against the City for violations at the City's waste treatment facility. During the 60-day notice period River Watch is willing to discuss effective remedies for the violations noted in this **NOTICE**. River Watch is also willing to enter into a ninety (90) day tolling agreement with the City preserving the rights of the parties and allowing for meaningful discussion of the issues described above.

Very truly yours,

Jack Silver

cc:

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