

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 15, 1999

Susan Rawlings, Deputy County Counsel
County of Sonoma
575 Administration Drive, Room 116-A
Santa Rosa, California 95403

*Re: Second and Updated Notice of Violations and Intent to File Suit Under
the Clean Water Act*

Dear Ms. Rawlings:

In September, 1997 Northern California River Watch ("River Watch") sent a Notice of Violations and Intent to File Suit Under the Clean Water Act ("Notice") to your clients the Sonoma Valley County Sanitation District, the Sonoma County Water Agency and the County of Sonoma (collectively the "Defendants"). A copy of that Notice is attached hereto and incorporated herein for reference as if part of this document.

This Second and Updated Notice of Violations and Intent to File Suit Under the Clean Water Act (“Second Notice”) updates the first Notice. This Second Notice covers violations which have occurred, but for which data was not or may not have been available or submitted or apparent from the face of the reports or data submitted by the Defendants to the Regional Board or to River Watch.

The enumerated violations are based upon review of monitoring data and other documents submitted by the Defendants to the Regional Board or to River Watch. In addition to all of the enumerated violations, this Second Notice covers any and all violations of permit No. CA0037800 evidenced by the Defendants’ monitoring reports or other documents that the Defendants have submitted to the Regional Board or River Watch during the period from August 1997, through the present.

RIVER WATCH ALLEGES THE FOLLOWING VIOLATIONS:

I. DISCHARGE PROHIBITIONS

A. Collection System Overflows

In the Defendants’ Self-Monitoring Reports for the Sonoma Valley Treatment Plant the Defendants report collection system overflows in the section titled East County Sewage Stoppage Report for the various months. The Defendants have admitted the following violations:

<u>MONTH/YEAR</u>	<u>OVERFLOWS</u>	<u>GAL. REPORTED</u>
AUG 97	3	460
SEP 97	2	520
OCT 97	1	400
NOV 97	1	400
DEC 97	2	400*
JAN 98	5	230*
FEB 98	1	2,000
MAR 98	3	300*
APR 98	4	355*
MAY 98	7	700*
JUN 98	4	0*
JUL 98	3	620*
AUG 98	1	3,600
SEP 98	4	1,600
OCT 98	5	16,980

TOTAL: 46 days of violation for at least 28,565 gallons

River Watch further alleges that the actual amount is not known since not all spills are measured.

B. Plant Bypasses

The Defendants reported 40 days in January and February 1998 during which they discharged approximately 142,020,000 gallons of partially treated (blended) sewage and 14 days in the same period during which their basin spilled over into Shell Creek discharging approximately 49,545,000 gallons raw sewage. In Defendants' self monitoring report for February 1998 the column labeled "blended" represents discharge of partially treated sewage from the treatment facility to Schell Slough. The column labeled "overflow" represents overflows of the equalization basins themselves. The discharges take place at different places within the system and are therefore considered separate violations.

TOTAL: 54 days violation for approximately 191,565,000 gallons

II. EFFLUENT LIMITATIONS

Violations of weekly average limits were counted as 7 violations, violations of monthly averages were counted as violations of each day of that month.

A. Copper

Copper has a daily average of 2.9 μ /l when discharged to Schell Slough and 11.8 μ /l when discharged to wetlands. Therefore, the Defendants were considered to be in violation from the date of non-compliance until the date the Defendants came back into compliance.

TOTAL: 293 days of violation

The Defendants admit these limits were exceeded on the following dates:

<u>MONTH/YEAR</u>	<u>DATES</u>	<u>VIOLATIONS</u>
SEP 97	16-22	7 days

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OCT 97	2-20, 28-31	24 days
NOV 97	1-30	30 days
DEC 97	1-31	31 days
JAN 98	1-31	31 days
FEB 98	1-28	28 days
MAR 98	1-31	31 days
APR 98	1-30	30 days
MAY 98	1-31	31 days
JUN 98	1-19	19 days*
AUG 98	5-11, 20-31	23 days
SEP 98	16, 17, 25-28	6 days
OCT 98	26-27	2 days

*Discharge switched from Schell Slough to wetlands June 20, 1998.

B. Mercury

Mercury has a both a daily limit and a monthly average. The Permit requires that the Defendants measure mercury down to a limit of 0.01µ/l. The Defendants failed to properly measure below 0.2µ/l until September 9, 1998, at which point all samples measured were above the 0.01µ/l specified in the Permit. Every month between August 1997 and October 1998 the violations were counted as occurring every day.

TOTAL: 488 days of violation

Additionally the Defendants admitted violations on the following months:

<u>MONTH/YEAR</u>	<u>DATES</u>
AUG 97	11-18
NOV 97	18-22
JAN 98	13-20
APR 98	8-11
SEP 98	9-30

C. Lead

Lead has a daily limit of 3.2µ/l. Therefore, the Defendants were considered to be

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in violation from the date of non-compliance until the date the Defendants came back into compliance.

TOTAL: 71 days of violation

The Defendants admits these limits were exceeded on the following dates:

<u>MONTH/YEAR</u>	<u>DATES</u>	<u>VIOLATIONS</u>
AUG 97	5-31	27 days
SEP 97	1-3	3 days
OCT 97	2-31	29 days
NOV 97	1-4	4 days
JAN 98	5-13	9 days
OCT 98		

D. pH

The pH of the effluent is required to be not less than 6.5. Of the 15 months examined, the Defendants violated that Permit requirement 8 of the 15 months.

TOTAL: 14 days of violation

The Defendants admitted violations on the following months:

<u>MONTH/YEAR</u>	<u>VIOLATIONS</u>
SEP 97	1
NOV 97	5
APR 98	1
MAY 98	1
JUN 98	1
AUG 98	3
SEP 98	1
OCT 98	1

E. Coliform

____ The Defendants are required to maintain both a daily limit as well as a 5-day median limit as to coliform. Daily exceedences were counted as 1 day of violation. Violation of the 5-day moving median was also counted as one day of

violation for the day the 5-day median exceeded permit limits. For coliform there were a total of 8 days of single day limits and 26 days of 5-day median violations.

TOTAL: 34 days of violation

The Defendants admitted violations on the following months:

<u>MONTH/YEAR</u>	<u>VIOLATIONS</u>
OCT 97	1
NOV 97	10
JAN 98	6
FEB 98	3
MAR 98	3
APR 98	1
MAY 98	1
AUG 98	3
SEP 98	8

F. 85% Removal BOD and TSS

The Defendants are required to achieve a removal of biological oxygen (BOD) and total suspended solids (TSS) equal to or greater than 85%. Each day the Defendants failed to meet the 85% removal was counted as 1 day of violation.

TOTAL: 18 days of violation

The Defendants admitted violations on the following months:

<u>MONTH/YEAR</u>	<u>VIOLATIONS</u>
OCT 97	1
FEB 98	6
MAR 98	1
AUG 98	1
SEP 98	2

G. Total Suspended Solids and Settleable Matter

____ Total suspended solids ("TSS") effluent is limited to a daily average of 60 mg/l,

weekly of 45 mg/l, monthly of 30 mg/l and 40 mg/l for recycled water. Settleable Solids also referred to as Settleable Matter ("SM") is limited to an instantaneous maximum of 0.2 mg/l. Each daily exceedance of the constituent was counted as one day of violation. Daily violations were counted as a single day of violation. For the month of February the Defendants failed to meet several single day limits, 2 of 4 weekly averages and the monthly average. To be conservative February was counted as 28 days of violation rather than 28 plus the daily and weekly exceedances.

TOTAL: 43 days of violation

The Defendants admitted violations on the following months:

<u>MONTH/YEAR</u>	<u>EFFLUENT LIMIT</u>	<u>VIOLATIONS</u>
SEP 97	TSS	1
OCT 97	TSS	3
NOV 97	SM	2
JAN 98	SM	1
FEB 98	TSS	28
MAR 98	SM	4
APR 98	SM	2
AUG 98	SM	2

H. Effluent Limit B.6.b. Constituents

Numerous constituents were required to be measured at levels listed below. As with Mercury above, the Defendants failed to measure at the required level. Therefore, for every month between August 1997 and October 1998 the violations were counted as occurring every day for each constituent. There were 457 days during this period and 16 constituents.

TOTAL: 7312 days of violation

<u>Constituent</u>	<u>Limit (µl monthly unless otherwise specified)</u>
2,4 Dichlorophenol	0.3
2,4,6 Trichlorophenol	0.34
Aldrin	0.0001

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☞-BHC	0.004
☞-BHC	0.01
Chlordane	0.0001
Cyanide	1 - daily
DDT	0.0006
DDT	0.001 - daily
Dieldrin	0.001
Heptachlor	0.0002
Heptachlor Epoxide	0.0001
Hexachlorobenzene	0.0007
PAHs	0.003
PCBs (total)	0.0001
PCBs (total)	0.01 - daily
Pentachlorophenol	0.28
Pentachlorophenol	7.9/9.5 - daily
Toxaphene	0.0002 daily

Additionally the Defendants admitted violations on the following months:

<u>MONTH/YEAR</u>	<u>CONSTITUENT</u>	<u>DATE</u>
NOV 97	Cyanide	5-30
FEB 98	Cyanide	5-24
MAR 98	Tributlytin	21-31
MAR 98	PAHs	21
MAR 98	Dieldrin	21-31
APR 98	Dieldrin	29-July 29
APR 98	Tributlytin	1-23, 29-30
JUL 98	Tributlytin	1-28

I. Chloroform and Helomethanes

Chloroform and Helomethanes each have a monthly limit of 100µ/l. Defendants were considered to be in violation from the date of non-compliance until the date the Defendants came back into compliance. On July 20, 1998, the Defendants admitted to be in violation for both constituents and did not measure again in August or September despite requirements to do so by Permit.

TOTAL: 216 days of violation

The Defendants admits these limits were exceeded on the following dates:

<u>MONTH/YEAR</u>	<u>CONSTITUENT</u>	<u>DATES</u>	<u>VIOLATIONS</u>
OCT 97	Chloroform	2-31	29 days
NOV 97	Chloroform	1-30	30 days
DEC 97	Chloroform	1-31	31 days
APR 98	Chloroform	16-22	7 days
APR 98	Halomethane	16-22	7 days
JUL 98	Chloroform	21-31	10 days
JUL 98	Halomethane	21-31	10 days
AUG 98	Chloroform	1-31	31 days
AUG 98	Halomethane	1-31	31 days
SEP 98	Chloroform	1-30	30 days
SEP 98	Halomethane	1-30	30 days

I. Chlorine Discharges

Chlorine is measured on a continuous basis and is required to be non-detect at the discharge point. Any violation in a day was considered a daily violation. The amounts discharged are from the Defendants' estimates.

TOTAL: 3 days violation and at least 62,000 gallons

<u>MONTH/YEAR</u>	<u>DATES</u>	<u>GAL. REPORTED</u>
APR 98	8	12,000
JUN 98	8, 12	25,000, 25,000

J. Receiving Water Limitations

Section C.1.c. of the Permit prohibits the discharge from causing any alteration of temperature or turbidity in the receiving waters. Although discharges often caused "any alteration", only discharges which caused an increase of more than 0.1 degree in temperature or increase in turbidity were considered significant and counted as violations of the standard. Discharge occurs between monitoring points CS-1 and CS-2. Of the 9 discharge months, 3 showed significant increases in temperature, 3 showed significant

increases in turbidity. The discharger failed to measure for dissolved sulfide for any discharge months as required by the Permit section C.2.b. and SMP Attachment A to Permit. Receiving water parameters were only measured monthly although discharge took place throughout the month. Therefore, each month with a receiving water exceedance, violations were counted for each day of that month. Turbidity was counted for 91 days of violation, temperature for 92 days violation, and dissolved sulfide 270 days of violation.

TOTAL: 453 days of violation

The Defendants admitted violations on the following months:

<u>MONTH/YEAR</u>	<u>CONSTITUENT</u>
NOV 97	Turbidity, pH
DEC 97	Turbidity
JAN 98	Turbidity
APR 98	Temperature
MAY 98	Temperature
JUN 98	Temperature

K. Monitoring and Reporting Violations

1. Failure to Accelerate Sampling After Measuring an Exceedance of an Effluent Parameter

Under the terms of the Defendants's Permit in SMP Attachment A "[i]f any effluent sample is in violation of limits, sampling shall be increased for that parameter to at least daily or greater until compliance is demonstrated in two successive samples." Self-monitoring Program Part A of the Permit furthers requires that "[i]f two consecutive samples of a constituent monitored on a weekly or monthly basis in a 30 day period exceed the monthly average effluent limit for any parameter, (or if the required sampling frequency is once per month and the monthly sample exceeds the monthly average limit), the sampling frequency shall be increased to daily until the additional sampling shows that the most recent 30-day moving average is in compliance with the monthly average limit." To determine compliance with this provision of the Defendants's Permit the following criteria was used:

- a. Only effluent limitations Section B exceedances.
- b. Only effluent limitation exceedances identified in the Defendants' own SMR's.
- c. Constituents in which the Defendants failed to monitor or failed to monitor at the detection level required in the Permit were not counted.
- d. If there was any conflict between the requirements of SMP Attachment A or Self-monitoring Program Part A, the more conservative approach was taken.
- e. For the constituents detailed, the Defendants did not accelerate sampling after measuring an exceedance of the effluent parameter, therefore, violations were counted as occurring after the first day of admitted exceedance to the time compliance was demonstrated.

Based upon the above criteria the Defendants had the following violations:

CONSTITUENT	DATES	VIOLATIONS
Cooper	See section II. A. above	275
Mercury	See section II. B. above	42
Lead	See section II. C. above	66
Cyanide	See section II. H. above	44
Tributlytin	See section II. H. above	53
Dieldrin	See section II. H. above	101
Chloroform	See section II. I. above	161
Halomethanes	See section II. I. above	76

TOTAL: 818 days of violation

2. Failure to Sample Overflows for BOD and Coliform

None of the SMRs or records supplied by the Defendants pursuant to discovery requests demonstrated that the Defendants sampled any collection system overflows for BOD or Coliform. Between August 1997 and October 1998 there were 41 collection system overflows and therefore 41 violations of the failure to sample for BOD and Coliform.

TOTAL: 41 days of violation

3. Failure to Identify and Describe its Violations in its Cover Letters to its Monthly SMRs

As required by the Defendants' Permit, the letter of transmittal should identify all violations found during the reporting period. Only those violations identified by the Defendants as evidenced in their own monitoring data attached to their SMRs was used to determine compliance with this provision. Each deficient transmittal letter was counted as one day of violation no matter how many violations they failed to report.

Based upon the above criteria the Defendants had the following violations:

<u>MONTH/YEAR</u>	<u>CONSTITUENT</u>
SEP 97	Copper, pH
NOV 97	Turbidity
DEC 97	Turbidity
JAN 98	Turbidity
APR 98	Temperature, Halomethane, pH
MAY 98	Temperature
JUN 98	Temperature
JUL 98	Halomethane
AUG 98	pH, Settleable Matter
SEP 98	85% Removal BOD, TSS

TOTAL: 10 days of violation

4. Failure to Submit Follow-up Letters to the RWQCB Confirming its Telephonic Reports of Violations of Permit Effluent Limitations and Prohibitions

Section E.6.d. of the Standard Provisions and Reporting Requirements requires that the Defendants make a telephonic report of any "[v]iolation of a maximum daily discharge limitation for any of the pollutants listed" in the Defendants' Permit within 24 hours of the incident and within 5 days to follow that telephonic report with a written report describing the violation. On no occasion does the Defendants' record show that a telephonic or written report

was made which conforms to the requirement of this section of the Defendants' Permit.

<u>MONTH/YEAR</u>	<u>DATE</u>	<u>CONSTITUENT</u>
SEP 97	16, 19	TSS, Copper
OCT 97	2, 7, 15, 18,28	Coliform, Copper
NOV 97	3-7, 9-13,15-19, 23	SM, Copper Coliform, pH
DEC 97	2, 11, 18, 22, 28	Copper
JAN 98	5, 13, 15, 21, 26-31	SM, Copper, Coliform
FEB 98	1-6, 9, 12, 18, 25	TSS, Copper, Coliform
MAR 98	3, 13, 19, 21,22, 24, 30	SM, Copper, Coliform
APR 98	8, 12, 14-16, 21, 22,28,29	SM, Copper, Coliform, pH
MAY 98	7, 13, 17, 20, 27	Copper, pH
JUN 98	2, 8, 10,12,17,24	Copper, pH, Chlorine
AUG 98	5, 6, 16, 20, 24, 26-28	SM, Copper, Coliform, pH
SEP 98	9, 15-21, 23, 25, 28	SM, Copper, Coliform,

TOTAL: 94 days of violation

5. Failure to Submit Reports on a Timely Basis

Section F.4. of the Self-monitoring Program Part A of the Defendants' Permit requires that SMRs be filed by the 15th day following the end of the monitored month. The face of each report details both the date submitted as well as the reporting month. Of the 17 months examined, none of the SMRs were submitted on a timely basis. The time submitted ranged from 24 to 143 days after the end of the reporting month.

TOTAL: 17 days of violation

6. Failure to Monitor Certain Constituents at Required Detection Levels

As mentioned in II. H. above, several constituents were routinely measured at levels below that specified in the Permit. These were counted as both an effluent violation and as a monitoring and reporting violation.

TOTAL: 7312 days of violation

7. Failure to Properly Certify Reports

40 CFR 122.22(d) as well as section E.1.b. of the Standard Provisions require specific certification. Certification appears on the title page of each SMR. Not until the SMR for October 1998 were the SMRs properly certified.

TOTAL: 17 days of violation

8. Failure to Provide Map of Each Known Overflow or Bypass Location

The Defendants' Permit requires them to provide a map of each known overflow or bypass location. When examining the Defendants' files and from a review of the Defendants' response to discovery, no maps were submitted for the numerous overflows and bypasses. Only one violation per SMR was counted despite multiple overflows and bypasses in that month. There were overflows or bypass for each of the 17 months examined.

TOTAL: 17 days of violation

Pursuant to Section 309(d) of the Act, 33 U.S.C. §1319(d), each of the violations above described violations of the Act subjects the violator to a penalty of up to \$27,500 per day per violation. In addition to civil penalties, River Watch seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) & (d), 33 U.S.C. §1365(a) & (d), and such other relief as is permitted by law. Lastly, Section 505(d) of the Act, 33 U.S.C. §1365(d), permits prevailing parties to recover costs and fees.

Northern California River Watch is a nonprofit public benefit corporation dedicated to protect, enhance and help restore the rivers, creeks and tributaries of Northern California. River Watch is organized under the laws of the State of California, with its main office in Santa Rosa, California. Many of the members of River Watch live in Sonoma County. Several members live in the Sonoma/Glen Ellen watershed area. The violations of the Discharger effect the health and enjoyment of our members in Sonoma/Glen Ellen watershed area, as well as all citizens of the Bay Area. Our members use the effected area for domestic water

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supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Our members' health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the Clean Water Act.

The address of River Watch is P.O. Box 3591, Santa Rosa, California 95402, phone number 707-578-0966. River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver
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Santa Rosa, California 95404

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Very truly yours,

Jack Silver

cc:

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