

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

August 30, 2002

Larry Moran, Utility Director
City of Willits
111 East Commercial Street
Willits, California 95490

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

Dear Mr. Moran:

On or about August 3, 2001, Northern California River Watch (“River Watch”) served the City of Willits (“Willits”) with a 60 day Notice of Intent letter (“Notice”) as required by the Clean Water Act. Although River Watch believes that the initial Notice was adequate under the law, in order to further clarify any claimed ambiguities from the first Notice, River Watch hereby supplements that Notice with the one contained herein. This Notice shall also serve as Notice separate and apart from any other Notice thus served.

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.

River Watch hereby places Willits 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 Willits 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

Willits' failure to comply with the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0023060 ("Permit")¹, 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, with respect to Willits' wastewater treatment facility located in Mendocino County, California, and identified in the Permits attached herein.

BACKGROUND

The Clean Water Act regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter which 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 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 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 RWQCB.

Willits owns, maintains, and operates wastewater treatment, refuse and disposal facilities that serve the City of Willits and adjacent areas ("the Facility"). The Facility is a major discharger as defined by the EPA. The Facility is permitted to discharge into Broaddus Creek which is a tributary to the Eel River. The Facility has chronic pollution problems associated with, among other things, its antiquated collection system, old equipment and an inconsistent maintenance schedule. Willits has had a long standing problem in staying within the 1:100 dilution criteria set forth in its Permit. Willits is aware of the problem and has long

¹ Both the 1995 Permit (WDR Order No. 95-49) and the current Permit (WDR Order No. R1-2001-71) are attached.

term plans to resolve these violations by redesigning its Facility. To that end Willits has completed a draft Environmental Impact Report (DEIR) and is in the scoping process for its final EIR. In the DEIR, Willits has admitted that it is impossible for them to comply fully with the 1:100 dilution criteria. As a means to circumvent the 1:100 dilution, Willits discharges excess wastewater via irrigation to a field near its Facility. The DEIR admits that the holding capacity of this field is limited. RWQCB staff and residents in the area have observed runoff from Willits' irrigation discharge. In addition the field into which Willits discharges is a wetlands and has been so designated by the Army Corp of Engineers. Willits' irrigation discharges to these wetlands is illegal during the no discharge season - May 15 through September 30, and illegal when the combined discharge to Broaddus Creek and irrigation exceeds 1% of the flow of the receiving waters.

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 Willits of its NPDES Permit, are prohibited by law. Beneficial uses of the Eel River and its tributaries in the vicinity of the Facility are being affected in a prohibitive manner by these violations. Pursuant to § 304 of the Clean Water Act, 33 U.S.C. §1311, the EPA and the State have identified Willits' Facility as a point source, the discharges of which contribute to violations of applicable water quality standards.

From September 1, 1997 through September 1, 2002, Willits has violated the requirements of its NPDES Permit, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in Willits' Permit for discharge limitations, effluent limitations, receiving water limitations, monitoring and reporting requirements as evidenced and reported by Willits 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 its possession, and unpermitted discharges due to failures in the collection system and illegal irrigation discharges. Furthermore these violations are continuing. The violations, established in Willits' SMRs, raw data, records of the City of Willits, Mendocino County, and of the RWQCB, include but are not limited to the following categories in Willits' Permit:

A. Discharge Prohibitions

| <u>Violations</u> | <u>Description</u> |
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| 525 | Creation of a pollution, contamination etc. ² For discharging wastewater via irrigation in such a fashion to cause runoff of pollution including animal waste and soils into receiving waters. |
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² See Discharge Prohibitions A(4) and A(3) in Order Nos. 95-49 and R1-2001-71 respectively.

600 Discharge of waste to waters of the United States during the period May 15 through September 30.³ For discharging wastewater via irrigation to wetlands adjacent to tributaries of the Eel River.

525 Discharges which exceed 1% limit of the flow of the receiving waters.⁴ For discharging wastewater via irrigation in such a fashion to cause runoff of pollution including animal waste and soils into receiving waters exceeding 1% limit when the irrigation values are added to daily discharge to Broaddus Creek.

B. Effluent Limitations

| <u>Violations</u> | <u>Description</u> |
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| 50 | Minimum limit on pH. Willits measures pH in 3 significant figures but only reports in 2 significant numbers. By averages half each reported pH of 6.5 was actually a pH less than 6.5 rounded up. |
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E. General Provisions

| <u>Violations</u> | <u>Description</u> |
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| 525 | Failure to mitigate. ⁵ Willits has failed to take all reasonable steps to minimize or prevent adverse effects of over irrigation. |
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| 60 | Failure to properly maintain adequate laboratory control and appropriate quality assurance procedure as required under 40 CFR 122.41(e). ⁶ |
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| 1000 | Failure to comply with monitoring information records. ⁷ Willits' monitoring records fail to consistently include the date, exact place, and time of sampling or measurements; the individual(s) who performed the sampling or measurements; the date(s) analysis were performed; the individual(s) who performed the |
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³ See Discharge Prohibition A(7) and A(6) in Order Nos. 95-49 and R1-2001-71 respectively.

⁴ See Discharge Prohibition A(8) and A(7) in Order Nos. 95-49 and R1-2001-71 respectively.

⁵ See Order No. R1-2001-71 E(4) Duty to Mitigate.

⁶ See Order No. R1-2001-71 E(5) Proper Operation and Maintenance.

⁷ See Order No. R1-2001-71 E(10)(c) Records of monitoring information.

analysis; the analytical techniques or methods used; the results of the analysis (eg. see pH above); the method detection method limit and the practical quantitation level or the limit of quantitation.

575 Failure to report non-compliance.⁸ Willits has never made a written submission containing a description of its noncompliance events, causes, periods of noncompliance etc. as specified and required by its Permit.

1000 Failure to file a new Report of Waste Discharge after making a material change in the character, location, or volume of a discharge.⁹ Willits has sought to circumvent its 1% discharge to receiving waters limitation by discharging its excess waste to wetlands adjacent to receiving waters.

1000 Failure to properly monitor and report.¹⁰ Willits submits many reports without identifying the exact date; fails to report chlorine values sufficiently to determine what the chlorine value was at the time of discharge; fails to report monitoring of receiving waters as required in its permit.¹¹

These enumerated violations are based upon review of monitoring data, correspondence, and other documentation submitted by Willits to the RWQCB as well as investigations conducted by the RWQCB and River Watch. In addition to all of the above violations, this NOTICE OF INTENT TO FILE SUIT covers any and all violations of Permit No. CA0023060 evidenced by Willits' monitoring reports which Willits has submitted to the RWQCB and/or the EPA during the period September 1, 1997 through September 1, 2002. 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 Willits 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

⁸ See Order No. R1-2001-71 E(12)(f) Noncompliance Reporting.

⁹ See Order No. R1-2001-71 E(17) Change in Discharge.

¹⁰ See Order No. R1-2001-71 E(19) Monitoring.

¹¹ Monitoring and Reporting Program No. R1-2001-71.

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 707-874-2579.

The violations of Willits 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 Willits 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 Willits' 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
902 Stevenson St.
Santa Rosa, CA 95404
Telephone 707-527-8811 Fax 707-527-5443

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 Willits 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 Willits wishes to pursue such discussions in the absence of litigation, we suggest they be initiated 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 lawsuit if discussions are continuing when that period ends.

Sincerely,

Jack Silver

cc:

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