CS

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415·460·9760
david@weinsofflaw.com

Via Certified Mailing – Return Receipt

May 2, 2016

Thomas K. Mattson
Airport Manager / Head of Agency
California Redwood Coast – Humboldt County Airport
Arcata / Eureka Airport
3561 Boeing Avenue
McKinleyville, CA 95519

Thomas K. Mattson
Director/Head of Agency
Humboldt County Public Works Department
1106 2nd Street
Eureka, CA 95501

Kathy Hayes, Clerk of the Board
Members of the Board of Supervisors
County of Humboldt
825 5th Street, Room 111
Eureka, CA 95501

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Mattson, Head of Agency, Ms. Hayes and Members of the Board of Supervisors,

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. §1251 *et seq.,* that River Watch believes are occurring at the California Redwood Coast – Humboldt County Airport, also known as the Arcata/Eureka Airport, owned and operated by the County of Humboldt ("the Airport") located at 3561 Boeing Avenue in McKinley, California. Notice is being sent to you as the responsible owners, operators, and managers of the Airport and real property. This Notice addresses the violations of the CWA, including violation of the new terms of the General California Industrial Storm Water Permit that replaced the "Group Monitoring" provisions, and

the unlawful discharge of pollutants from the Airport directly into Widow White and Strawberry Creeks, the Mad River (CWA § 303(d) impaired for sedimentation/siltation, temperature, and turbidity), and into the Pacific Ocean.

CWA §301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System ("NPDES") permit or a general NPDES permit issued pursuant to CWA §402(p), 33 U.S.C. §1342. CWA §402(p), 33 U.S.C. §1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA §402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA §402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

CWA §505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Airport. Consequently, the Airport and County of Humboldt, (collectively, the "Discharger") is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA §301(a), §402(p), and §505(a)(1), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan."

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

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

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA §402(p) and violations of

NPDES Permit No. CAS000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the "General Permit") relating to the recycling services and operations at the Airport.

The Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board approved the NOI on or about March 11, 1992 and the Discharger is assigned Waste Discharger Identification ("WDID") number 1 21I000357. River Watch, on the basis of eye-witness reports and records publicly available and/or records in the possession and control of the Discharger, contends that in the continuing operation of the Airport, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit – specifically the requirements governing sampling and analysis, requiring the preparation and implementation of effective Best Management Practices ("BMPs") in its Storm Water Pollution Prevention Plan ("SWPPP"), and ensuring the elimination of all non-authorized storm water discharges from the Airport.

Compliance with these General Permit requirements is central to the effectiveness of the General Permit program. River Watch alleges the Discharger has failed and is failing to comply with the General Permit annual reporting requirements for reporting year 2015-2016. The General Permit in effect beginning July 1, 2015 (Order No. 2014-0057-DWQ), revised significantly the reporting requirements for industrial facilities such as the Airport that were covered under the "Group Monitoring" provisions of the 1997 General Permit. Under the new General Permit, "Group Monitoring" as defined in the previous permit, has been eliminated and replaced with a new compliance option called "Compliance Groups." The Compliance Group option differs from Group Monitoring as it requires (1) all Dischargers participating in a Compliance Group (Compliance Group Participants) sample two QSEs [qualifying storm events] each year …" *See* General Permit Fact Sheet Section II.M; Permit Section XI.B.3.

Consistent with the new General Permit, the Discharger obtained the first of two required storm water samples on December 3, 2015 (the second sample has not, as of the date of this Notice, been uploaded to SMARTS). Review of the "Analytical Report" of the storm water sample, however, fails to reveal monitoring and analysis of the full range of pollutants required by the General Permit. The Report provides sampling results for Oil and Grease, Total Suspended Solids, and COD, but fails to provide sampling results for pH (required of all permitted facilities), BOD and NH3 (additional analytical parameters in "Table 1" for dischargers in SIC code 4581 provided the Airport "use[s] more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an annual average basis"), and all "additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of industrial pollutant identified in the pollutant source assessment …" (Permit Section XI.B.6.c). In its June, 2015 SWPPP, the Discharger identifies the following "List of Industrial Materials" – Avgas 100LL, Jet A, Hydraulic Fluid, Torque Fluid, Differential Fluid, Power Divider Fluid, THF, Motor Oil, Waste Oil, Waste Fuel Storage, Generator Fuel, Propylene Glycol (*see* SWPPP Sections 4.1 and 7.0).[1] River Watch alleges that the Discharger's failure to provide full sampling results is a violation of the General Permit.

---

[1] Review of laboratory samples submitted by other SIC Code 4581 airport facilities identify copper, zinc, and lead as additional parameters requiring sampling and analysis by the Airport.

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

The Discharger's industrial activities, defined in Section 4.2 of the current SWPPP as "aircraft fueling," "equipment maintenance," waste fuel storage shed," "county vehicle washing," "airline deicing operations," and "rental vehicle washing." and classified on the NOI as SIC Code 4581 ("Airports, Flying Fields, and Airport Terminal Services"), trigger monitoring and sampling for the full range of mandated and "additional parameters" listed in paragraph 1 above.

The work at the Airport is conducted both indoors and outdoors, where it is subject to rain events. Because there is no State Water Resources Control Board or RWQCB exemption from the collecting and analyzing of the range of pollutants identified above, and without implementing the full range of required sampling and analysis, there is no accurate measure by which to determine whether required BMPs are both implemented at the Airport and effective to ensure no unlawful discharge(s) of the pollutants identified above from the Airport discharge to Widow White and Strawberry Creeks, the Mad River, and into the Pacific Ocean – all waters of the United States.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain a proper exemption under the terms of the General Permit from its requirements). As stated above, review of the public record by River Watch reveals that the Discharger obtained coverage under the General Permit for the Airport, but fails to comply with its environmentally protective requirements, in particular the mandated sampling and analysis of storm water discharges from the Airport.

Note that in addition to the pollution controls in the General Permit, the RWQCB has established water quality standards applicable to facilities such as that operated by the Discharger. The RWQCB's Basin Plan includes both a narrative toxicity standard and a narrative oil and grease standard, providing that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

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

The entities responsible for the alleged violations are the California Redwood Coast – Humboldt County Airport, also known as the Arcata/Eureka Airport, and the County of Humboldt, referred to collectively herein as the Discharger.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Airport at 3561 Boeing Avenue in McKinleyville, California, including the waters of Widow White and Strawberry Creeks, the Mad River, and into the Pacific Ocean – all waters of the United States.

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

The range of dates covered by this Notice is from July 1, 2015 to May 2, 2016. River Watch will from time to time further update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

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

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, Public Benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. River Watch's northern California mailing address is 290 South Main Street, #817, Sebastopol, California 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd., #422, Los Angeles, California 90043. River Watch is dedicated to protecting, enhancing and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

REMEDIAL MEASURES REQUESTED

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Airport:

1. Prohibition of the discharge of pollutants including, but not limited to:

- pH, total suspended solids, total organic carbon or oil & grease (the standard pollutants);

- BOD, COD, and NH3, which are the specific General Permit Section XI. (Monitoring) "Table 1: Additional Analytical Parameters" required to be sampled

for facilities identified under SIC code 4581 if the Airport "use[s] more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an annual average basis";

- all "Potential Pollutant Sources" listed in the Discharger's current SWPPP.

2. Preparation and submittal to the RWQCB of a "Reasonable Potential Analysis" for the Airport and its operations.

3. Preparation of further updates to the Airport's June, 2015 SWPPP that include, but are not limited to, additional BMPs necessary to address any violations identified by required sampling and analysis.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger to contact River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Airport. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the Discharger is in compliance with the strict terms and conditions of the General Permit, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

David Weinsoff

DW:lhm

Service List

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

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

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Executive Officer
Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd / Suite A
Santa Rosa, CA 95403