CS

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save our wetlands

Via Certified Mail –
Return Receipt Requested

May 25, 2016

Sean McGlade, Director
Department of Public Works
Head of Agency
City of Victorville
14343 Civic Dr.
P.O. Box 5001
Victorville, CA 92393-5001

Doug Robertson, City Manager
Members of the City Council
City of Victorville
14343 Civic Drive
P.O. Box 5001
Victorville, CA 92323-5001

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

Dear Mr. McGlade, Mr. Robertson, Head of Agency, and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"; 33 U.S.C. § 1251 *et seq.*) that River Watch alleges are occurring through the ownership and/or operation of the City of Victorville's sewage collection system.

River Watch hereby places the City of Victorville ("the City"), as owner and operator of its sewage collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Lahontan Regional Water Quality Control Board Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of sewage from the City's sewer pipelines to a water of the United States.

The CWA 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 enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a polluter in violation of the CWA. River Watch alleges the City violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

River Watch understands the City is a signatory to a NPDES permit governing the operation of the Victor Valley Wastewater Reclamation Authority for the treatment of its sanitary sewage, and that this permit does not cover discharges from the City's collection system.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the 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 (*see* 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 ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the Lahontan Regional Water Quality Control Board ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

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 specified standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of sewage from the City's sewage collection

system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

2. *The Activity Alleged to Constitute a Violation.*

River Watch contends that from May 25, 2011, to May 25, 2016, the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Collection System Surface Discharges Caused By Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the sewage collection system prior to reaching the Victor Valley Wastewater Reclamation Authority treatment plant, are alleged to have occurred both on the dates identified in the California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports and on the dates when no reports were filed with CIWQS by the City, all in violation of the CWA.

A review of the Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as **30**, with **12,102,280** "Total Vol of SSOs (gal)". Of this total volume, the City claims **404,038** gallons, or **3%** of the total, reached a surface water. However, a review of the records indicates a much greater percentage of SSOs reached a drainage to a surface water or a surface water itself. Critically, of the **12,102,280** gallons of sewage spilled, only **183,120** gallons or just **1.5%** was recovered. The remainder was discharged into the environment posing both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment.

The below listed violations are reported by the RWQCB and evidenced in CIWQS SSO Reporting Program Database Records.

7 - SSOs reported as reaching a water of the United States - CIWQS Event ID numbers: 769936, 773941, 776936, 814130, 818116, 819880, 820116.[1]

All of these discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are discharges of a pollutant (sewage) from a point source (sewage collection

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[1] *See*https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportId=sso_overview_region&reportAction=generate&region=6B&agency=Victorville%20City&collSys=Victorville%20SD%20CS&count=14&sortcol=1&printfriendly=y&curpage=0&pagesize=25; May 20, 2016.

system) to a water of the United States without complying with any other sections of the Act. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

Releases Reported. The City's aging sewage collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure resulting in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Oro Grande Wash, Bell Mountain Wash, Turner Wash and three unnamed tributaries of the Mojave River – all waters of the United States (*see* CIWQS Event ID# 819880 (Coordinates 34.50461-117.2995), Event ID# 820116 (Coordinates 34.56066-117.29904) and Event ID# 814130 (Coordinates 34.49631-117.29404).

As recorded in CIWQS Public SSO Reports, the City's sewage collection system has experienced at least **14** SSOs between May 25, 2011 and May 25, 2016, with a combined volume of at least **11,875,252** gallons – **235,956** gallons of which were reported as having reached surface waters.

As an example, on March 26, 2015 a spill estimated at 214,450 gallons occurred at a dirt easement approximately 350 feet from Grant Street and Lambert Lane (CIWQS Event ID# 814130). According to the report 3,000 gallons out of a total of 214,450 gallons were recovered. However, the City reports the total amount of 214,450 gallons as reaching an unnamed tributary of the Mojave River (Coordinates 34.49631-117.29404).

Also, on September 14, 2015, a spill took place at Turner Wash, approximately 240 feet northwest of Happy Valley Lane and Royston Street (Event ID # 818116), caused by debris consisting of rocks, sticks, tires and pipes reported as "vandalism". The estimated 11,360,000 gallons spilled into a two mile tributary path to the Mojave River within Turner Wash with 2,000 gallons reported as recovered and 1 gallon reported as reaching surface water. The City's SSO Report downplays impacts to the Mojave River from this spill stating there was no flow downstream of the SSO.

In addition, discharges from the City's sewage collection system to storm water channels are discharges to waters of the United States. While some areas where spills have occurred were dry at the time, the discharged pollutants enter receiving waters following rainfall or flooding.

This Notice also includes multiple violations that may have occurred on the same day but were reported by the City to CIWQS as a single violation. Many of the City's SSO Reports state "null" in response to question 12 "Number of appearance points." In addition, no water quality samples were taken for any of the 14 reported SSO violations.

Discharges to Surface Waters. River Watch's expert believes that many of the SSOs reported by the City as having been contained without reaching a surface water did in fact discharge to surface waters, and those reported as partially reaching a surface water did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the SSO Reports filed by the City state the estimated start time of the SSO as the same time as, or very soon after, the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun. The City's Reports indicate that some of the discharges reach a storm drain, but fail to determine the accurate amounts which reach a surface water. River Watch contends the City is grossly underestimating the incidences and volume of SSOs that reach surface waters.

Since the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration, the practice of estimating a later than actual start time leads to an underestimation of both the duration and the volume. The majority of the City's SSOs are estimated to have started within 3 hours of the notification/operator arrival time. River Watch believes that many of these spills were far more significant than as reported due to the unlikely time estimations.

As an example, the SSO Report from a spill event occurring at 14907 South Mojave Drive on March 24, 2011 (Event ID # 765740) lists the estimated start time as 12:15 p.m., agency notification time as 12:20 p.m., operator arrival time as 12:30 p.m. and spill end time as 1:00 p.m. Very little detail is given in the City's Report for this spill. The total volume is estimated at only 4,500 gallons, 1,000 recovered, and 3,000 gallons reported as affecting an unspecified surface water.

In describing a spill occurring on December 23, 2013 at Easement-Future Braemar Drive - Cross Street Future Penrith Way (Event ID # 802199) the City's SSO Report identifies both the estimated SSO start time and notification time as 05:00 p.m., the operator arrival time as 05:45 p.m., and the spill end time as 10:30 a.m. the following day, December 24, 2013. The City estimated a total volume of 28,800 gallons, 2,400 which were reported as recovered, and 28,800 gallons reported as spilling onto land.

Mitigating Impacts. River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the Impacts of a SSO. The EPA's "*Report to Congress on the Impacts of SSOs*" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within areas of the City's SSOs. Neighboring waterways to the City include sensitive areas such as Mojave Narrows Regional Park.

There is no record of the City performing any analysis of the impact of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the sewage collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. As the City is severely underestimating the number and quantity of SSOs which reach surface waters, River Watch contends the City also fails to conduct sampling on any of its reported SSOs.

Compliance with the Municipal Separate Storm Sewer System (MS4) Stormwater Permit. River Watch contends the City fails to adequately comply with the discharge prohibitions in the MS4 permit (Order No. 2013-0001-DWQ; NPDES No. CAS000004) which states, in relevant part: "[d]ischarges of waste from the MS4 that are prohibited by Statewide Water Quality Control Plans or applicable Regional Water Quality Control Plans (Basin Plans) are prohibited."

In practice, the addition of any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited, and any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code § 13050(m)[2] is prohibited (including SSOs whether or not they reach a surface water.

B. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is also a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewage collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints eroded segments, etc., in the City's sewage collection system into groundwater hydrologically connected to surface waters including, but not limited to, tributaries of the Mojave River such as Oro Grande

[2] California Water Code § 13050(m) defines nuisance to mean "anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes.

Wash, Bell Mountain Wash and Turner Wash. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.[3]

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data and video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the City is a violation of the NPDES permit and thus the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the City's sewage collection system to determine the location and extent of exfiltration.

C. Impacts to Beneficial Uses

The Mojave River has many beneficial uses as defined in the RWQCB's Basin Plan. The River supports 33 species of mammals, over 300 species of seabirds, and 20 species of fish. Os reaching the Mojave River cause prohibited pollution by unreasonably affecting its beneficial uses. River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around the City's diverse and sensitive ecosystem.

3. *The Person or Persons Responsible for the Alleged Violation.*

The entity responsible for the alleged violations identified in this Notice is the City of Victorville as owner and operator of its sewage collection system, as well as the those of the City's employees responsible for compliance with the City's NPDES Permit and the CWA.

4. *The Location of the Alleged Violation.*

The location of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its sewage collection system as further described in this Notice.

The City of Victorville, encompassing an area of about 73.7 square miles, is located in San Bernardino County in the geographic sub-region of the southwestern

[3] *See* the Report of Human Marker Study issued in July of 2008 and conducted by Dr Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

Mojave Desert known as the Victor Valley. It is accessible via Interstate 15, Highway 395, California State Highway 18 and historic Route 66. Commonly referred to as "high desert", the City sits approximately 2,900 feet above sea level. Temperatures range from below freezing to 110° F in the summer months. The average annual precipitation is 3.9 inches with an average of 28 days annually having measurable precipitation. The City's population exceeds 121,000. Based on the 2008 Sewer System Master Plan, the City has experienced a growth in population since 2006. Its location between Southern California and Las Vegas makes the City is a central hub for transportation and business.

The City's sewage collection system consists of 728,627 linear feet of PVC, Vitrified Clay Pipe and cement-lined pipe ranging from 8-inches to 36-inches in diameter. The City discharges its sewage to the Victor Valley Wastewater Reclamation Authority ("VVWRA") interceptor system at 6 metering site locations designated as VSD-1, VSD-2, VSD-3, VSD-4, VSD-5, and VSD-6. The VSD 1 metering station is located adjacent to E Street and I-15, immediately south of Southwest Portland Cement. The VSD 2 metering station is located near the railroad tracks between Kemper Campbell Ranch and Mojave Narrows Park. The VSD 3 and VSD 4 metering stations are located along Turner Road. VSD 3 is closest to National Trails Highway, and VSD 4 is adjacent to the City of Adelanto's storage tanks, water treatment system, and pump building. The flow from both of the correctional institutes at the Federal Prison Complex are included in the flow measured by VSD 4. The VSD 5 metering station (formerly known as VSD 1, or old VSD 1) is located immediately north of Southwest Portland Cement and adjacent to the old sewage treatment ponds. The VSD 6 station is a relatively new connection located at the foot of Third Street, and does not contain a metering or sampling station.

The flow through the City's sewage collection system is comprised of domestic, commercial, and industrial wastes. VVWRA operates as a joint powers authority and public agency of the State of California, serving four member agencies including: San Bernardino County Service Areas 42 (Oro Grande) and 64 (Spring Valley Lake); City of Hesperia; Town of Apple Valley; and the City. The VVWRA treatment plant is currently capable of treating approximately 13 MGD and is currently undergoing an expansion to increase its capacity to 18 MGD to meet the demands of Victor Valley.

The Mojave River ground-water basin is located in the western part of the Mojave Desert, about 80 miles northeast of Los Angeles. The basin encompasses about 1,400 square miles and is divided into 6 management subareas: Oeste, Este, Alto, Transition zone of the Alto, Centro, and Baja. The Mojave River serves as a major source of surface water and replenishment (recharge) to the ground-water system in the basin. However, the River is unreliable for direct water supply as its 100 miles of streambed is dry except for a short reach of perennial flow and periods of flow after intense storms. Therefore, residents of the basin rely almost entirely on ground water for their water supply which has resulted in overdraft conditions.

The Mojave River is approximately 110 miles long and flows throughout the Mojave Desert and eastern San Bernardino Mountains of San Bernardino County. The Mojave River is the primary geographic and hydrologic feature of the Mojave River Watershed, comprised of approximately 4,500 square miles of land that collects ground water, most of it from the Mojave River. Most of the River's flow is underground, while its surface channels remain dry most of the time with the exception of the headwaters and several bedrock gorges in the lower reaches. In the City, a plug of impermeable rock forces the underground flows to the surface.

Sourcing in the San Bernardino Mountains, the West Fork of the Mojave River flows into Silverwood Lake, formed by Cedar Springs Dam, which overflows in the Mojave River Forks Reserve area. On occasion, water is released from the Lake into the River. Downstream, Deep Creek meets the West Fork, forming the Mojave River immediately upstream of the Mojave Forks Dam, which provides flood control. Downstream of the dam, the Mojave River flows north and east, primarily underground, through Hesperia, Barstow and the City. Near its terminus, the Mojave River flows out onto Mojave River Wash – a large inland delta at the western edge of Mojave National Preserve. During heavy flows the River reaches Soda Lake at the north end of the Wash. The Mojave Desert is home to more than 1,000 plants and 600 animals. They acclimate to extreme climates and adapt to survival with very little water, making the quality of the water they use that much more important. Animals common to the Mojave Desert include the desert tortoise (threatened), coyote, red-tailed hawk, cottontail rabbit, black-tailed jackrabbit, bighorn sheep, bat, mountain lion, bobcat, rattlesnake and barn owl.

Numerous wildlife species listed by either the California Dept. of Fish & Game and/or the U.S. Fish & Wildlife Service as threatened or endangered, make their home in the City. The Yellow-billed Cuckoo, Willow Fly-catcher, Least Bell's Vireo, Mojave Ground Squirrel, Desert Tortoise, and Mojave River Vole can all be found within the riparian habitat of the Mojave River. The Mojave Narrows Regional Park is home to many migrating birds in October including Canadian Geese, Northern Shoveler, Great Blue Heron, Double-Crested Cormorants, Great White Egret, Raven, and Osprey.

5. *The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is May 25, 2011 through May 25, 2016. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after this period. Some violations are continuous, and 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, referred to herein as "River Watch." River Watch is an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 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 educating the public concerning environmental issues associated with these environs. River Watch members residing and recreating in the area of the City and the surrounding watershed have a vital interest in bringing the City's operation of its sewage collection system into compliance with the CWA.

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 raised in this Notice. All communications should be directed as follows:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with City staff to tailor remedial measures to the specific operation of the City's sewage collection system. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns.

I. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewage collection system. Inspection is based upon closed circuit television ("CCTV") inspections for sewer lines, manhole

inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewage collection system located sufficiently proximate to a surface water that if defective could allow exfiltration to that surface water. Whether a line is "sufficiently proximate" will depend upon a number of factors including: age, composition and PACP rating of the sewer line in question; the nature of the defect; soil types; groundwater patterns; and the like.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1 – Minor defect.

II. REMEDIAL MEASURES

A. Sewer Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in the City's sewage collection system sufficiently proximate to a surface water and determined to pose a risk of exfiltrating to that surface water, which have been CCTV'd within the past ten (10) years and were rated as Significantly Defective (PACP 5 or 4) or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, the City will:

i. Repair or replace all sewer lines found to be Significantly Defective;

ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; sewer pipe segments which contain defects with a rating of 3 that are not replaced or repaired within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the City determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall complete such repair or replacement within two (2) years after the last CCTV cycle;

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the City shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 5 or 4 based on the PACP rating system shall be repaired or replaced within three (3) years after the rating determination, and,

5. Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. This program shall begin one (1) year following the Full Condition Assessment described above.

B. <u>SSO Reporting and Response</u>

1. Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered;

ii. For Category I and II Spills, a listing of nearby residences or business owners who have been contacted, to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began);

iii. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.

2. Pursuant to the City's legal obligation under the State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements For Sanitary Sewer Systems*, Section D.7.v., the City shall have a qualified biologist develop and implement an adequate sampling program to determine the nature and impact of all SSOs.

3. Creation of website capacity to track information regarding SSOs or, in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification shall be given by the discharger to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.

4. Performance of human marker sampling on surface waters adjacent to sufficiently proximate sewer lines to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

   i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

   ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

   iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3)years;

   iv. Upon replacement or repair of any part of the sewer lateral;

   v. Upon issuance of a building permit with a valuation of $25,000.00 or more; or,

   vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

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, fishing, horseback riding, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource may be specifically impaired by the City'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 a governmental instrumentality or agency, 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 the 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 City to contact River Watch within **20 days** after receipt of this Notice Letter to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

SERVICE LIST

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