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OCT 06 2016

October 3, 2016

Via Certified Mail:

U.S. Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Washing, 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

RE: Notice of Violation and Intent to File Suit under the Clean Water Act, for Nuisance, Trespass and for Damages for Remediation of Wetland Property

To Whom It May Concern:

Pursuant to 33 U.S.C. 1365, a Notice of Violation and Intent to File Suit, a copy of which is attached hereto, was mailed to the below-named parties by certified mail today, October 3, 2016:

1. [redacted] Bayside, California 95524;
2. [redacted], Bayside, California 95524;
3. [redacted] Bayside, California 95524;
4. [redacted], Bayside, California 95524;
5. [redacted] Bayside, California 95524;
6. [redacted], Bayside, California 95524;
7. [redacted] Bayside, California 95524;
8. [redacted], Bayside, California 95524; and
9. [redacted] Bayside, California 95524.

Sincerely,

Allison G. Jackson

JAMES J. ASTE
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OCT 06 2016

October 3, 2016

By Certified Mail:
[redacted]
[redacted]
[redacted]
Bayside, CA 95524

Re: Notice of Violation and Intent to File Suit
Our File No. 10579.001

To [redacted]:

We are reserving the Notice of Violation and Intent to File Suit today by certified mail. The Notice of Violation and Intent to File Suit was originally served on you on May 11, 2016, but did not include the telephone number of our client, Greg Harmer. Therefore, please take notice that Greg Harmer's telephone number is ([redacted] Please direct all correspondence to my address as shown above or to Mr. Harmer at [redacted] Redding, CA 96002.

Sincerely,

Allison G. Jackson

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FORTUNA, CA 95540
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SENT TO All Addressees (9)
ON 5/11/16 BY REG. POST
PH

May 11, 2016

[redacted]
Bayside, California 95524

[redacted]
Bayside, California 95524

[redacted]
Bayside, California 95524

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Bayside, California 95524

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Bayside, California 95524

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Bayside, California 95524

[redacted]
Bayside, California 95524

[redacted]
Bayside, California 95524

[redacted]
Bayside, California 95524

RE: Notice of Violation and Intent to File Suit under the Clean Water Act, for Nuisance, Trespass and for Damages for Remediation of Wetland Property

To Whom It May Concern:

This letter is sent to notify you of a serious situation which requires your immediate attention. I apologize in advance for what I am sure to be an upsetting letter regarding your property, but this letter is necessary. It is my hope that you will immediately forward this to your attorney (if you have one) so that he or she can review the matter. Hopefully, the situation can then be rectified short of having to take formal action to correct the problem. However, correcting the problem will likely be significant.

I am writing on behalf of our client, Glen Harmer (for Richard and Edith Harmer). The Harmers own properties which are located at [redacted], Bayside, California 95524; the APN numbers of the Harmer properties are [redacted] respectively.

By this letter, our client gives you notice that we believe that each of you are in violation of the Clean Water Act by the deposit and discharge of waste and waste water from each of your properties' septic systems into wetlands located on the Harmer properties. If these violations outlined below are not remedied within sixty days, our client intends to commence an enforcement action against the below listed parties 1-9, naming each of you and seeking civil penalties, prohibitive and mandatory injunctive relief, as well as other appropriate relief including attorneys' fees and costs. *If you believe any of the information in this letter is incorrect, please contact the undersigned immediately or have your counsel notify us immediately*.

After review of the county files regarding this matter, the following properties are believed to be intentionally draining waste and waste water into the Harmer's wetland properties in violation of the Clean Water Act:

1. [redacted], Bayside, California 95524;
2. [redacted], Bayside, California 95524;
3. [redacted], Bayside, California 95524;
4. [redacted], Bayside, California 95524;
5. [redacted], Bayside, California 95524;
6. [redacted], Bayside, California 95524;
7. [redacted], Bayside, California 95524;
8. [redacted], Bayside, California 95524; and
9. [redacted] Bayside, California 95524.

I. Clean Water Act Background:

The Clean Water Act ("CWA" or "the Act") expressly prohibits the "discharge of a pollutant" unless such discharges comply with the terms of any applicable National Pollutant Discharge Elimination System ("NPDES") permit, and sections 301, 302, 307, 308, and 402 of the Act. 33 U.S.C. §§ 1311(a), 1342. "Discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutant is defined to include "industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). A point source is "any discernable confined and discrete conveyance." 33 U.S.C. § 1362(14). Navigable waters are broadly defined as "the waters of the United States." 33 U.S.C. § 1362(7). NPDES permits, which are issued under 40 C.F.R. § 122.28, include both general permits authorizing a category of discharges under the CWA within a geographical area, and individual permits, which are issued to specific facilities. NPDES permits must include conditions that will ensure compliance with the CWA. At a minimum, NPDES permits must include technology-based effluent limitations, and more stringent limitations necessary to meet water quality standards, and monitoring and reporting requirements. *See* 33 U.S.C. §§ 1342, 1311, 1318. NPDES permits must also implement and comply with all applicable Total Maximum Daily Loads ("TMDL"), including the temperature and sediment TMDL adopted for the Eel River and Outlet Creek.

The CWA § 402 requires each discharger to meet minimum technology-based treatment requirements. Section 402 states that all permits must meet all applicable requirements under CWA § 301. 33 U.S.C. § 1342. Section 301, in turn, requires all discharges to achieve, at a minimum, best practicable control technology ("BPT"). 33 U.S.C. § 1311(b)(1)(a). Discharges of toxic pollutants must be treated pursuant to the best available technology ("BAT"), 33 U.S.C. § 1311(b)(2)(A), and other pollutant discharges must comply with best conventional technology ("BCT"). 33 U.S.C. § 1311 (b)(2)(E).

In addition to implementing technology-based controls, each point source discharger must achieve "any more stringent limitation, including those necessary to meet water quality standards...." 33 U.S.C. § 1311(b)(1)(C). Water quality standards establish the water quality goals for a water body. 40 C.F.R. § 131.2. They serve as the regulatory basis for the establishment of water-quality-based controls over point sources, as required under § 301 and § 306 of the CWA. Once water quality standards are established for a particular water body, any NPDES permit authorizing discharges of

pollutants into that water body must ensure that the applicable water quality standard will be met. 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.4(d), 122.4(i), 122.44(d).

Although the EPA is the primary administrator of the Clean Water Act, the EPA is authorized to delegate its authority to states to implement and administer the Clean Water Act. 33 U.S.C. § 1342(b). Pursuant to this provision, California has the authority to regulate discharges of pollutants by, among other actions, issuing NPDES permits to dischargers, and establishing receiving water quality standards and objectives. The State Water Resources Control Board and the nine Regional Water Quality Control Boards, including the Regional Water Quality Control Board, North Coast Region ("Regional Board"), are the California agencies bearing responsibility for issuing NPDES permits.

The Clean Water Act also prohibits the discharge of dredged or fill materials to waters of the United States without a Section 404 Permit. 33 U.S.C. §§ 1342(a), 1344. Section 404 permits are issued and administered by the United States Army Corps of Engineers. *See* 33 C.F.R. §§ 323.1-323.6. The term "waters of the United States" includes a wide range of waterbodies, including "interstate wetlands," wetlands adjacent to navigable waters, and all other waters the "degradation or destruction of which could affect interstate or foreign commerce." 33 C.F.R. §328.3.

II. Property Background.

The four Harmer properties that I listed above and for which I provided the APNs, also above, are designated as Coastal Wetlands and are in the Coastal Zone. The Harmer properties are as 3-parameter wetlands as you can get: Hydrophytic vegetation, wetland hydrology, and wetland soils all present and easily identified.

III. Clean Water Act Violations.
<u>Point Source Discharge Without an NPDES Permit</u>

Many years ago, it seems that each of your properties (the nine subject properties listed above) suffered a failure in each of their septic systems due to the inability of the leach systems to drain appropriately. Apparently, instead of installing a mound septic system, all of the subject properties, 1-9 above, simply rerouted the wastewater to deposit into the wetlands located on the properties now owned by the Harmers.

As explained above, the discharge of any pollutant to a water of the United States is prohibited unless it is in compliance with a NPDES permit. See 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.21. Here, each of the above nine properties are and have been discharging pollutants into the wetlands without first obtaining coverage under a NPDES permit. A failure to comply with, or obtain coverage under a NPDES permit is a violation of the Clean Water Act. Each time you discharge pollutants into the wetlands owned by the Harmers without a permit is a separate and distinct violation of Section 301(a) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.21.

Moreover, you have also failed to treat discharges from its unpermitted point source discharge to any applicable Clean Water Act standard. As a result, discharges from each of your Properties' unpermitted point source cause and degrade the wetlands on the Harmer Property as well as all of the streams that the wetlands connect to. Unfortunately, there is no easy answer to these violations as you cannot get a NPDES permit to discharge waste.

IV. Nuisance and Trespass

The current way that each of your homes run its septic system, by discharging onto the Harmer property is by definition a "nuisance" because it is in violation of not only the Clean Water Act, but also of the Humboldt County Codes. It is a health hazard. In addition, none of the above listed properties have any type of easement to discharge onto the Harmer wetlands, nor can any of the properties establish an easement for discharge as it would be in violation of the law (Clean Water Act and Humboldt County Codes.) Therefore, such discharge is also a trespass. This must immediately stop.

V. Conclusion

Our client hereby puts each of the property owners listed in 1-9 above on notice that, after the expiration of sixty (60) days from the date of this letter, our client intends to file an enforcement action against the owners of the above-listed nine properties for the violations described, above. Again, to the extent that you believe any of the information in this notice letter is inaccurate, we urge that you or your representative(s) contact us at your earliest convenience. During the 60-day notice period, our client is very willing to discuss effective remedies for the violations noted in this letter, and actions that might be taken to ensure future compliance with the Clean Water Act. If

you wish to pursue such discussions, it is suggested that you initiate those discussions immediately. We believe it is best for all if a remedy to this problem is immediately sought. I can assure you that my client simply wants this unlawful waste/wastewater discharge to stop and for their wetland property to be remediated from the effects of years of unlawful discharge of pollutants onto their property.

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Violation, 40 C.F. R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to $37,500 per day per violation for all Clean Water Act violations. In addition to civil penalties, our client will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), our client will seek to recover costs, including attorneys' and experts' fees, associated with this enforcement action.

Please do not hesitate to call if you have questions or comments.

Sincerely,

Allison G. Jackson