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Via Certified Mail -
Return Receipt Requested

January 2, 2013

Head of Agency/Head of Operations
American Canyon Wastewater Treatment Plant
Administrative Offices
151 Mezzetta Court
American Canyon, CA 94503

City Council
City of American Canyon
City Hall
4381 Broadway Street, Suite 201
American Canyon, CA 94503

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

Dear Head of Agency or Operations and City Council:

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

Northern California River Watch ("River Watch") hereby places the City of American Canyon, hereinafter referred to as "the Discharger" on notice, that following the expiration of 60 days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Permit issued under the CWA § 301(a), in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. §

1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board - San Francisco Bay Region, Region Water Quality Control Plan ("Basin Plan") as exemplified by violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permit.

INTRODUCTION

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, 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 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. 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) and 33 U.S.C. § 1365(f)(l).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the 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 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 NOTICE is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation 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 has identified in this NOTICE the NPDES Permit of the American Canyon Wastewater Treatment Plant and specifically identified the applicable permit standard, limitation or condition being violated. A violation of the NPDES Permit is a violation of the CWA.

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

Most often, the NPDES Permit limitations being violated are self-explanatory and an examination of the language of the Permit is sufficient to inform the Discharger, especially since the Discharger is responsible for complying with that Permit condition. In addition, River Watch has set forth narratives in this NOTICE describing with particularity the activities leading to violations and has incorporated by reference the Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its NPDES Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

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

The person or persons responsible for the alleged violations identified in this NOTICE are the City of American Canyon as owner and operator of the American Canyon Wastewater Treatment Plant, identified herein as the Discharger, and those of its employees responsible for compliance with the NPDES Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's Permit and also in records created and/or maintained by or for the Discharger which relate to the American Canyon Wastewater Treatment Plant and related activities as further described in this NOTICE.

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

River Watch has examined both RWQCB files and the Discharger's records with respect to the American Canyon Wastewater Treatment Plant for the period from May 1, 2007 through May 1, 2012. The range of dates covered by this NOTICE is from May 1, 2007 through May 1, 2012. River Watch will from time to time update this NOTICE to include all violations of the CWA by the Discharger which occur after the range of dates currently covered by this NOTICE. Some of the 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 Northern California River Watch, referred to in this NOTICE as "River Watch." 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, and located at P.O. Box 817, Sebastopol, CA 95472. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the violations set forth in this NOTICE. All communications should be addressed to:

Jerry Bernhaut, Esq.
Jack Silver, Esq.
Law Offices of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
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THE DISCHARGER'S OPERATION

The Discharger owns and operates the American Canyon Wastewater Treatment Plant (the "Plant"), and its associated wastewater collection system (the "Facility"). The discharge of treated wastewater from the Plant is regulated under Order No. R2-2011-0046, NPDES Permit CA0038768. The discharge was formerly regulated under Order No. R2-2006-0036 NPDES Permit CA0038768. The Discharger provides sewerage service to a population of approximately 16,800. The Plant has design treatment capacities of 2.5 mgd average dry weather flow and 5.0 mgd peak wet weather flow design capacity. The Plant provides advanced secondary treatment of wastewater collected from its service area and discharges to North Slough, tributary of the Napa River, during the wet weather season and to constructed freshwater wetlands year round.

The Discharger's Facility consists of approximately 31 miles of gravity sewer main, 2.5 miles of force main, and five pump stations. Treated wastewater from the Plant is disinfected and either used as reclaimed water for irrigation or is discharged directly, or through constructed wetland ponds, to the North Slough.

The Discharger's ageing Facility has historically experienced high inflow and infiltration (I/I) during wet weather. The structural defects in the collection systems, which allow I/I into the sewer lines, result in a buildup of pressure which causes sewage system surface overflows (SSO). 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 and North Slough – all waters of the United States. As recorded in California Integrated Water Quality System's ("CIWQS") Public SSO Reports, the Facility has

experienced 8 SSOs between June of 2007 and August 2011, with a combined volume of 44,900 gallons - a good many of which reached surface waters. On June 8, 2007 there was a spill of reported volume of 3,300 gallons of untreated waste water from a City owned sewer main at the intersection of Broadway and Cartagena, all 3,300 gallons of which discharged to a nearby surface water.

The Discharger has a history of non-compliance with the SSO reporting requirements of the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements ("WDR") Order No. 2006-0003-DWQ, governing the operation of sanitary sewer systems. The Discharger is a permittee under the Statewide WDR which requires that sewer system operators report SSOs to the CIWQS, and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water.

The Discharger's field reports regularly indicate the SSO start time as the same time the Discharger was notified of the SSO, and usually notes the cleanup crew arriving just 10 minutes later. These equivalencies are highly unlikely and result in an under estimation of the duration of the spill. The Discharger's common practice of underestimating the duration of the spill leads to underestimating the volume of the spill. The Discharger's SSO records generally do not indicate what method was used to estimate the total volume of the spill, which also calls into question the estimates of volume recovered and volume which reached a surface water.

The Discharger also has had repeated difficulties with monthly and annual reporting, including frequent errors in sampling, reporting, and staff and equipment errors. These also call into question the integrity of the Discharger's estimates and reporting.

In addition to SSOs which discharge over land into surface waters, underground leakages ("exfiltration") caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines have verified the contamination of the adjacent waters with untreated sewage. River Watch alleges that such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in the Discharger's Facility are located adjacent to surface waters, including North Slough, Walsh Creek, and American Canyon Creek. Surface waters and groundwater become contaminated with fecal coliform, exposing people to human pathogens. The Discharger's chronic Facility failures pose a substantial threat to public health.

The Discharger has a history of violations of the chlorine residual effluent limit of 0.0 micrograms per liter (mg/L) in its NPDES Permit. Primarily during the dry season, May 1 through October 31, but also at other times, treated effluent from domestic and commercial wastewater is chlorine-disinfected for reclamation uses. Reclaimed water is used for irrigation at American Canyon High School, local vineyards, and city parks and street medians. It is of special concern that chlorine was detected in reclamation water intended for use in vineyards which produce wine grapes for human consumption. For example, on January 27, 2011, the Discharger's reported value for chlorine residual in its effluent was 1.0 mg/L. On August 5, 2011 the Discharger's reported value for chlorine residual in its effluent was 0.2 mg/L, *see* Order R2-2012-0049, ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING, June 20, 2012, EXHIBIT A, Notice of Violation ("NOV").

The Discharger also has a history of exceedance of the effluent limits for ammonia in its NPDES Permit. Ammonia is toxic at low levels. Although injury from ammonia most commonly is caused by inhalation, it also may follow ingestion or direct contact with eyes or skin. Mild exposures primarily affect the upper respiratory tract, while more severe exposures tend to affect the entire respiratory system . The gastrointestinal tract also may be affected if ammonia is ingested. (MEDSCAPE REFERENCE, Ammonia Toxicity.) Ammonia exposure can also cause irreversible damage to the developing brain by alteration of brain chemistry. (Pub Med.gov, U.S. National Library of Medicine, National Institute of Health.) The Discharger reported ammonia in its effluent exceeding effluent limits in its permit on August 26, 2008, July 6, 2009 and June 17, 2010 (NOV).

River Watch has reason to believe and on the basis of said belief alleges, that the ammonia and chlorine violations described above are ongoing and are likely to reoccur in the future, in that there appears not to have been any effective corrective action. River Watch also believes that the collection system violations described above, both the surface overflows and subsurface exfiltration are ongoing and likely to continue based on the structural defects in the Discharger's collection system.

The discharges described herein constitute a nuisance, and are either: injurious to health; indecent or offensive to the senses; or, an obstruction to the free use of property; and, occur during, or as a result of, the transportation, disposal, or treatment of wastes.

The Discharger's illegal discharge of untreated wastewater exceeding Basin Plan standards is a significant contribution to the degradation of the Napa River and tributary waters, such as North Slough, with adverse effects on beneficial uses of those waters. River Watch members residing in the area have a vital interest in bringing the Discharger's operations at the Plant and associated Facility into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES permit and the Basin Plan, and to prioritize remedial measures to reflect the biological impacts of the Discharger's ongoing non-compliance:

1. A reduction of collection system I/I through an aggressive collection system management, operation and maintenance ("CMOM") program, with clear time lines for prioritized repairs. The CMOM program shall include:

    a. The amendment of the Discharger's Sewer System Management Plan to specify that defective gravity sewer lines located within 150 feet of surface waters including storm drainage channels and creeks, will be given a higher priority for repair and/or replacement than other sewer lines with comparable defects located more than 150 feet from surface waters;

    b. The provision of funding in the Discharger's Capitol Improvements Plan to CCTV all gravity sewer lines every 10 years, except for lines CCTV'd within the prior 10 years and lines constructed, replaced or repaired within the prior 20 years.

2. A mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

    a. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within 20 years prior to the transfer;

    b. The occurrence of 2 or more SSOs caused by the private sewer lateral within 2 years;

    c. A change of the use of the structure served (1) from residential to non-residential use, (2) to a non-residential use that will result in a higher flow than the current non-residential use, and (3) to non-residential uses where the structure served has been vacant or unoccupied for more than 3 years;

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

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

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

3. Compliance with monitoring and reporting requirements, especially regarding all overflows which reach storm drains or discharge directly to State waters, including a more detailed account of SSOs and remedial actions to verify and document SSO start times, durations, volumes, volumes recovered, volumes reaching surface waters and remedial actions.

4. Creation of a website capacity to track information regarding SSOs. In the alternative, a link from the Discharger's website to the CIWQS Public SSO Reports. Provision of notification 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.

5. Performance of human marker sampling on creeks, rivers, wetlands adjacent to sewer lines to test for sewage contamination from underground exfiltration.

VIOLATIONS

River Watch contends that from May 1, 2007 through May 1, 2012, the Discharger has violated the requirements of the Discharger's NPDES Permit, the Basin Plan and the Code of Federal Regulations, as those requirements are referenced in the Discharger's NPDES Permit, with respect to the American Canyon Wastewater Treatment Plant and associated Facility. Said violations are evidenced and reported in the Discharger's Self Monitoring Reports, testing data compiled in compliance with the NPDES Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in the Discharger's possession, and as evidenced by unpermitted discharges due to failures in the Discharger's Facility. Furthermore, these violations are continuing.

The violations, established in Self Monitoring Reports, raw data and records of the RWQCB, and the CIWQS Public SSO Reporting Program Database records include, but are not limited to, the following categories in the NPDES Permit:

Discharge Prohibitions

Violations	**Description**
1800	**Collection system overflows caused by underground exfiltration** – an event in which untreated sewage is discharged from the Facility prior to reaching the Plant. Underground discharges are alleged to have been

continuous throughout the 5 year period from May 1, 2007 through May 1, 2012.

(Order No. R2-2006-0036, Discharge Prohibitions III.E: "Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.")

(Order No. R2-2011-0046, Discharge Prohibitions III.D: "Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.")

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes to the Plant reported in Self Monitoring Reports, video inspection of the Facility, and testing of waterways adjacent to sewer lines, creeks, and wetlands for human markers, nutrients, pathogens and other constituents indicating sewage contamination.

8 **SSOs,** as evidenced in the CIWQS Interactive Public SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents.

(Order No. R2-2006-0036, Discharge Prohibitions III.E: "Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by an NPDES permit, to a storm drain system or waters of the State are prohibited.")

(Order No. R2-2011-0046, Discharge Prohibitions III.D: "Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewate to waters of the United States is prohibited.")

Effluent Limits

Violations	**Description**
10	Ammonia Daily Maximum
10	Ammonia Daily Average
7	Ammonia Weekly Average
8	Chlorine Total Residual Instantaneous Maximum

(Order No. R2-2011-0046, IV.A. Effluent Limitations for Conventional and Non-Conventional Pollutants – Discharge Points 001 and 003.)

(Order No. R2-2006-0036 IV.A . Final Effluent Limitations - Discharge Points 001-S and 003-R.)

Monitoring Requirements

Violations/Description

Failure to monitor, report or adequately describe violations. The majority these violations occur due to failure to report violations of Discharge Prohibitions III.E of Order No. R2-2006-0036 , failure to report violations of Discharge Prohibitions III.D of Order No. R2-2011-0046, as well as failure to adequately describe reported violations of said provisions.

CONCLUSION

The violations as 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 use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. The members' health, use and enjoyment of these natural resources is specifically impaired by the Discharger's violations of the CWA as set forth in this NOTICE.

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to either file a citizen's suit under CWA § 505(a) against the Discharger for the violations alleged in this Notice, or to amend the pending litigation in the U.S. District Court entitled *Northern California River Watch v. City of American Canyon, et al* Case No. 3:12-cv-04600 JSC, to include the violations alleged in this NOTICE.

During the 60-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice.

Very truly yours,

Jerry Bernhaut

Jerry Bernhaut

JB:lhm

cc: Administrator
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