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VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

November 13, 2012

Head of Operations
City of Antioch
Sanitary Sewer Collection System
P.O. Box 5007
Antioch, CA 94531

Lynn Tracy Nerland, City Attorney
City of Antioch
City Hall
Third and H Streets
P.O. Box 5007
Antioch, CA 94531-5007

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

Dear Head of Operations and City Attorney:

NOTICE

The Clean Water Act ("CWA" or the "Act") § 505(b) requires that sixty (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 Antioch 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 Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(l), 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 the incidents of non-compliance identified and outlined in this Notice.

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 National Pollutant Discharge Elimination System ("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) and thus 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 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 has identified discharges of raw sewage from the Discharger's sewage collection system to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

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

River Watch has set forth narratives below describing the discharges of raw sewage to surface waters as the activities leading to violations, and describing with particularity specific incidents referenced in the California State Water Resources Control Board's ("SWRCB") California Integrated Water Quality System ("CIWQS") SSO Public Reports and other public documents in the Discharger's possession or otherwise available to the Discharger, and incorporates by reference records cited below from which descriptions of specific incidents were obtained.

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 Antioch as owner and operator of the sewage collection system, and those of its employees responsible for compliance with the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-003-DWQ ("Statewide WDR"), adopted on May 2, 2006, as revised by Order No. WQ 2008-0002.EXEC on February 20, 2008.

4. *The location of the alleged violation.*

The location of the various violations are identified in records created and/or maintained by or for the Discharger which relate to the Discharger's sewage collection system 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 records maintained by the RWQCB and the Discharger for the period October 27, 2007 to October 27, 2012. The range of dates covered by this Notice is October 27, 2007 to October 27, 2012. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered. 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 full name, address, and telephone number of the person giving 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 issues set forth in this Notice. All communications should be addressed to:

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BACKGROUND

The Discharger provides sewer services for the residents of the City of Antioch. The Discharger's service area lies within the watershed basins of the San Francisco Bay Delta. This waterway is a water of the United States. The Discharger provides sewage collection services for a population of over 103,000 residents. The Discharger owns and manages in excess of 300 miles of gravity sewers. The collected wastewater from all areas within the Discharger's service area is conveyed to the Delta-Diablo Sanitation District's Water Treatment Plant.

The Discharger has a history of sewer system overflows ("SSOs") from its ageing sewer lines. As recorded in the CIWQS Interactive SSO Reports, the Discharger's collection system experienced 163 SSOs between November 2007 and October 2012, with a combined volume of 18,163 gallons – 1,266 gallons of which reached surface waters. For example, on August 21, 2008, a reported spill of 2,390 gallons occurred at 1206 Lemontree Way, 590 gallons of which reached a surface water. Structural defects in the Discharger's collection system, which allow inflow and infiltration ("I/I") of rainwater and groundwater into the sewer lines, result in a build-up of pressure which causes 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 the San Francisco Bay Delta.

The Discharger is a permittee under the Statewide WDR which requires that sewer system operators report SSOs to the CIWQS, including an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The Discharger has a history of non-compliance with the SSO reporting requirements of the Statewide WDR. River Watch alleges the Discharger regularly under estimates the duration and volume of SSOs. The Discharger's field reports regularly report the spill start time and the time the Discharger was notified of the spill as identical. These equivalencies are highly unlikely and result in an under estimation of the duration and volume of the spill as well as an under estimation of the volume that reached a surface water. The Discharger's common practice of under estimating spill duration and volume undermines the credibility of reports of spills which reached a drainage channel and/or a separate storm drain where allegedly none of the spill reached a surface water.

River Watch alleges the Discharger regularly mistakenly reports spills as not reaching surface waters. In some cases, records indicate crews arriving within minutes of notification of a spill, which is also unlikely. In reporting the spill which occurred at 101 West 20th Street on September 4, 2012, the Discharger's field report indicates the estimated spill start time and the time the sanitary sewer agency was notified as 3:53:00.0, exactly the same time. The report indicates the spill reached a separate storm drainpipe and that not all the spill was recovered. However, next to the item "Estimated volume of spill that reached surface water, drainage channel, or not recovered from a separate storm drain" the entry is "N/A", indicating that none of the spilled sewage reached a surface water. Given the clear under estimation of the spill volume based on the identical start time and notification, River Watch

alleges a high degree of likelihood that some of the spilled sewage reached a surface water. The Discharger's SSO records generally do not indicate what method was used to estimate the total volume of the spill or how it was determined whether or how much reached a surface water.

In addition to surface overflows which discharge overland 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.[1] River Watch alleges that such discharges are continuous wherever ageing, damaged structurally defective sewer lines in the Discharger's collection system are located adjacent to surface waters. Surface waters and groundwater become contaminated with fecal coliform exposing people to human pathogens. The Discharger's chronic collection system failures pose a substantial threat to public health.

Any point source discharge of sewage effluent to waters of the United States must comply with technology-based, secondary treatment standards at a minimum, and any more stringent requirements necessary to meet applicable water quality standards and other requirements. Hence, the unpermitted discharge of wastewater from a sanitary sewer system to waters of the United States is illegal under the CWA. In addition, many Basin Plans adopted by the Regional Water Quality Control Boards contain discharge prohibitions which apply to the discharge of untreated or partially treated wastewater. The discharges described herein constitute a nuisance. These discharges are either: injurious to health; indecent or offensive to the senses; 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 is a significant contribution to the degradation of the San Francisco Bay and San Francisco Bay Delta, with serious adverse effects on the beneficial uses of these waters. River Watch members residing in the area have a vital interest in bringing the Discharger's operation of its collection system into compliance with the CWA.

VIOLATIONS

From October 27, 2007 through October 27, 2012, the Discharger has violated the CWA, the Basin Plan and the Code of Federal Regulations for discharging pollutants to waters of the United States from its collection system without a NPDES permit. The below-listed violations are reported by the SWRCB staff, and evidenced by the SWRCB's CIWQS

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See the July, 2008 Report of the Human Marker Study 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.

4.5 SSO Reporting Program Database Records and the Discharger's records. These violations are continuing.

Violations	Description
1800	Collection system overflows caused by underground exfiltration. An event in which untreated sewage is discharged from the collection system prior to reaching the treatment Plant. Underground discharges are alleged to have been continuous throughout the 5 year period from October 27, 2007 through October 27, 2012. 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 treatment plant reported in the Discharger's records, video inspection of the collection system, and testing of waterways adjacent to sewer lines, creeks, and wetlands of the San Francisco Bay Delta, for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.
60	SSOs Evidenced in the SWRCB CIWQS Interactive SSO Reports, including the reports discussed above. Also, unrecorded surface overflows witnessed by local residents and surface overflows where it was inaccurately reported that zero (0) volume reached a surface water or drainage.

REMEDIAL MEASURES REQUESTED

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

A. SEWER SYSTEM INVESTIGATION AND REPAIR

1. The repair or replacement of all sewer lines located within two hundred (200) feet from surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the prior two (2) years and which have been found to be Significantly Defective (having received a rating of 4 or 5 on the PACP rating scale).

2. The completion of a Surface Water Condition Assessment of all sewer lines located within two hundred (200) feet from surface waters, including gutters, canals and storm drains, which have not been CCTV'd within the prior five (5) years.

3. Within one (1) year after completion of the Surface Water Condition Assessment, the repair or replacement of all sewer lines which have been found to be Significantly Defective.

4. With respect to sewer lines which receive a grade of 3 based on the PACP rating system, ascertain whether such lines need to be repaired or re-CCTV'd.

5. Amendment of the Discharger's long term Capitol Improvements Plan within a period of five (5) years to provide for the Condition Assessment, by CCTV inspection, of its collection system on a six (6) year cycle, so that the entire collection system will be CCTV'd every six (6) years.

B. PRIVATE SEWER LATERAL INSPECTION AND REPAIR

1. 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 twenty (20) years prior to the transfer;

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

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

C. MORE DETAILED SSO REPORTING

1. Modification of the Discharger's (SSO) reporting form submitted to the State of California, to require the method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.

2. A listing of nearby residents or business operators contacted to attempt to establish the SSO start time, duration, and flow rate.

3. Photographs of the manhole flow at the SSO site and the San Diego Method array, if applicable to the method used to estimate spill volume; or other photographic evidence that may aid in establishing the spill volume.

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

5. 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.

D. WATER QUALITY SAMPLING AND TESTING

1. Water quality sampling and testing whenever it is estimated that an SSO of fifty (50) gallons or more enters surface waters, and if field crews can safely access the affected surface waters. The Discharger should collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. Constituents tested for should include Ammonia, Total Coliform, and E. coli.

   a. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the Discharger should determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the non-structural defect.

E. HUMAN MARKER SAMPLING

Performance of human marker sampling on creeks, rivers, wetlands and areas of the San Francisco Bay Delta adjacent to the Discharger's sewer lines to test for sewage contamination from underground exfiltration.

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. The members of River Watch use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. The members' health, use and enjoyment of this natural resource 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 file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for these violations. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested that discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,

Jerry Bernhaut

Jerry Bernhaut
Attorney for Northern California River Watch

JB:lhm

cc: Jim Jakel, City Manager
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