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NORTHERN CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA RIVER
WATCH, a non-profit corporation,

Plaintiff

v.

CITY OF SAUSALITO, and
DOES 1-10, Inclusive,

Defendants

CASE NO. :

COMPLAINT FOR INJUNCTIVE RELIEF,
CIVIL PENALTIES, RESTITUTION AND
REMEDICATION
(Environmental -
Clean Water Act - 33 U.S.C. §1251 et seq.;
Resource Recovery and Conservation Act -
42 U.S.C. 6901, et. seq.)

_____/

NOW COMES PLAINTIFF, NORTHERN CALIFORNIA RIVER WATCH a non-profit corporation, (hereafter, "RIVER WATCH") by and through its attorneys, and for its Complaint against Defendants CITY OF SAUSALITO and DOES 1-10, Inclusive, (hereafter, "DEFENDANTS"), states as follows:

I. NATURE OF THE CASE

1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Water Pollution Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. §1251 et seq., specifically Section 505, 33 U.S.C. §1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to stop DEFENDANTS from repeated and ongoing violations of the CWA. These violations are detailed in

the Notice of Violations and Intent to File Suit dated August 16, 2007 (hereafter, "CWA NOTICE") made part of this pleading and attached hereto as EXHIBIT A.

2. DEFENDANTS are routinely violating the CWA's prohibition against discharging a pollutant from a point source to Waters of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit, CWA §301(a), 33 U.S.C. §1311(a), in the course of their operation of their Sewage Collection System. Point source discharges to waters of the United States are occurring due to numerous sewage pipeline surface overflows to waters of the United States as well as ongoing underground overflows from aging, deteriorated sewer lines to hydrologically connected waters of the United States, including Richardson Bay.

DEFENDANTS collect residential and commercial sewage which is pumped to the treatment plant in the City of Sausalito operated by the Sausalito-Marin City Sanitary District, (hereafter "SMCSD"). SMCSD has identified DEFENDANTS' collection system as a significant source of increased wet weather flows into the treatment plant because of the high level of inflow and infiltration ("I/I") of stormwater and groundwater into the DEFENDANTS' sewer system through cracks, eroded sections and misaligned joints. The SMCSD has identified high salinity I/I into DEFENDANTS' sewer system as a major source of saltwater intrusion into the SMCSD treatment plant, which the SMCSD identifies as a significant factor in causing total suspended solids and biological oxygen demand effluent limit violations. High wet weather flows into SMCSD's treatment plant, caused in significant part by I/I into DEFENDANTS' sewer lines, creates the need for SMCSD to direct excess flows to bypass biological treatment units directly to secondary clarifiers, and then to be blended with fully treated effluent. Blending is a compromised treatment process permitted when no feasible alternative is available to prevent loss of life, personal injury, or severe property damage, 40 C.F.R. §122.41(m)(4)(1). Blending has resulted in a number of effluent limit violations when the blended effluent was tested.

DEFENDANTS' sewer lines are point sources under the CWA. DEFENDANTS have no NPDES Permit for the discharge of pollutants from a point source to waters of the United States.

3. DEFENDANTS are also routinely violating the Basin Plan, Environmental Protection Agency ("EPA") regulations codified in the Code of Federal Regulations, and toxics standards promulgated by the State Water Resources Control Board in the course of DEFENDANTS' operation of the sewage collection system, as described in the CWA NOTICE.

4. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.

5. DEFENDANTS illegally discharge to waters which are habitat for threatened or endangered species as that term is defined by the California EPA and the United States EPA.

6. Plaintiff also brings this citizens' suit against DEFENDANTS under the citizen suit enforcement

provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (hereafter, "RCRA"), specifically Sections 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), to stop DEFENDANTS from repeated and ongoing violations of the RCRA. These violations are detailed in the Notice of Violations and Intent to File Suit dated August 20, 2007 (hereafter, "RCRA NOTICE") made part of this pleading and attached hereto as EXHIBIT B.

7. DEFENDANTS are routinely violating the RCRA's regulatory mandates applicable to hazardous or solid wastes by causing untreated sewage, a hazardous waste under the RCRA, to be

discharged or deposited where it is or probably will be discharged into waters of the State, thereby creating or threatening to create, conditions of pollution or nuisance. (42 U.S.C. § 6972(a)(1)(A)).

8. DEFENDANTS are routinely violating the RCRA's prohibition against creating an imminent and substantial endangerment to human health and the environment by the operation of their sewage collection system, as identified in the RCRA NOTICE, which has caused contamination of soil, groundwater and surface water with fecal coliform and other pathogens, (42 U.S.C. § 6972(a)(1)(B)).

9. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for DEFENDANTS' violations of the CWA § 301, 33 U.S.C. § 1311 prohibition against discharging a pollutant to waters of the United States without a NPDES Permit, the RCRA's standards and regulations applicable to hazardous or solid wastes and DEFENDANTS' violation of the RCRA's prohibition against creating an imminent and substantial endangerment to human health and the environment.

II. PARTIES

10. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of California, with headquarters and main office located at 6741 Sebastopol Avenue, Suite 140, Sebastopol, California. RIVER WATCH is dedicated to protect, enhance and help restore the surface and subsurface waters of Northern California. Its members live in Northern California including Marin County where DEFENDANTS' sewage collection system facilities and operations are located.

11. Members of RIVER WATCH live nearby to waters affected by DEFENDANTS' illegal discharges. Said members have interests in the watersheds identified in this Complaint, which

interests are or may be adversely affected by DEFENDANTS' violations. Said members use the effected waters and effected watershed areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks, religious, spiritual and shamanic practices, and the like. Furthermore, the relief sought will redress the injury in fact, likelihood of future injury and interference with the interests of said members.

12. RIVER WATCH is informed and believes and on such information and belief alleges that Defendant CITY OF SAUSALITO. is a City formed under California Government Code § 34000 et. sec., with administrative offices located at 420 Litho Street, Sausalito, Marin County, California.

13. DEFENDANTS DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and entities, who are, or were, responsible for, or in some way contributed to, the violations which are the subject of this Complaint or are, or were, responsible for the maintenance, supervision, management, operations, or insurance coverage of DEFENDANTS' sewage collection system facilities and operations. The names, identities, capacities, and functions of DEFENDANTS DOES 1 - 10, Inclusive are presently unknown to RIVER WATCH , who shall seek leave of court to amend this Complaint to insert the true names of said DOES Defendants when the same have been ascertained.

III. JURISDICTIONAL ALLEGATIONS

14. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation." For purposes of Section 505, "the term 'citizen' means a person or persons having an interest which is or may be adversely affected."

15. Subject matter jurisdiction is further conferred upon this Court by RCRA § 7002(a)(1), 42

U.S.C. § 6972(a)(1), which states in part that, "...any person may commence a civil action on his own behalf (A) against any person ... who is alleged to be in violation of any permit, standard, regulation, condition requirement , prohibition or order which has become effective pursuant to this chapter, or (B) against any person ...who has contributed or who is contributing to the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment."

16. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the waterways and associated natural resources into which DEFENDANTS' discharge pollutants, or by which DEFENDANTS' operations adversely affect their interests, in violation of CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), CWA § 402, 33 U.S.C. § 1342 and RCRA § 7002 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The health, economic, recreational, aesthetic and environmental interests of RIVER WATCH and its members may be, have been, are being, and will continue to be adversely affected by DEFENDANTS' unlawful violations. RIVER WATCH and its members contend there exists an injury in fact to them, causation of that injury by DEFENDANTS' complained of conduct herein, and a likelihood that the requested relief will redress that injury.

17. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), notice of the CWA violations alleged in this Complaint was given more than sixty (60) days prior to commencement of this lawsuit, to: (a) defendant City of Sausalito (b) the United States EPA, Federal and Regional, and (c) the State of California Water Resources Control Board.

18. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has been served on the United States Attorney General and the Administrator of the Federal EPA.

19. Pursuant to Section RCRA § 7002 (2)(A), 42 U.S.C. § 6972(2)(A), notice of the RCRA violations alleged in this Complaint was given more than ninety (90) days prior to the commencement of this lawsuit to: (a) defendant City of Sausalito, (b) the United States Environmental Protection Agency, Federal and Regional,(c) the State of California Water Resources Control Board, and (d) the State of California Integrated Waste Management Board.

20. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the sewage collection system facilities under DEFENDANTS' operation and/or control, and the sites where illegal discharges occurred, which are the source of the violations complained of in this action, are located within this District.

21. Pursuant to RCRA § 7002(a)&(b), 42 U.S.C. §§ 6972(a)&(b) venue lies in this District as DEFENDANTS' sewage system collection facilities are located in this District. All of the sites of pollution are located in this District as well.

IV. GENERAL ALLEGATIONS

22. RIVER WATCH incorporates by reference all the foregoing including EXHIBITS A and B as though the same were separately set forth herein.

23. DEFENDANTS own and operate a separate sanitary sewage collection system which collects sewage from approximately 6,200 connections servicing a population of approximately 7,454 in southern Marin County. Sewage collected by DEFENDANTS' collection system is conveyed to the sewage collection system operated by SMCSO and thereafter conveyed to SMCSO's wastewater treatment plant. DEFENDANTS' sewer lines discharge pollutants both directly and indirectly into the waterways referenced below.

24. All illegal discharges and activities complained of in this Complaint occur in the waterways named in the CWA NOTICE, all of which are waters of the United States, and at the locations identified in detail in the CWA NOTICE and the RCRA NOTICE.

25. The Regional Water Quality Control Board has determined that the watershed areas and affected waterways are beneficially used for drinking water, water contact recreation, non-contact water recreation, fresh water habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial service supply, navigation, and sport fishing.

V. STATUTORY AND REGULATORY BACKGROUND

26. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a “point source” into the navigable waters of the United States, unless such discharge is in compliance with applicable effluent limitations as set by the EPA and the applicable State agency. These limits are to be incorporated into a NPDES permit for that point source specifically. The effluent discharge standards or limitations specified in a NPDES Permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a), 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. Additional sets of regulations are set forth in the Basin Plan, California Toxics Plan, the Code of Federal Regulations and other regulations promulgated by the EPA and the State Water Resources Control Board.. CWA § 301(a) prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent standard or limitation or an order issued by the EPA or a State with respect to such a standard or limitation including a NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342. The sewage collection system facilities and sewer lines owned and operated by DEFENDANTS are point sources under the CWA.

27. The affected waterways detailed in this Complaint and in the CWA NOTICE are navigable waters of the United States within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

28. The Administrator of the EPA has authorized the Regional Water Quality Control Board to issue NPDES permits, subject to specified conditions and requirements, pursuant to CWA § 402, 33 U.S.C. § 1342.

29. DEFENDANTS have no NPDES permit for discharging pollutants from their sewage collection system to waters of the United States. Without a NPDES Permit, all unauthorized point source discharges from DEFENDANTS' sewage collection system to waters of the United States are illegal. DEFENDANTS' sewer lines are a point source. Discharges from this point source via surface overflows and tributary ground waters to waters of the United States, without a NPDES permit, are illegal.

30. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person who violates a PERMIT, STANDARD or REGULATION pursuant to the RCRA. DEFENDANTS have stored, handled and disposed of materials containing untreated sewage, defined as hazardous wastes under the RCRA, in a manner which has allowed these pollutants to be discharged to soil and groundwater adjacent to DEFENDANTS' sewer collection system and sewer lines, in violation of regulations regarding the use and disposal of hazardous wastes. (RCRA § 3004 (d), 42 U.S.C. §6924(d)).

31. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) permits an action against any person who has contributed to or who is contributing to the past or present handling of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. The untreated sewage stored and conveyed in DEFENDANTS' sewage collection system consists of solid wastes and hazardous wastes pursuant to RCRA §6903(27), 42 U.S.C. § 6972(27), and RCRA § 6903(5), 42 U.S.C. § 6972 (5). Pollutants from untreated sewage in DEFENDANTS' sewer lines have leached into soil and ground water adjacent to DEFENDANTS' sewer lines, creating an imminent and substantial endangerment to health and the environment.

VI. DEFENDANTS' VIOLATIONS

32. DEFENDANTS' discharges of pollutants from their sewage collection system to waters of

the United States without a NPDES Permit, as detailed in the CWA NOTICE incorporated herein by reference as Exhibit A, are violations of CWA §301(a), 33 U.S.C. § 1311(a) The violations are established in Regional Water Quality Control Board Files for DEFENDANTS' sewage collection system facilities, as well as in studies conducted by DEFENDANTS in compliance with orders from regulatory agencies .

33. The enumerated violations are detailed in the CWA NOTICE, incorporated herein by reference, and below, designating the section of the CWA violated by the described activity.

34. The location of the discharges are the discharges points as described in the CWA NOTICE, incorporated herein by reference.

35. DEFENDANTS' discharges to soil and groundwater violate the RCRA's regulations regarding the storage and disposal of hazardous wastes. The violations are established in Regional Water Quality

Control Board Files for DEFENDANTS' sewage collection system facilities, as well as in studies conducted by DEFENDANTS in compliance with orders from regulatory agencies

36. DEFENDANTS' discharges to soil and ground water violate the RCRA's prohibition against creating an imminent and substantial endangerment to health and the environment. The violations are established in Regional Water Quality Control Board Files for DEFENDANTS' sewage collection system, as well as in studies conducted by DEFENDANTS in compliance with orders from regulatory agencies .

37. The enumerated violations are detailed in the RCRA NOTICE incorporated herein by reference, and below, designating the section of the RCRA violated by the described activity.

VII. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF

Violation of CWA 33 U.S.C. § 1251 et seq., 33 U.S.C. § 1342 (a) and (b), 33 U.S.C. § 1311

Discharge of Pollutants from Point Sources to United States Waters Without a NPDES Permit

38. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 37 including EXHIBIT A as though fully set forth herein.

39. DEFENDANTS have and continue to violate the CWA as evidenced by the discharges of pollutants from a point source without a NPDES permit in violation of CWA § 301, 33 U.S.C. § 1311.

40. RIVER WATCH contends the violations of DEFENDANTS alleged herein are ongoing and will continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by DEFENDANTS to the Regional Water Quality Control Board or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will file additional amended complaints if necessary to address DEFENDANTS' State and Federal violations which may occur after the filing of this Complaint. Each of DEFENDANTS' violations is a separate violation of the CWA.

41. RIVER WATCH avers and believes and on such belief alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to violate the CWA as well as State and Federal standards with respect to the enumerated discharges and releases. RIVER WATCH avers and believes and on such belief alleges that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect the their interests which are or may be adversely affected by DEFENDANTS' violations of the CWA, as well as other State and Federal standards.

B. SECOND CLAIM FOR RELIEF

Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(A)

42. RIVER WATCH reallege and incorporates by reference the allegations of Paragraphs 1

through 41 including EXHIBIT B as though fully set forth herein.

43. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person who violates a PERMIT, STANDARD or REGULATION pursuant to the RCRA. Civil penalties may be assessed against any person or entity in violation of this section, under the provisions of 42 U.S.C. §§ 6928 (a) and (g).

44. DEFENDANTS' storage and handling of untreated sewage at their sewage collection system facilities, defined as hazardous wastes under the RCRA, has caused the discharge of hazardous wastes to soil and groundwater in violation of regulations regarding the use and disposal of hazardous wastes. (RCRA §3004 (d), 42 U.S.C. §6924(d)).

45. RIVER WATCH avers and believes and on such belief alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANTS will continue to violate a PERMIT, STANDARD or REGULATION pursuant to the RCRA, specifically RCRA § 3004 (d), 42 U.S.C. §6924(d).

C. THIRD CLAIM FOR RELIEF

Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(B)

46. RIVER WATCH realleges and incorporate by reference the allegations of Paragraphs 1 through 55 including EXHIBIT B as though fully set forth herein.

47. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), provides that any person may commence a civil action against any person or governmental entity including a past or present generator, transporter, owner or operator of a treatment, storage or disposal facility who has contributed to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or to the environment.

48. DEFENDANTS own and operate a sewage collection system in which they have stored and

conveyed and from which they have discharged untreated sewage containing fecal coliform and other pollutants.

49. DEFENDANTS have stored untreated sewage in a manner which has allowed it to leach pollutants into soil and ground water adjacent to DEFENDANTS' sewer lines.

50. The pollutants listed above, are known to be hazardous to the environment and if released into the environment in sufficient quantity to pose an imminent and substantial risk.

51. For purposes of the RCRA, untreated sewage is "solid waste" and "hazardous waste" within the meaning of the statute.

52. RIVER WATCH is informed and believes, and thereon alleges that amounts of untreated sewage released by DEFENDANTS from their sewage collection system are in sufficient quantity to pose an imminent and substantial risk to both the environment and human health.

VIII. RELIEF REQUESTED

53. Declare DEFENDANTS to have violated and to be in violation of the CWA;

54. Issue an injunction ordering DEFENDANTS to immediately operate their sewage collection system in compliance with the CWA;

55. Order DEFENDANTS to pay civil penalties of \$27,500.00 per violation per day for their violations of the CWA;

56. Declare DEFENDANTS to have violated and to be in violation of RCRA § 6972(a)(1)(A) for violation of a PERMIT, STANDARD or REGULATION regarding the storage and disposal of hazardous wastes, specifically RCRA § 3004 (d), 42 U.S.C. §6924(d);

57. Enjoin DEFENDANTS from storing and disposing of hazardous wastes in their sewage collection system in a manner which violates RCRA §3004 (d), 42 U.S.C. §6924(d);

58. Order DEFENDANTS to pay civil penalties of \$25,000.00 per violation per day for their violations of RCRA § 6972(a)(1)(A);

59. Declare DEFENDANTS to have violated and to be in violation of the RCRA for discharging toxic pollutants from their sewage collection system which are known human pathogens in sufficient quantity to pose an imminent and substantial risk to health;
60. Enjoin DEFENDANTS from discharging toxic pollutants from their sewage collection system which toxins pose an imminent and substantial risk to health and the environment;
61. Order DEFENDANTS to pay reasonable attorneys' fees and costs of RIVER WATCH (including expert witness fees), as provided by 33 U.S.C. § 1365(d), 42 U.S.C. § 6972(e) and applicable California law; and,
62. For such other and further relief as the court deems just and proper.

DATED: April 14 , 2008 _____

JERRY BERNHAUT
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH,