

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

April 4, 2011

Head of Operations
Wastewater Treatment Facility
City of Blue Lake
P.O. Box 458
111 Greenwood Avenue
Blue Lake CA 95525

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

Dear Head of Operations:

The Clean Water Act ("CWA" or the "Act") Section 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 Blue Lake Wastewater Treatment Facility, hereinafter referred to as "the Discharger" on notice that following the expiration of sixty (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)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's 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 - 33 U.S.C. § 1311(a), CWA § 301(a). 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 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 Act. 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)(1).

The Act 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, North Bay Region ("RWQCB"). The Discharger has no NPDES Permit authorizing it to discharge pollutants into navigable waters, which are waters of the United States.

The Act 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 collection system to surface waters, and discharges of partially treated sewage from the Discharger's percolation ponds via subsurface hydrological connection 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 and treated sewage to surface waters without a NPDES Permit as the activities leading to violations of the CWA. River Watch describes below with particularity specific operations

and conditions at the Discharger's facilities causing unauthorized discharges to surface waters, as referenced in studies and reports prepared by or commissioned by the Discharger or in correspondence from the RWQCB, and other public documents in the Discharger's possession or otherwise available to the Discharger, and incorporates by reference the records cited below from which descriptions of specific conditions and operations were obtained.

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

The person responsible for the alleged violations is the City of Blue Lake Wastewater Treatment Facility, identified herein as the Discharger, and includes those of its employees responsible for compliance with environmental regulations.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's Waste Discharge Requirements and also in records created and/or maintained by or for the Discharger which relate to the Discharger's wastewater treatment facility 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 RWQCB records for the period from April 2, 2006 through April 2, 2011. The range of dates covered by this NOTICE is from April 2, 2006 through April 2, 2011. 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 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 full name, address, and telephone number of the person giving notice is Northern California River Watch, identified through this NOTICE as "River Watch", 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. Its address is P.O. Box 817, Sebastopol, CA 95472, email US@ncriverwatch.org.

THE DISCHARGER'S OPERATIONS

The Discharger owns and operates a municipal wastewater treatment facility and associated wastewater collection system, designed to treat 0.18 million gallons per day ("mgd") average dry weather flow ("ADWF"). Recent data shows that the treatment facility

received ADWF of approximately 0.125 mgd and peak wet weather flows of approximately 1.0 mgd, for an Inflow and Infiltration (“I/I”) rate of greater than eight-to-one due to an ageing collection system with multiple structural defects. The Discharger’s wastewater treatment facility and collection system is regulated by Waste Discharge Requirements (“WDR”) Permit No. 94-28. The treatment facility is comprised of a headworks where screening and flow measurement takes place, a 7.5 acre, 4-cell lagoon system where secondary treatment is performed, a rock filter used during the summer months to remove algae cells, and a liquid chlorine disinfection system. Effluent is disposed to 3 rapid infiltration percolation ponds which allow treated effluent to infiltrate into groundwater.

The Discharger’s wastewater treatment facility is overloaded, due primarily to the contributory effects of significant industrial users (“SIU”), including the Blue Lake Rancheria and the Mad River Brewery. Historically, the treatment facility has exceeded effluent limits in its Permit for BOD, TSS and total coliform. Wastewater from the Blue Lake Rancheria and Casino includes high Biological Oxygen Demand (“BOD”) and Total Suspended Solids (“TSS”) concentrations at flow rates which contribute significant organic loadings to the facility. The Rancheria plans to expand its facilities to include an expanded hotel, RV park and laundry. These future facilities will increase the hydraulic and organic loadings to the sewer and treatment systems. Wastewater from the Mad River Brewery consists of a high strength discharge, with concentrations of BOD and TSS far exceeding the standards established by the City of Blue Lake. The effects of the Brewery’s high strength waste on the Discharger’s treatment process have been an ongoing cause of high levels of BOD and TSS in the Discharger’s effluent. The Discharger is responsible for compliance with federal regulations governing contributions by industrial users into publicly owned wastewater treatment facilities, pursuant to 40 CFR 403.1, *et. seq.* River Watch contends the Discharger has failed to effectively regulate the above-described discharges from SIUs which have interfered with the Discharger’s ability to comply with regulations governing its treatment process, and is thereby in ongoing violation of 40 CFR § 403.1 *et. seq.*

The Discharger uses 3 rapid infiltration basins, referred to as percolation ponds, to dispose of treated effluent. Each pond is used until its floor is lightly layered with effluent before the next pond is used in turn. Once a year the percolation pond floors are rototilled to control vegetation. These percolation ponds are located adjacent to the Mad River, a water of the United States. The rapid rate of infiltration strongly indicates the ponds are unlined. There are no records of liners having been installed. Groundwater monitoring has shown the presence of nitrate and total coliform in surrounding soils. The soil in the area consists primarily of gravelly sands which are highly permeable and provide pathways for water from the ponds to be conveyed to the underlying water table and to the adjacent surface water, the Mad River. Therefore, River Watch contends the Discharger is discharging pollutants via underground hydrological connection to a water of the United States without a NPDES Permit in violation of 33 U.S.C. § 1311(a).

The Discharger's wastewater collection system has historically experienced high I/I during wet weather. The structural defects in the collection systems, which allow I/I into the sewer lines, result in a build-up of pressure which causes sewage system surface overflows. 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 wetlands, creeks and the Mad River. Some surface overflows discharge directly overland into surface waters. Underground leakages caused by pipeline cracks and other defects result in discharges to these adjacent surface waters via underground hydrological connections. The Discharger's chronic collection system failures pose a substantial threat to public health.

River Watch contends the Discharger is discharging pollutants from a point source to a water of the United States without a permit in violation of the CWA which requires that all discharges of pollutants from point sources to waters of the United States be permitted under a NPDES permit. Further, that the Discharger's illegal discharge of untreated wastewater and of treated wastewater with high concentrations of pollutants is a significant contribution to the degradation of the Mad River and tributary waters, with serious adverse effects on beneficial uses. River Watch members residing in the area have a vital interest in bringing the City's operations at the treatment facility and associated collection system into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

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

1. Either prohibit high strength discharges from SIUs or adopt a tiered rate structure to recover the costs of treatment of SIU wastes when discharge rates exceed 300 mg/L BOD or 350 mg/L TSS.
2. Set maximum limits on pre-treatment performance and establish procedures for assessing penalties for non-compliance.
3. Update the City of Blue Lake's Significant User Plan to allocate a waste load to each SIU with rate increases for discharges exceeding industry specific thresholds.
4. Perform monthly inspections of SIUs' pre-treatment facilities.
5. Upgrade the wastewater treatment facility in accordance with the recommendations set forth on page 16 of the compliance audit report issued by SHN Engineers in 2008.
6. Apply for a NPDES Permit for the discharge to the percolation ponds.

7. Perform a flow study to determine the condition of the Discharger's collection system and develop a system to prioritize repairs and/or replacement. Consider rehabilitation technologies such as cured, in-place pipe and pipe bursting as alternatives to pipe replacement.
8. Perform human marker sampling in creeks, wetlands and areas of the Mad River adjacent to sewer lines to test for sewage contamination from underground exfiltration.

VIOLATIONS

River Watch contends that from April 2, 2006 through April 2, 2011, the Discharger has violated the CWA, the RWQCB's Basin Plan and the Code of Federal Regulations due to discharging pollutants to waters of the United States from its percolation ponds and collection system without a NPDES permit. Said violations are based on records and reports created and/or maintained by or for the Discharger. River Watch contends further that these violations are continuing.

Underground discharges from the Discharger's collection system are alleged to have been continuous throughout the period from April 2, 2006 through April 2, 2011. 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, including creeks, wetlands and the Mad River, for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.

Discharges from the Discharger's percolation ponds are alleged to have been continuous throughout the period from April 2, 2006 through April 2, 2011. Evidence to support the allegation of underground discharge of treated sewage to the Mad River from the Discharger's percolation ponds via underground hydrological connection exists in the Discharger's groundwater monitoring reports and data regarding hydrological flow between the Discharger's percolation ponds and the adjacent area of the Mad River.

River Watch contends from April 2, 2006 through April 2, 2011 the Discharger has failed to effectively regulate discharges from SIUs which have interfered with the Discharger's ability to comply with regulations governing its treatment processes, and has thereby been in continuous violation of regulations implemented pursuant to the CWA, and 40 C.F.R. 403.1 *et. seq.* Evidence of the Discharger's failure to effectively regulate such discharges exists in records and reports created and/or maintained by or for the Discharger.

CONTACT INFORMATION

River Watch has retained legal counsel with respect to the allegations and violations of the CWA described in this NOTICE. All communications should be addressed to:

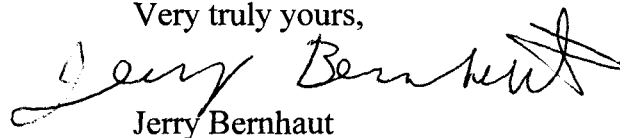
Jack Silver, Esquire
Law Offices of Jack Silver
Jerry Bernhaut, Esquire
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Fax. 707-528-8675

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 communities. 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 Act 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 violations at the wastewater treatment facility 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

JB:lhbm

cc: City Council
City of Blue Lake
P.O. Box 458
111 Greenwood Avenue
Blue Lake CA 95525

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

Regional Administrator
US. Environmental Protection Agency Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-100