

May 24, 2004

**CERTIFIED MAIL --
RETURN RECEIPT REQUESTED**

Owner/ Managing Agent
City of Petaluma
Water Pollution Control Plant
Veolia Water North America Operating Services, Inc.
950 Hopper Street
Petaluma, CA 95452

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

Dear Managing Agent and/or Owner:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), requires that sixty (60) days prior to the initiation of a civil action under 33 U.S.C. ' 1365(a), ' 505(a) of the Clean Water Act, a citizen must give notice of his/her intent to sue.

Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur, and the registered agent of the alleged violator. The Clean Water 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:

- (1) the specific standard, limitation, or order alleged to have been violated;
- (2) the activity alleged to constitute a violation;
- (3) the person or persons responsible for the alleged violation;
- (4) the location of the alleged violation;
- (5) the date or dates of violation or a reasonable range of dates during which the alleged activity occurred; and,
- (6) the full name, address, and telephone number of the person giving notice.

Northern California River Watch (ARiver Watch@) hereby places the City of Petaluma and Veolia Water North America Operating Services, Inc., formerly U.S. Filter/EOS, Inc. (hereafter collectively, "Petaluma") on notice that following the expiration of sixty (60) days from the date of this NOTICE OF INTENT TO FILE SUIT, River Watch intends to bring suit in Federal District Court against Petaluma for Petaluma's continuing violations of an effluent standard or limitation, "permit condition or requirement and/or an order issued by the Administrator or a State with respect to such standard or limitation" under ' 505(a)(1) of the Clean Water Act, 33 U.S.C. ' 1365(a)(1), the Code of Federal Regulations, and the Water Quality Control Plan for the North Coast Region ("Basin Plan"), as exemplified by illegal discharges and violations of effluent limits in its National Pollutant Discharge Elimination System ("NPDES") permit at Petaluma's Water Pollution Control Plant, located at 950 Hopper Avenue, Petaluma, California.

I. INTRODUCTION

The Clean Water Act regulates the discharge of pollutants into navigable waters of the United States. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the NPDES, 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). Private parties may bring citizen's 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 Clean Water Act provides that in any given state or region, authority to administer the NPDES permitting system can be delegated by the federal Environmental Protection Agency 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. 33 U.S.C. ' 1342(b). In California, the Environmental Protection Agency 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 case is the Regional Water Quality Control Board ("RWQCB").

The main office of Petaluma's Water Pollution Control Plant ("the Facility") is

located at 950 Hopper Street, in Petaluma, California. The Facility is a major discharger as defined by the Environmental Protection Agency. The City of Petaluma owns the Facility and contracts with Veolia Water North America Operating Services, Inc. to operate the Facility.

The Facility provides secondary level treatment for combined domestic, commercial and industrial wastewater collected in the City of Petaluma, the community of Penngrove, and unincorporated areas in the vicinity of the City of Petaluma. Treated effluent is disposed of by discharge to the Petaluma River from October 21st to April 30th each year. From May 1st through October 20th, treated wastewater is re-used for agricultural irrigation. Discharge to the Petaluma River during the reclamation period is authorized by the Facility's permit only after a request approved by the Executive Officer of the RWQCB.

The Basin Plan prohibits the discharge of wastewater which does not receive an initial dilution of at least 10:1. Discharge of wastewater to the Petaluma River is contrary to this prohibition, due to the tidal nature of the River and limited fresh water flows upstream of the outfall. The discharge is classified as a shallow water discharge. The Facility's permit grants an exception to the above prohibition, based on the finding of the RWQCB that the Facility's water re-use program complies with the exception provision of the Basin Plan. The Facility's discharge is regulated under Waste Discharge Requirements Order No. 98-076, adopted on July 15, 1998, which also serves as the Facility's NPDES Permit No. CA0037810. WDR Order No. 98-076 is attached to and fully incorporated into this NOTICE OF INTENT TO FILE SUIT.

The Facility has a history of collection system problems including excessive inflow and infiltration, exfiltration, unauthorized bypasses and releases of untreated and partially treated wastewater into the Petaluma River, Lynch Creek and other tributaries of the Petaluma River. Although there have been some recent collection system improvements such as the upgrade of the pond influent pump station and the replacement of the undersized sewer main on Lindberg Lane, there remain large segments of the approximately 220 miles of public sewer pipelines which are cracked, corroded, and misaligned at the joints, allowing inflow and infiltration of rainwater, exfiltration of untreated sewage, and sewage system overflows. One clear indication that collection system failures continue to cause significant unauthorized discharges is the Sewage Overflow Report of January 1, 2004, reporting the escape of approximately 21,840 gallons of untreated sewage from seven different manholes.

Storm fed flows at the Facility are reaching and often exceeding treatment and

storage capacity. Flows routinely exceed the 4 million gallon per day ("MGD") secondary treatment capacity. Flows in excess of 4 MGD bypass secondary treatment and are sent directly from the primary clarifiers to the oxidation pond system. The additional bypass monitoring required by the Facility's Self Monitoring Program is not being carried out. The operators claim that the "oxidation pond system is an integral part of the treatment process", that the Facility was designed to operate in this manner as reflected by findings in the Facility's Permit acknowledging the diversion of excess flows to the pond system, and therefore the diversions do not constitute a bypass.

However, ponds are subject to meteorological effects, such as increased temperatures and winds, which render them imperfect substitutes for secondary treatment, as reflected by the Facility's effluent limits violations. On Page 12 of Petaluma's Self Monitoring Program, under WDR No. 98-076, General Note 1., Bypass Monitoring: "When bypassing occurs from any treatment process, primary or secondary treatment units...the self-monitoring program shall include the following sampling and analysis in addition to the Table 1 schedule,". . . Clearly the additional bypass monitoring requirement was intended to apply whenever secondary treatment was bypassed. The mere acknowledgment of this practice in the Permit's findings does not constitute an exemption from the bypass monitoring requirements. The Facility's inadequate wastewater treatment and monitoring pose a serious threat to aquatic habitat and public health.

When treated effluent is used for irrigation, there is no adequate monitoring of irrigation runoff. Every day that irrigation occurs in excess of the absorbent capacity of the land, there are unauthorized discharges to streams, storm drains and gullies.

There are numerous references in RWQCB staff communications to Petaluma as to malfunctioning or inadequate measurement technologies such as a tidally influenced flow meter effecting the chlorine dosage, a non-representative sampling location for total suspended solids, conflicting analytical results from Petaluma's laboratory and Sequoia Analytical for total suspended solids analysis, failure of the biological oxygen demand ("BOD") dilution water blanks to meet Standard Methods criteria.

The Facility has a history of chronic exceedance of effluent limits for suspended solids and coliform bacteria. The standard recorded explanation offered by the operators has been that the suspended solids exceedances are due to growth of algae in the oxidation ponds, rather than inadequate treatment of the effluent. The coliform exceedances are attributed to the increased disinfection demands of the suspended solids. The algae growth is simply regarded as a "natural occurrence", with no analysis

of nutrients in the effluent as a possible explanation. These violations and inadequate analyses and remediation are especially serious in light of the Environmental Protection Agency's listing of the Petaluma River as impaired for pathogens and nutrients.

It is also alleged that underground discharges from Petaluma's leaking and damaged collection system are a contributing cause of both the nutrient and pathogen loading in the Petaluma River. Raw sewage from the antiquated collection system is discharged directly into the Petaluma River or its tributaries including storm drains and gullies. Much more sewage is discharged to the Petaluma system than reaches the treatment Facility. In other words the collection system leaks like a sieve; however, as most of the leaks are below ground they go undetected. Evidence to support the allegation of underground discharge of raw sewage exists in Petaluma's own data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, and influent flow volumes to the treatment plant reported in the Petaluma's SMRs. Additional evidence of underground discharges is discoverable through a video inspection of the collection system and testing of waterways adjacent to sewer lines for nutrients and pathogens indicative of sewage contamination.. There are unauthorized discharges of raw sewage every day that Petaluma continues to transport untreated sewage through cracked, corroded and misaligned sewer lines. The leaking sewer system poses a significant risk to both human health and the environment .

The Facility's self monitoring reports for 2002 and 2003 do not include reports of receiving water, i.e. Petaluma River observation and sampling analysis as required by the Facility's Self Monitoring Program.

The oxidation ponds are in close proximity to the Petaluma River. They are unlined and leaking, thereby illegally discharging untreated and/or partially treated wastewater to the Petaluma River in violation of the Facility's Permit

II. VIOLATIONS

Pursuant to ' 301(a) of the Clean Water Act, 33 U.S.C. '1311(a), the Environmental Protection Agency and the State of California have formally concluded that violations by Petaluma at its Water Pollution Control Plant Facility are prohibited by law. Beneficial uses of the Petaluma River, Lynch Creek and other tributaries to the Petaluma River in the vicinity of the Facility are being affected in a prohibited manner by these violations. Pursuant to ' 304 of the Clean Water Act, 33 U.S.C. ' 1311, the Environmental Protection Agency and the State have identified the Facility as a point

source, the discharges from which contribute to violations of applicable water quality standards. Beneficial uses of the Petaluma River identified in the Basin Plan include: cold fresh water habitat, marine habitat, fish migration, navigation, preservation of rare and endangered species, water contact recreation, non-contact water recreation, fish spawning, warm freshwater habitat, wildlife habitat.

From May 24, 1999 to May 24, 2004, Petaluma has violated the requirements of its NPDES Permit, the Basin Plan and the Code of Federal regulations as those requirements are referenced in Petaluma's Permit for discharge limitations, effluent limitations, and receiving water limitations. Said violations are evidenced and reported by Petaluma in its monthly self monitoring reports (ASMRs@) or daily monitoring reports (ADMRs@), its own testing data compiled in compliance with its Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or in its possession, and as evidenced by unpermitted discharges due to failures in the collection system. Furthermore these violations are continuing. The violations, established in Petaluma's SMRs, raw data and records of the RWQCB, include but are not limited to the following categories in Petaluma's Permit:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
25	Excessive irrigation, exceeding vegetative capacity. (Order No. 98-076, A.5) for each time excess irrigation caused run-off to storm drains, gullies, or other waters of the State.
1825	Collection system overflows. (Order No. 98-076 A.2, A5) includes discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the State. Surface overflows are evidenced in Petaluma's Hazardous Materials Spill Reports, such as those submitted on 9/27/2000, 6/13/2003, and 1/1/2004. Underground discharges are alleged to have been continuous throughout the five year period from 5/24/1999 to 5/24/2004.
1825	Leakage from oxidation ponds to the Petaluma River (Order No. 98-76 A.2, A.5) , alleged to have been continuous throughout the five year period from 5/24/1999 to 5/24/2004.

Effluent Limits

<u>Violations</u>	<u>Description</u>
30	Maximum limit on Chlorine Residual. (Order No. 98-076 B.1, B.2)
60 B.1, B)	Maximum limit on Biological Oxygen Demand. (Order No. 98-076 B.1, B)
120	Maximum limit on Total Suspended Solids. (Order No. 98-076 B.1)
80	Maximum limit on Total Coliform. (Order No. 98-076 B.3)
12	Maximum limit on Chronic Toxicity, triggering accelerated monitoring requirement (Order No. 98-076 B.6)

Effluent limits violations are evidenced in Petaluma's monthly Self Monitoring Reports.

Monitoring Requirements

<u>Violations</u>	<u>Description</u>
215	Failure to report or adequately describe violations. (Order No. 98-076 ,E.10) including failure to report runoff from excessive irrigation and failure to report collection system overflows, as evidenced by Petaluma's field records of response to incident calls.

In addition to all of the violations identified above, this NOTICE OF INTENT TO FILE SUIT covers any and all violations evidenced by the records and monitoring data which Petaluma has submitted (or failed to submit) to the RWQCB and/or other agencies during the period May 24, 1999 through May 24, 2004. This NOTICE OF INTENT TO FILE SUIT also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by the Petaluma to the RWQCB or other agencies.

III. PENALTIES

Pursuant to ' 309(d) of the Clean Water Act, 33 U.S.C. ' 1319(d), each of the above described violations of the Clean Water Act subjects the violator to a penalty of up to \$27,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Clean Water Act pursuant to

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' 505(a) and ' 505(d), 33 U.S.C. ' 1365(a) & (d), and such other relief as is permitted by law. Lastly, ' 505(d) of the Clean Water Act, 33 U.S.C. ' 1365(d), permits prevailing parties to recover costs and fees.

IV. CONTACT INFORMATION

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. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465, telephone number 707-874-2579. River Watch has an e-mail address at rwatch@sonic.net. Its web site is northerncaliforniariverwatch.org.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire Tel. 707-528-8175
Jerry Bernhaut, Esquire
Northern California Environmental Defense Center
Post Office Box 5469
Santa Rosa, CA 95402-5469

V. CONCLUSION

The violations of Petaluma as set forth in this NOTICE OF INTENT TO FILE SUIT effect the health and enjoyment of members of River Watch who reside and recreate in the effected communities in Petaluma. The members of River Watch use the effected watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Petaluma's violations of the Clean Water Act.

River Watch believes this NOTICE OF INTENT TO FILE SUIT 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 ' 505(a) of the Clean Water Act against Petaluma and Veolia Water North America Operating Services, Inc. for the aforementioned violations. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE OF INTENT TO FILE SUIT. However, if Petaluma wishes to pursue such discussions in the absence of

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litigation, it is suggested that they be initiated within the next twenty (20) days 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 period ends.

Very truly yours,

Jack Silver

JS:lh
cc:
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