

August 13, 2004

**CERTIFIED MAIL --
RETURN RECEIPT REQUESTED**

Gerald L. Gall, Treatment Plant Supervisor
Head of Operations
City of Ukiah Wastewater Treatment Plant
300 Plant Road
Ukiah, CA 95482

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

Dear Mr. Gall and/or other Head of Operations:

Section 505(b) of the Federal Water Pollution Control Act ("Clean Water Act") 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 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 such 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 ("River Watch") hereby places the City of Ukiah ("Ukiah") on notice that following the expiration of sixty (60) days from the date of this **Notice**, River Watch intends to bring suit in Federal District Court against Ukiah for its 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 Basin Plan, as exemplified by Ukiah's failure to comply with the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0022888, Order No. 99-65, ("Permit"), issued by the Regional Water Quality Control Board, North Coast Region ("RWQCB") pursuant to § 402 of the Clean Water Act, 33 U.S.C. § 1342, at the City of Ukiah Wastewater Treatment facility identified in said Permit, located in Mendocino County, California.

I. BACKGROUND

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
August 13, 2004

The Clean Water Act 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 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), 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 ("EPA") to a state or 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 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 RWQCB.

Ukiah owns, maintains, and operates a wastewater treatment, reuse and disposal facility ("the Facility") which serves the City of Ukiah and adjacent areas. The Facility is permitted to discharge into the Russian River.

Pursuant to § 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by Ukiah of its NPDES Permit, are prohibited by law. Beneficial uses of the Russian River in the vicinity of the Facility and its discharges are being

affected in a prohibited manner by these violations. Pursuant to § 304 of the Clean Water Act, 33 U.S.C. § 1311, the EPA and the State have identified Ukiah's Facility as a point source, the discharges from which contribute to violations of applicable water quality standards.

Ukiah's Facility is designed for an average dry weather flow of 2.8 mgd and wet weather flows of 7.0 mgd. Although current average dry weather flows are close to the Facility's design of 2.8 mgd, the wet weather flows often exceed the design capacity of 7.0 mgd. Due to its failing collection system the Facility experiences excess inflow and infiltration ("I&I") during the wet season. Excess I&I causes raw sewage to be discharged from the collection system. In addition to the I&I problems, the Facility also experiences collections system overflows, and the discharge of untreated waste. Although these overflows are often addressed by Ukiah, Ukiah fails to properly report these overflows to the RWQCB. By law Ukiah must report telephonically within 24 hours of a release and follow that oral report with a written report within five days of the event. Although it is estimated that Ukiah experiences on the average two collection system discharges per month. Ukiah only reports collection system discharges which reach surface waters.

During the non-discharge season (May 15th through September 1st) the discharge of waste from the Ukiah Facility to the Russian River is prohibited. During this time Ukiah discharges its waste from the Facility to three percolation ponds. These ponds are not lined and are hydrologically connected to the Russian River. Due to this hydrological connection, pollutants are discharged from these ponds to the Russian River or its tributaries in violation of Ukiah's Permit.¹

¹ Page 5 of Order No. 99-65, Discharge Prohibitions A(2), A(3), and A(6)

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
August 13, 2004

Each month Ukiah is required to submit a discharge monitoring report (“DMR”). The DMR must include a certification and any noncompliance.² Ukiah consistently fails to certify its DMRs to the RWQCB and often fails to report non-compliance particularly discharges of untreated waste from the collection system at the Facility.

From August 13, 1999 through August 13, 2004 and continuing through the present, Ukiah has violated the requirements of its Permit, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in Ukiah’s Permit for discharge limitations, effluent limitations, receiving water limitations, monitoring and reporting requirements and unpermitted discharges due to failures in the collection system, as evidenced and reported by Ukiah in its monthly self monitoring reports (“SMRs”) or DMRs, its own testing data compiled in compliance with its Permit or other orders of the RWQCB, and other documentation filed with the RWQCB or maintained by Ukiah in its normal course of business. These violations also include the lack of data required from

Ukiah as evidence of its compliance with the Clean Water Act or enabling regulations. Furthermore, these violations are continuing.

II. VIOLATIONS

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.*

To comply with this requirement River Watch has identified Ukiah’s NPDES permit with specificity. It has also used the actual language of the Permit to describe the various violations.

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

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations.

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

The person or persons responsible for the alleged violations are Ukiah and its employees responsible for compliance with Ukiah’s Permit.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in Ukiah’s Permit and in records either created or maintained by or for Ukiah which relate to Ukiah’s Facility and related activities.

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

River Watch has examined Ukiah’s records for the period from August 13, 1999 through August 13, 2004. Therefore, the range of dates covered by this **Notice** is from August 13, 1999 through August 13, 2004 . River Watch will from time to time update this **Notice** to include all violations which occur after the range of dates currently covered by this **Notice**. Some of the violations are continuous and therefore each day is a violation. The

² Page 13 Section 11(c) and Page 15 Section 12(g) respectively, of Order No. 99-65.

remainder of the violations and dates are evidenced in Ukiah's own records or the records of other agencies including the RWQCB, County Health and the local police department.

6. *The full name, address, and telephone number of the person giving notice.*

This information can be found at the end of this **Notice**.

The following violations occurred between August 13, 1999 and August 13, 2004 and are evidenced in Ukiah's records and the RWQCB records identified in this **Notice**. The listings below are organized around Ukiah's Permit using the same headings as in the Permit itself.

A. Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
1825	<p>Discharge of raw sewage due to collection system wastewater overflows in violation of A(2), A(3) and A(5) of Order No. 99-65.</p> <p>Collection system overflows include discharges caused by surface overflows directly from overflowing manholes as well as underground exfiltration reaching waters of the State. Surface overflows are evidenced in Ukiah's Sewage System Overflow Reports, such as those reported on 10/31/2002 regarding overflows which occurred on 10/24/2002 and 10/28/02, and overflows reported on 5/19/2003 and 1/28/03. All such reports contain a detailed description of the date, location, conditions and activities constituting the violation. Underground discharges are alleged to have been continuous throughout the five year period from August 13, 1999 through August 13, 2004. Evidence to support the allegation of underground discharge of raw sewage exists in Ukiah'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 Ukiah's DMRs, generally referred to as mass balance data. 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, pathogens and other constituents indicative of sewage contamination, such as caffeine.</p> <p>Remedial steps Ukiah could take to avoid future discharges of raw sewage from its collection system include a thorough, ongoing video inspection of its sewage lines, sampling of creeks adjacent to sewage lines for tracer elements such as caffeine and commitment of adequate resources to repair damaged sections in a timely manner as they are disclosed by the video inspections, creek studies and surface overflows.</p>
50	<p>Failure to report violations of discharge of raw sewage due to collection system wastewater surface overflows in violation of, A(2), A(3), A(5) and Section 12(g) of Order 99-65.</p> <p>Evidence of failure to report discharge of raw sewage due to collection system wastewater surface overflows exists in Ukiah's records of incident calls and listings of sewage stoppages which resulted in overflows not reported because they allegedly did not reach surface waters by overland drainage, such as a spill at Dora and Clay in Ukiah on 9/28/00, and a spill from the manhole at Gobbi and Oak in Ukiah on 3/17/02.</p> <ol style="list-style-type: none">1. A(2) DISCHARGE PROHIBITIONS - Creation of a pollution, contamination, or nuisance, as defined by Section 13050 of the California Water Code (CWC) is prohibited. [Health & Safety Code, Section 5411]2. A(3) Discharge Prohibitions -There shall be no discharge of waste to

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
August 13, 2004

land, which is not owned, or under agreement to use by the discharger.

3. A(5) Discharge Prohibitions-The discharge of untreated waste from anywhere within the collection, treatment, or disposal facility is prohibited.

4. 12(g) Noncompliance reporting: The permittee shall report any non compliance at the time monitoring reports are submitted. The written submission shall contain a description of the non-compliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

Discharge of waste from Ukiah's Facility percolation ponds to the Russian River between May 15th and September 30th in violation of A(6) Order No. 99-65. Violations are alleged to have been continuous over the five year period from August 13, 1999 through August 13, 2004, between May 15th and September 30th of each year.

675 Failure to report violations of waste discharge from Ukiah's Facility percolation ponds to the Russian River between May 15th and September 30th in violation of A(6) and Section 12(g) of Order No. 99-65.

5. A(6) Discharge Prohibitions-The discharge of waste from the City of Ukiah Wastewater Treatment Plant and Disposal Facilities to the Russian River or its tributaries during the period May 15 through September 30 each year is prohibited.

Remedial steps Ukiah could take to avoid future discharges of waste from its storage ponds to the Russian River during the period May 15th through September 30th include lining the ponds, which the RWQCB is requiring for new ponds, and complete reuse during the non-discharge period.

These enumerated violations are based upon review of the RWQCB files for Ukiah as well as monitoring data submitted by Ukiah to the RWQCB.

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

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 ground water in Northern California. River Watch is

City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
August 13, 2004

organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465. It's telephone number is 707-874-2579.

The violations of Ukiah as set forth in this **Notice** effect the health and enjoyment of members of River Watch who reside and recreate in the Russian River area. The members of River Watch use this watershed 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 Ukiah's violations of the Clean Water Act.

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

Jack Silver, Esq.
Post Office Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175

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 § 505(a) of the Clean Water Act against Ukiah for violations at its Facility.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this **Notice**; however, if Ukiah wishes to pursue such discussions in the absence of litigation, it is suggested that Ukiah initiate those discussions 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

cc:

Michael Leavitt, Administrator
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City of Ukiah Wastewater Treatment Plant
Notice of Violations and Intent to File Suit - CWA
August 13, 2004
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