



VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

September 28, 2009

Robert Weil, Public Works Director  
City of San Carlos  
600 Elm Street  
San Carlos, CA 94070

Mark Weiss, City Manager  
City of San Carlos  
600 Elm Street  
San Carlos, CA 94070

**Re: Notice of Violation and Intent to File Suit Under the  
Federal Water Pollution Control Act**

To the above-listed notice recipients:

San Francisco Baykeeper (“Baykeeper”) hereby provides notice of Baykeeper’s intent to sue for violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”), committed by the City of San Carlos (“San Carlos”). As explained further below, San Carlos violates the Clean Water Act by: (1) discharging pollutants to waters of the United States without National Pollution Discharge Elimination System (“NPDES”) permit; and (2) discharging pollutants in violation of the Waste Discharge Requirements for City/County Association Of Governments Of San Mateo County, *et al.*, San Francisco Regional Water Quality Control Board Order No. 99-058, NPDES Permit No. CAS0029921, reissued as Order No. 99-059, and subsequently amended by Order Nos. R2-2003-0023, R2-2004-0060, R2-2004-0062, and R2-2007-0027 (“MS4 Permit”).

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intent to file suit. Notice must be given to the head of the State or local agency responsible for the violations, the Administrator of the United States Environmental Protection Agency (“EPA”), the Regional Administrator of the Environmental Protection Agency for the region in which the violations occurred, and the chief executive officer of the water pollution control agency for the state in which the violations occurred. 33 U.S.C. § 1365(b)(1)(A), *see also* 40 C.F.R. § 135.2(a)(2).

As required by the Clean Water Act, Baykeeper hereby places San Carlos on formal notice that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit (“Notice Letter”), Baykeeper intends to file suit in federal District Court pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), against the persons responsible for the violations described in this Notice Letter. Specifically, Baykeeper will seek



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injunctive relief pursuant to CWA Sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), and declaratory relief and such other relief permitted by law to remedy the CWA violations outlined below. Baykeeper will also seek civil penalties pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d) and the EPA Regulation, Adjustment of Civil Monetary Penalties for Inflation, set forth at 40 C.F.R. § 19.4. These provisions of law authorize civil penalties for each separate violation of the Clean Water Act occurring between March 15, 2004 and January 12, 2009 of up to \$32,500 per day per violation, and \$37,500 per day per violation for all Clean Water Act violations occurring after January 12, 2009. Finally, Baykeeper will seek to recover its litigation costs, including attorneys' and experts' fees, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d).

## **I. ORGANIZATIONS GIVING NOTICE OF CLEAN WATER ACT VIOLATIONS**

Baykeeper is a non-profit public benefit corporation whose mission is to protect and enhance the water quality of the San Francisco Bay and its tributaries for the benefit of its ecosystems and the surrounding human communities. Baykeeper accomplishes its mission through education, advocacy, and enforcement.

Baykeeper's address and contact information is as follows:

Sejal Choksi  
Baykeeper  
785 Market Street, Suite 850  
San Francisco, California 94103  
Phone: (415) 856-0444  
Fax: (415) 865-0443

Baykeeper's members use and enjoy the beaches and waters in and around San Carlos, such as the lower San Francisco Bay and the Greater San Francisco Bay and its tributaries, Cordilleras Creek, Pulgas Creek, Brittan Creek, Belmont Creek, Belmont Slough, and Greenwood Creek. Baykeeper's members sail, swim, windsurf, picnic, fish, hike and enjoy the wildlife in and around these waters. Information available to Baykeeper indicates that San Carlos discharges raw and/or inadequately treated sewage to these waters. These discharges of sewage and associated pollutants degrade water quality and harm aquatic life in the area receiving waters, and thus impair Baykeeper's members' use and enjoyment of these waters. Further, information available to Baykeeper indicates that San Carlos's discharges of raw and/or inadequately treated sewage are ongoing and continuous. As a result, Baykeeper's members' use and enjoyment of these waters has been and continues to be adversely impacted by the discharge of sewage to these waters and the tributaries to these waters.

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## **II. THE COLLECTION SYSTEM, THE MUNICIPAL SEPARATE STORM SEWER SYSTEM, AND THE ENTITY RESPONSIBLE FOR THE ILLEGAL DISCHARGES**

### **A. The Collection System**

San Carlos's sewage collection system ("Collection System") is a "satellite system" that serves a population of approximately 28,000. The Collection System consists of over 133 miles of main and lateral sewer lines, with approximately 11,000 sewer service connections and 6 lift stations that transport sewage to the South Bayside System Authority wastewater treatment plant ("WWTP"). The Collection System is a point source under the Clean Water Act. *See* 33 U.S.C. § 1362(14). San Carlos owns and operates this WWTP in conjunction with Redwood City, the City of Belmont, and the West Bay Sanitary District.<sup>1</sup> Information available to Baykeeper indicates that nearly 70% of the existing sewer mains in the Collection System are more than 20 years old.

San Carlos operates and manages its Collection System improperly, resulting in sewer system overflows ("SSOs") of raw and/or inadequately treated sewage. San Carlos's internal SSO reports, service requests/call out reports, spreadsheets and tables summarizing SSOs from the Collection System, SSO reports submitted by San Carlos to the State of California Water Resources Control Board ("State Board"), the Regional Water Quality Control Board, San Francisco Region ("Regional Board"), the Office of Emergency Services ("OES"), and annual SSO reports submitted to the Regional Board, indicate that San Carlos has spilled raw and/or inadequately treated sewage from its Collection System on at least 289 separate occasions in the last five (5) years. Attached hereto as Exhibit A is a table that lists the date and location of the 289 reported SSOs.<sup>2</sup> San Carlos's ongoing and continuous SSOs demonstrate serious problems with San Carlos's operation and maintenance of its Collection System.

### **B. The Municipal Separate Storm Sewer System and the MS4 Permit**

San Carlos's municipal separate storm sewer system ("San Carlos MS4") serves the areas also served by the Collection System. An MS4 is defined as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains)" owned or operated by a State, city, or town that is designed or used for collecting or conveying storm water and that discharges to waters of the United States. *See* 40 C.F.R. 122.26(b)(8)(i)-(ii); *see also* 40 C.F.R. 122.26(b)(18).<sup>3</sup> The San Carlos MS4 contains numerous storm drain inlets that lead to

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<sup>1</sup> South Bayside System Authority operates the WWTP and its conveyance system under the terms of Order No. R2-2007-0006, NPDES No. CA0038369 ("South Bayside Permit"). San Carlos is not a permittee on the South Bayside Permit, nor does it have separate NPDES permit coverage for discharges from its Collection System.

<sup>2</sup> Exhibit A lists the SSOs San Carlos reported in the last five (5) years in SSO reports submitted to the State Board, Regional Board and OES, in annual SSO reports submitted to the Regional Board, in San Carlos's internal SSO reports, work orders, service requests/call out reports, spreadsheets summarizing SSOs, and in other correspondence to and from San Carlos indicating SSO from its Collection System.

<sup>3</sup> An MS4 is further defined as a sewer system that is not a combined sewer, and is not part of a Publicly Owned Treatment Works. *See* 40 C.F.R. 122.26(b)(8)(iii)-(iv).

underground storm drain pipes. These pipes discharge to watersheds that drain to San Francisco Bay

Clean Water Act Section 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating municipal storm water discharges under NPDES permits. Section 402(p) of the CWA requires an NPDES permit for storm water discharges from an MS4 to waters of the United States. Section 402(p)(3)(B) sets forth the requirements that must be in all MS4 permits, including requirements that prohibit discharges into the storm sewers and reduce pollutants in discharges to receiving waters. 33 U.S.C. § 1342(p)(3)(B).

San Carlos is one of twenty cities and towns in San Mateo County that have joined together to form the San Mateo Countywide Stormwater Pollution Prevention Program (“STOPP”). STOPP submitted an NPDES permit application and was granted an NPDES permit in 1993, which was reissued in 1999 and subsequently amended in 2003, 2004, and 2007. San Carlos has jurisdiction over and/or maintenance responsibilities for the San Carlos MS4. *See* MS4 Permit, Findings 1-2. *Id.* Specifically, San Carlos is required to effectively prohibit the discharge of non-storm water into its storm drain system. *See* MS4 Permit, Discharge Prohibitions, A.1. Accordingly, San Carlos and/or the San Carlos Department of Public Works (“DPW”) is the owner and/or operator of the San Carlos MS4.

**C. The Entity Responsible for Operating the Collection System and the San Carlos MS4**

San Carlos is a municipality incorporated under the laws of the State of California. The DPW is a department of the City of San Carlos, and has offices at 600 Elm Street, San Carlos, California. The DPW’s current Director is Robert Weil, and the current City Manager is Mark Weiss. San Carlos and/or DPW are the owner and/or operator of the Collection System. San Carlos and/or DPW is responsible for operating and maintaining the Collection System, tasks which include, but are not limited to, collecting and conveying sewage through the Collection System, conducting routine maintenance, cleaning, and inspection of the Collection System, and responding to citizen complaints of SSOs.

As explained above, San Carlos is also a permittee on the MS4 Permit. Pursuant to the MS4 Permit, San Carlos has jurisdiction over and/or maintenance responsibilities for the San Carlos MS4. *See* MS4 Permit, Findings 1-2. *Id.*

**III. THE LOCAL WATERWAYS RECEIVING THE ILLEGAL DISCHARGES OF POLLUTANTS AND ENVIRONMENTAL IMPACTS FROM THOSE DISCHARGES**

The collection system is located in several major watersheds that drain to San Francisco Bay and its tributaries, including, but not limited to, Cordilleras Creek, Pulgas Creek, Brittan Creek, Belmont Slough, Belmont Creek, Greenwood Creek, and other unnamed tributaries and seasonal creeks. Cordilleras Creek flows east from the western portion of San Carlos to Smith Slough, which discharges to San Francisco Bay. Pulgas Creek and Brittan Creek both flow east through San Carlos to Steinberger Slough, which discharges into San Francisco Bay. Belmont

Creek flows to Belmont Slough, which also discharges into San Francisco Bay. The point of discharge for the Smith Slough and Steinberger Slough into San Francisco Bay is directly adjacent to Bair Island National Wildlife Refuge — a 2,600 acre wetland that is home to harbor seals and many species of shorebirds, and is an important stop for birds on the Pacific flyway. In addition, the storm pipes in the San Carlos MS4 discharge to these and other watersheds. Information available to Baykeeper indicates that SSOs from the Collection System, as well as SSOs that enter the San Carlos MS4 from the Collection System and/or from privately-owned lateral lines, are discharged to these waters, and then flow untreated to San Francisco Bay.

San Francisco Bay is an ecologically sensitive waterbody and a defining feature of Northern California. San Francisco Bay is an important and heavily used resource, with special aesthetic and recreational significance for people living in the surrounding communities. Aquatic sports are very popular in the Bay Area. The San Francisco Bay shoreline has numerous highly valued lagoons with beaches and public access that offer unique recreational opportunities for swimmers, kayakers, and windsurfers. The large-scale urbanization of the Bay Area makes these recreational and aesthetic uses critically important to the quality of life of Bay Area residents. However, the San Francisco Bay's water quality is impaired and continues to decline. The Bay's once-abundant and varied fisheries have been drastically diminished by pollution. Much of the wildlife habitat of the Bay has also been degraded.

Spills of raw and/or inadequately treated sewage harm San Francisco Bay and pose a serious risk to fisheries, wildlife habitat, and human health. Sewage contains human waste, viruses, protozoa, mold spores and bacteria. In addition, sewage contains chemicals that cause cancer or reproductive toxicity. These chemicals come from solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals, and other chemicals used by households and businesses and then discarded to sewage collection systems.<sup>4</sup> High concentrations of these pollutants are typically found in raw and/or inadequately treated sewage. SSOs from the Collection System that discharge to waters, as well as SSOs that enter the storm sewer system and then subsequently flow directly or with storm water to waters, result in the addition of these pollutants to San Francisco Bay and its tributaries.

In addition, the intensive use of San Francisco Bay and its tributaries for commercial and sport fishing, shellfish harvesting, and water-contact recreation increases the likelihood that people will come into direct contact with SSOs and the pollutants they contain. SSOs also affect people who eat fish caught in these waters. Toxic chemicals bio-accumulate in the San Francisco Bay's food web; *i.e.*, contaminants absorbed by plankton accumulate in fish and birds farther up the food chain, and ultimately transfer to human consumers. Contamination of fish is particularly damaging to ethnic and economic minorities, who eat a greater-than-average amount of local fish.

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<sup>4</sup> See People for Puget Sound, "Puget Sound Georgia Basin Sewage Report," February 1995; see also Excerpt from "Safe Substitutes at Home: Non-Toxic Household Products," Gary A. Davis and Em Turner, University of Tennessee-Knoxville Waste Management Institute, [es.epa.gov/techinfo/facts/safe-fs.html](http://es.epa.gov/techinfo/facts/safe-fs.html); see also Frick, E., et al, Presence of Pharmaceuticals in Wastewater Effluent and Drinking Water, Metropolitan Atlanta, Georgia July-September 1999, Proceedings of the 2001 Georgia Water Resources Conference, March 26-27, 2001.

Some of the waters that receive San Carlos's SSOs are listed on the State of California's 2006 Clean Water Act Section 303(d) list of impaired water bodies. A waterbody that is listed as impaired cannot support the designated beneficial uses for that waterbody. The beneficial uses of the waters that receive San Carlos's SSOs include, but are not limited to, ocean fishing, commercial and sportfishing, fish migration, fish spawning, preservation of rare and endangered species, estuarine habitat, wildlife habitat, shellfish harvesting, contact and non-contact water recreation, navigation, and industrial service and process supply.<sup>5</sup> San Francisco Bay is listed as impaired for chlordane, dichlorodiphenyltrichloroethane ("DDT"), dieldrin, dioxin compounds, furan compounds, mercury, polychlorinated biphenyls ("PCBs"), and selenium. These pollutants are found in raw and/or inadequately treated sewage. By discharging raw and/or inadequately treated sewage and its associated pollutants to waters of the United States in violation of the Clean Water Act, and by discharging sewage to the storm sewer that subsequently flows untreated to waters, San Carlos has contributed to the continuing impairment of San Francisco Bay and its tributaries. As such, San Carlos's violations of the Clean Water Act have directly harmed Baykeeper's members' use and enjoyment of San Francisco Bay and its tributaries.

#### **IV. CLEAN WATER ACT VIOLATIONS**

##### **A. San Carlos's Discharges of Sewage From the Collection System in Violation of the Clean Water Act**

Clean Water Act Section 301(a) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of an NPDES permit. 33 U.S.C. § 1311(a). As explained above, raw and/or inadequately treated sewage contains numerous pollutants. At no point has San Carlos obtained a CWA permit that authorizes the discharge of sewage from the Collection System to waters of the United States. Therefore, each and every time San Carlos discharges pollutants, including discharges of sewage, from a point source to waters of the United States is a violation of Section 301(a) of the Clean Water Act.

Exhibit A sets forth all the SSOs from the Collection System that San Carlos reported in the last five (5) years. Of the 289 reported SSOs, San Carlos reported that 87 SSOs reached surface waters and/or the San Carlos MS4. *See* Exhibit B, listing dates and locations of these SSOs.<sup>6</sup> San Carlos reported in its internal SSO reports and in SSO reports submitted to the State Board, Regional Board, and OES that SSOs from the Collection System are frequently discharged to waters of the United States and/or into the San Carlos MS4. As explained in Section II.B above, the San Carlos MS4 is a point source of pollutants and the system subsequently discharges to waters of the United States, such as San Francisco Bay and/or its tributaries, Cordilleras Creek, Pulgas Creek, Brittan Creek, Belmont Slough, Belmont Creek, and Greenwood Creek. SSOs from San Carlos's Collection System that reach the San Carlos MS4

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<sup>5</sup> *See* Water Quality Control Plan, San Francisco Basin (Region 2), Chapter 2.

<sup>6</sup> Exhibit B lists the SSOs San Carlos reported discharged to waters, and/or to the MS4, in the last five (5) years, as indicated in SSO reports submitted to the State Board, Regional Board, and OES, in annual SSO reports submitted to the Regional Board, in San Carlos's internal SSO reports, work orders, service requests, spreadsheets and tables summarizing SSOs, and in other correspondence to and from San Carlos indicating SSOs from its Collection System.

ultimately discharge to waters of the United States. Baykeeper hereby puts San Carlos on notice that all discharges of pollutants from a point source to waters of the United States, including San Carlos's SSOs that discharge directly to waters and SSOs that enter the San Carlos MS4 and then discharge to waters, are violations of Section 301(a) of the Clean Water Act.

In addition to the reported SSOs, San Carlos has been underreporting and/or misreporting the number of SSOs from the Collection System. Moreover, San Carlos lacks an adequate monitoring program to detect, report, and address SSOs and their impacts. Therefore, information available to Baykeeper indicates that SSOs in addition to those identified in Exhibit A will be discovered through this enforcement action. Baykeeper puts San Carlos on notice that every discharge of pollutants, including SSOs, from a point source to waters of the United States in the last five (5) years, whether specifically reported or not, is a violation of the Clean Water Act that will be included in this litigation. Baykeeper will include additional violations when information becomes available.

Further, the Collection System SSOs described in this section violate the *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* ("SSO WDR").<sup>7</sup> In addition, San Carlos discharges SSOs from the Collection System into the San Carlos MS4, in violation of local municipal code and county ordinance. Baykeeper has put San Carlos on notice of these violations in a separate letter sent concurrently herewith. Baykeeper will include San Carlos's violations of the SSO WDR and local municipal code and county ordinance in this litigation.

San Carlos's discharges of raw and/or inadequately treated sewage from its Collection System to waters of the United States, and discharges of raw and/or inadequately treated sewage that enter the San Carlos MS4 and then discharge to waters, are ongoing and continuous. Each day and/or occasion that San Carlos has discharged and continues to discharge raw and/or inadequately treated sewage from a point source to waters of the United States is a separate and distinct violation of Section 301(a) of the Clean Water Act. 33 U.S.C. § 1311(a). San Carlos's violations will continue each day and/or occasion it discharges SSOs in violation of the requirements of the Clean Water Act. San Carlos is subject to penalties for all violations of the Clean Water Act in the five (5) years prior to the date of this Notice Letter.

**B. San Carlos's Discharges of Sewage from the Collection System to the San Carlos MS4 in Violation of the MS4 Permit and the Clean Water Act**

The MS4 Permit contains prohibitions and limitations on the discharge of pollutants into and from the San Carlos MS4. *See e.g.* MS4 Permit §§ A and B. Discharge Prohibition A.1 of the MS4 Permit requires that San Carlos effectively prohibit discharges of non-storm water into the San Carlos MS4. As explained below, San Carlos has violated and continues to violate this provision by failing to effectively prohibit the discharge of non-stormwater in the form of SSOs from the Collection System into the San Carlos MS4.

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<sup>7</sup> *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, State Water Resources Control Board Order No. 2006-0003-DWQ and Monitoring and Reporting Programs No. 2006-0003-DWQ and Order No. WQ 2008-0002-EXEC.

San Carlos's internal SSO reports, call out reports, reports of SSOs submitted to the State Board, Regional Board and OES, and annual SSO reports generated by San Carlos and submitted to the Regional Board, indicate that San Carlos has discharged SSOs from its Collection System into the San Carlos MS4 on at least 87 separate occasions in the five (5) years prior to the date of this Notice Letter. *See Exhibit B.*<sup>8</sup> San Carlos violates Discharge Prohibition A.1 of the MS4 Permit and the Clean Water Act each day and/or occasion an SSO from the Collection System enters the San Carlos MS4. Information available to Baykeeper indicates that San Carlos has been underreporting and/or misreporting the number of SSOs, including those that enter the San Carlos MS4 from the Collection System. Baykeeper puts San Carlos on notice that each discharge of SSOs into the San Carlos MS4 in the last five (5) years, whether specifically reported or not, will be included in this enforcement action. Baykeeper will include additional violations when information becomes available.

San Carlos's discharges of SSOs from the Collection System into the San Carlos MS4 in violation of Discharge Prohibition A.1 of the MS4 Permit are ongoing and continuous. Each day and/or occasion that San Carlos has discharged and continues to discharge non-storm water into the San Carlos MS4 in violation of the MS4 Permit's discharge prohibitions is a separate and distinct violation of the Clean Water Act. San Carlos's violations will continue each day and/or occasion that San Carlos discharges non-storm water in the form of SSOs into the San Carlos MS4 in violation of the requirements of the MS4 Permit and the Clean Water Act. San Carlos is subject to penalties for all violations of the Clean Water Act occurring in the five (5) years prior to the date of this Notice Letter.

## **V. CONCLUSION**

Baykeeper will seek injunctive and declaratory relief and such other relief permitted by law to remedy the CWA violations outlined above. Baykeeper will also seek civil penalties and the recovery of litigation costs, including attorneys' and experts' fees, pursuant to CWA Section 505(d), 33 U.S.C. § 1365(d).

Upon expiration of the 60-day notice period, Baykeeper will file a citizen suit enforcement action pursuant to Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, Baykeeper is willing to discuss effective remedies for the violations noted in this letter. If San Carlos wishes to pursue such discussions in the absence of litigation, we suggest that it initiate those discussions immediately.

Baykeeper has retained legal counsel to represent it in this matter. Please direct all communications to Lawyers for Clean Water at the addresses/numbers below:

Daniel Cooper

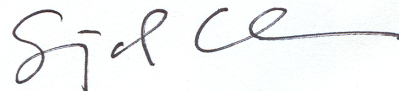
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<sup>8</sup> Exhibit B sets forth the SSOs from the Collection System that reached the MS4, as indicated in San Carlos's SSO reports submitted to the State Board, Regional Board, and OES, in annual reports submitted to the Regional Board, in San Carlos's internal SSO reports, call out reports/work orders, spreadsheets and tables summarizing SSOs, and in other correspondence from San Carlos indicating SSOs from its collection system.

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September 28, 2009  
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Martin McCarthy  
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Sincerely,

A handwritten signature in black ink, appearing to read "Sejal Choksi", is written over a light blue rectangular background.

Sejal Choksi  
Baykeeper and Director of Programs  
San Francisco Baykeeper

**SERVICE LIST**

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