

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

September 28, 2009

Vivian Housen, Interim District Manager
West Bay Sanitary District
500 Laurel Street
Menlo Park, CA 94025

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

To the above-listed notice recipient:

San Francisco Baykeeper (“Baykeeper”) hereby provides notice of its intent to file suit for violations of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”), committed by West Bay Sanitary District (the “District”). The District violates the CWA for its discharges of pollutants to waters of the United States without a National Pollution Discharge Elimination System (“NPDES”) 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 EPA 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 puts the District on formal notice that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit Letter (“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 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. ORGANIZATION 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 Francisco Bay and its tributaries, such as San Francisco Creek, Los Trancos Creek, Corte Madera Creek, Searsville Lake, Woodside Creek, and Bear 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 the District discharges raw and/or inadequately treated sewage to these waters. These discharges of sewage and associated pollutants degrades water quality and harms aquatic life in these waters, and thus impairs Baykeeper's members' use and enjoyment of the waters. Further, the District'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 waters directly used by Baykeeper's members, as well as the tributaries to these waters.

II. THE COLLECTION SYSTEM AND THE ENTITY RESPONSIBLE FOR THE ILLEGAL DISCHARGES

A. The Collection System

The District's collection system ("Collection System") is a "satellite" system that has a service population of approximately 55,000. The Collection System consists of 210 miles of main sewer line in the City of Menlo Park and portions of East Palo Alto, Redwood City, Atherton, Woodside and Portola Valley. In addition, the Collection System serves portions of Unincorporated San Mateo and Santa Clara Counties. The Collection System consists of pipes and other manmade conveyances, and is a point source under the Clean Water Act. *See* 33 U.S.C. § 1362(14). All wastewater collected within the District is transported via main line trunk sewers to the Menlo Park Pumping Station, located at the entrance to Bayfront Park. From

there, wastewater is sent for treatment to the South Bayside System Authority wastewater treatment plant (“WWTP”). The District owns and operates this WWTP in conjunction with Redwood City, Belmont and San Carlos.¹ The Collection System’s average flow during dry weather is approximately 6 million gallons per day. The District’s website states that this flow increases considerably during wet weather due to the inflow and infiltration of rainwater.

The District operates and manages its Collection System improperly, resulting in sewer system overflows (“SSOs”) of raw and/or inadequately treated sewage. The District’s internal SSO reports, work orders, service requests, and spreadsheets and tables summarizing SSOs from the Collection System, SSO reports submitted by the District to the State of California Water Resources Control Board (“State Board”), the Regional Water Quality Control Board, San Francisco Region (“Regional Board”), and Office of Emergency Services (“OES”), and annual SSO reports submitted to the Regional Board, indicate that the District has spilled raw and/or inadequately treated sewage from its Collection System on at least 286 separate occasions in the last 5 years. Attached hereto as Exhibit A is a table that lists the date and location of the 286 reported SSOs.² The District’s ongoing and continuous SSOs demonstrate serious problems with the District’s operation and maintenance of its Collection System.

B. The Entity Responsible for Operating the Collection System

The District is an independent political corporation formed in 1902 in a special election held by the then-unincorporated cities of Atherton and Menlo Park. The powers of the District are established by California State Law, and vested in a five-member Board elected to four-year terms. The District has offices at 500 Laurel Street, Menlo Park, CA, 94025. The Interim District Manager is Vivian Housen. The District 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.

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

The Collection System runs through several major watersheds that drain to San Francisco Bay and its tributaries, including but not limited to San Francisquito Creek, Los Trancos Creek, Corte Madera Creek, Searsville Lake, Woodside Creek, Bear Creek, Atherton Channel, and unnamed tributaries and seasonal creeks. San Francisquito Creek flows east through the municipalities that the District serves and discharges to San Francisco Bay via Ravenswood Slough near East Palo Alto, where it empties adjacent to the Palo Alto Baylands Nature Preserve.

¹ 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”). The District is not a permittee on the South Bayside Permit, nor does it have separate NPDES permit coverage for discharges from its Collection System.

² Exhibit A lists the SSOs the District reported in the last 5 years in SSO reports submitted to the State Board, Regional Board and OES, in annual SSO reports submitted to the Regional Board, in the District’s internal SSO reports, “requested work forms,” service requests, spreadsheets and tables summarizing SSOs, and in other correspondence to and from the District indicating SSOs from its Collection System.

Corte Madera Creek flows to Los Trancos Creek via Searsville Lake (a private reservoir), which discharges to San Francisquito Creek. Woodside Creek flows to Bear Creek, which discharges to San Francisquito Creek at the Jasper Ridge Biological Preserve. Atherton Channel flows east through Menlo Park, and discharges to San Francisco Bay via West Point Slough. Information available to Baykeeper indicates that SSOs from the Collection System discharge 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 diverse 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, raw and/or inadequately treated 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.³ High concentrations of these pollutants are typically found in raw and/or inadequately treated sewage. SSOs from the District's Collection System that discharge 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 harmful to ethnic and economic minorities, who eat an above-average amount of local fish.

Several of the waters that receive the District'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 its designated beneficial uses. The beneficial uses of the waters that receive the District's SSOs include habitat support for commercial fishing and sport

³ 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; 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.

fishing, estuarine habitat, wildlife habitat, fish migration, fish spawning, preservation of rare and endangered species, shellfish harvesting, contact and non-contact water recreation, industrial service and process supply, and navigation.⁴ San Francisco Bay is listed as impaired for chlordane, dichlorodiphenyltrichloroethane (“DDT”), dieldrin, dioxin compounds, furan compounds, mercury, polychlorinated biphenyls (“PCBs”), and selenium. San Francisquito Creek and Corte Madera Creek are listed as impaired for diazinon. 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, the District has contributed to the continuing impairment of San Francisco Bay and its tributaries. As such, the District’s violations of the Clean Water Act directly harm Baykeeper’s members’ use and enjoyment of San Francisco Bay and its tributaries.

IV. THE DISTRICT’S ILLEGAL DISCHARGES OF SEWAGE FROM THE COLLECTION SYSTEM

A. SSOs From the Collection System

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 partially treated sewage contains numerous pollutants. At no point has the District 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 the District 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 the District reported in the last 5 years. Of the 286 reported SSOs, the District reported that 162 SSOs reached surface waters and/or the municipal separate storm sewer systems (“MS4”) operated by the municipalities and counties the District serves. *See* Exhibit B (listing dates and locations of these SSOs).⁵ 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).⁶ The District has 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 MS4. The MS4 is a point source and the system subsequently discharges to waters of the United States, including but not limited to San Francisco Bay, San Francisquito Creek, Los

⁴ *See* Water Quality Control Plan, San Francisco Basin (Region 2), Chapter 2.

⁵ Exhibit B lists the SSOs the District reported discharged to waters and/or to the MS4 in the last 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 the District’s internal SSO reports, “requested work forms,” service requests, spreadsheets and tables summarizing SSOs, and in other correspondence to and from the District indicating SSOs from its Collection System.

⁶ 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).

Trancos Creek, Corte Madera Creek, Searsville Lake, Woodside Creek, Bear Creek, and Atherton Channel. SSOs from the District Collection System that reach the MS4 ultimately discharge to waters of the United States. Baykeeper hereby puts the District on notice that all discharges of pollutants from a point source to waters of the United States, including the District's SSOs that discharge directly to waters and SSOs that enter the MS4 and then discharge to waters, are violations of Section 301(a) of the Clean Water Act.

The District's discharges of raw and/or inadequately treated sewage from the Collection System to waters of the United States, and discharges of raw and/or inadequately treated sewage from the Collection System that enter the MS4 and then discharge to waters, are ongoing and continuous. Each day and/or each occasion that the District 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). The District's violations will continue each day and/or each occasion it discharges SSOs in violation of the requirements of the Clean Water Act. The District is subject to penalties for all violations of the Clean Water Act occurring in the 5 years prior to the date of this Notice Letter.

B. Inadequate Reporting of SSOs From the Collection System

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

Finally, the Collection System SSOs violate the *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* ("SSO WDR").⁷ In addition, the District discharges SSOs from the Collection System into the MS4 operated by the municipalities and counties it serves, in violation of local municipal code and county ordinance. Baykeeper has put the District on notice of these violations in a separate letter sent concurrently herewith. Baykeeper will include the District's violations of the SSO WDR and local municipal code and county ordinance in this litigation.

VI. 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

⁷ *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.


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 the District 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 address/number below:

Daniel Cooper
Samantha Williams
Lawyers for Clean Water, Inc.
1004 A O'Reilly Avenue
San Francisco, CA 94129
Telephone: (415) 440-6520
Email: daniel@lawyersforcleanwater.com

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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