

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

September 30, 2009

Marcia Raines, City Manager  
City of Millbrae  
621 Magnolia Avenue  
Millbrae, CA 94030

Ron Popp, Director  
City of Millbrae  
Department of Public Works -  
Administration and Engineering  
621 Magnolia Avenue  
Millbrae, CA 94030

**Re: Notice of Violations 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 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 the City of Millbrae (“Millbrae”). As explained below, this letter notifies Millbrae of its violations of: (1) Waste Discharge Requirements for City of Millbrae Water Pollution Control Plant, National Pollution Discharge Elimination System (“NPDES”) Permit No. CA0037532, Order No. R2-2001-0143 and Monitoring and Reporting Program No. R2-2001-0143, California Regional Water Quality Control Board San Francisco Bay Region (“2001 POTW Permit”); (2) Waste Discharge Requirements for City of Millbrae Water Pollution Control Plant, NPDES Permit No. CA0037532, Order No. R2-2008-0071 and Monitoring and Reporting Program No. R2-2008-0071, California Regional Water Quality Control Board San Francisco Bay Region (“2008 POTW Permit”) (the 2001 POTW Permit and 2008 POTW Permit are referred to collectively as the “POTW Permits”); (3) 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 EPA for the region in which the violations occurred, and the chief administrative officer of the water pollution control agency in 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 Millbrae on formal notice that, after the expiration of sixty (60) days from the date of this Notice of Violations 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. 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  
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Baykeeper’s members use and enjoy the beaches and waters in and around Millbrae, such as San Francisco Bay, Green Hills Creek, Highline Canal, Millbrae Creek, El Portal Canal, Lomita Creek, Lomita Canal, Minorca Creek, Tioga Creek, and Cowan Canal. Baykeeper’s members sail, swim, windsurf, picnic, fish, hike, and enjoy the wildlife in and around these waters. Information available to Baykeeper indicates that Millbrae discharges raw and/or inadequately treated sewage to these waters. This discharge 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 these waters. Further, Millbrae’s discharges of 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, THE WATER POLLUTION CONTROL PLANT, THE MUNICIPAL SEPARATE STORM WATER SYSTEM, AND THE ENTITY RESPONSIBLE FOR THE ILLEGAL DISCHARGES**

### **A. The Collection System and Water Pollution Control Plant**

Millbrae's sewage collection system ("Collection System") and Publicly Owned Treatment Works ("POTW") serve a population of approximately 22,000. The Collection System conveys sewage from within Millbrae to the POTW for treatment. The Collection System consists of 67 miles of pipeline, including 1 mile of pressure sewer, 55 miles of gravity sewer, and 11 miles of laterals. 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). Most of the sewer lines in the Collection System were built in the late 1930s and early 1940s using clay pipe with cement mortar. In addition, approximately 6,300 privately-owned sewer laterals are connected to the Collection System.

The POTW is located at 400 Millbrae Avenue, Millbrae, California 94030. The POTW provides secondary treatment of domestic and commercial wastewater to Millbrae. The POTW has an average dry weather treatment capacity of 3 million gallons per day ("MGD") and a wet weather treatment capacity of 9 MGD. Peak dry weather flows average 1.8 MGD, while peak wet weather flows average 10 MGD.

The POTW Permits prohibit the discharge of wastewater, including sanitary system overflows ("SSOs"), from the Collection System and/or the POTW. *See* 2001 POTW Permit, Discharge Prohibition B.1 and B.3; 2008 POTW Permit, Discharge Prohibition III.A and III.E. Improper management and operation of the Collection System and/or the POTW results in SSOs.

Millbrae discharges chlorinated secondary effluent from the POTW through Outfall E-001, and then to the North Bayside System Unit ("NBSU") joint use force main. The NBSU force main sends effluent to be dechlorinated at the City of South San Francisco Water Quality Control Plant. Dechlorinated effluent is discharged into Lower San Francisco Bay, a water of the State and the United States, through the NBSU combined outfall (Outfall E-002). Outfall E-002 is a submerged diffuser located northeast of Point San Bruno, about 5,300 feet offshore. The POTW discharges an average of 1.8 MGD of effluent to the NBSU. The NBSU is a joint powers authority and includes the Cities of Burlingame, Millbrae, South San Francisco, and San Bruno, and San Francisco International Airport.

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

Millbrae's municipal separate storm sewer system ("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.<sup>1</sup> *See* 40 C.F.R. 122.26(b)(8)(i)-(ii); *see also* 40 C.F.R. 122.26(b)(18). Millbrae's MS4 contains numerous storm drain inlets that lead to 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 a MS4 to waters of the United States. Section 402(p)(3)(B) of the CWA 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).

Millbrae 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"). *See* MS4 Permit, Findings 1-2. STOPP submitted an NPDES permit application in 1993. As a result, the MS4 Permit was issued in 1993, reissued in 1999 and subsequently amended in 2003, 2004, and 2007. *Id.* Millbrae has jurisdiction over and/or maintenance responsibilities for the MS4 within Millbrae city limits. *See* MS4 Permit, Findings 1-2. *Id.* Specifically, the MS4 Permit requires Millbrae to effectively prohibit the discharge of non-storm water into its MS4. *See* MS4 Permit, Discharge Prohibitions, A.1.

### **C. The Entity Responsible for Operating the Collection System, the POTW, and the MS4**

Millbrae is a municipality incorporated under the laws of the State of California. The Millbrae Public Works Department ("MPWD") is a department of Millbrae and has offices at 621 Magnolia Avenue, Millbrae, California, 94030. Millbrae and/or MPWD is the owner and/or operator of the Collection System and the POTW. Marcia Raines is the current City Manager. The Director of the MPWD is Ron Popp.

Millbrae is the permittee under both the 2001 POTW Permit and the 2008 POTW Permit. Millbrae and/or MPWD are responsible for operating and maintaining the Collection System and POTW, tasks which include, but are not limited to, collecting and conveying sewage through the Collection System to the POTW, providing treatment for wastewater at the POTW, conducting routine maintenance, cleaning, and inspection of the Collection System and the POTW, and responding to citizen complaints of SSOs.

As explained above, Millbrae is also a co-permittee on the MS4 Permit. Pursuant to the MS4 Permit, Millbrae has jurisdiction over and/or maintenance responsibilities for the MS4 within Millbrae city limits. *See* MS4 Permit, Findings 1-2. Accordingly, Millbrae is the owner and/or operator of the MS4.

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<sup>1</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).

### **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 Green Hills Creek, Highline Canal, Millbrae Creek, El Portal Canal, Lomita Creek, Lomita Canal, Minorca Creek, Tioga Creek, Cowan Canal, and unnamed tributaries and seasonal creeks. Green Hills Creek flows east through Millbrae and discharges to Highline Canal. Highline Canal discharges to San Francisco Bay adjacent to San Francisco International Airport. Millbrae Creek flows east through Millbrae, and discharges to El Portal Canal. El Portal Canal discharges to San Francisco Bay just south of Highline Canal. Lomita Creek also flows east through Millbrae, and discharges to San Francisco Bay via Lomita Canal. Minorca Creek, Tioga Creek, and Cowan Canal discharge to San Francisco Bay. In addition, the storm pipes in the 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 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 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, 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>2</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 MS4 and subsequently flow directly or with storm water to waters, result in the addition of these pollutants to San Francisco Bay and its tributaries.

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<sup>2</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.

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.

SSOs that do not directly reach waters, but that instead discharge to public streets, public buildings and grounds, and private yards and homes, still pose significant health risks. Exposure to raw and/or inadequately treated sewage can cause a variety of health problems, including gastroenteritis, respiratory illness, ear, nose, and throat problems, and skin rashes. Mold spores can establish an ecological niche when they are carried onto a homeowner's property during an SSO, creating an ongoing health risk from chronic exposure. Residential SSOs also diminish property values and impose severe nuisance on local residents.

Some of the waters that receive Millbrae'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 Millbrae's SSOs include habitat support for commercial fishing and sport 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.<sup>3</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 directly to waters in violation of the Clean Water Act, as well as discharging sewage to the MS4 which subsequently flows untreated to waters, Millbrae contributes to the continuing impairment of San Francisco Bay and its tributaries. As such, Millbrae's violations of the Clean Water Act directly harm Baykeeper's members' use and enjoyment of San Francisco Bay and its tributaries.

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

##### **A. Millbrae's Discharges of Sewage from the Collection System in Violation of the POTW Permits and the Clean Water Act**

Clean Water Act section 301 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). The POTW Permits prohibit the discharge of wastewater from any location or in any manner different from those described therein. *See* 2001 POTW Permit, Discharge Prohibition B.1; 2008 POTW Permit, Discharge Prohibition III.A. The 2001 POTW Permit also prohibits the bypass or overflow of untreated or partially treated wastewater from the POTW, the

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<sup>3</sup> *See* Water Quality Control Plan, San Francisco Basin (Region 2), Chapter 2.

Collection System, or from pump systems tributary to the POTW to waters of the State, except under specific conditions. *See* 2001 POTW Permit, Discharge Prohibition B.3. The 2008 POTW Permit contains an absolute prohibition on any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States. *See* 2008 POTW Permit, Discharge Prohibition III.E. As explained below, Millbrae has violated and continues to violate these provisions by discharging SSOs from the Collection System. Any violation of the POTW Permits is a violation of the Clean Water Act. 2001 POTW Permit, Attachment D, Standard Provisions and Reporting Requirements, August 1993, Standard Provisions, Section F.2; 2008 POTW Permit, Attachment D, Standard Provisions, Section I.A.1

Millbrae's internal SSO service callout reports, SSO reports submitted by Millbrae to the State Water Resources Control Board ("State Board"), the San Francisco Bay Regional Water Quality Control Board ("Regional Board"), and/or Office of Emergency Services ("OES"), and annual SSO reports generated by Millbrae and submitted to the Regional Board, indicate that Millbrae has spilled raw and/or inadequately treated sewage from its Collection System on at least 344 separate occasions in the last five (5) years. Each of these SSOs is a violation of the POTW Permits' discharge prohibitions and the Clean Water Act. Attached hereto as Exhibit A is a table setting forth the dates and locations of the 344 reported SSOs.<sup>4</sup>

Information available to Baykeeper indicates that Millbrae has been underreporting and/or misreporting the number of SSOs from the Collection System. Moreover, Millbrae lacks an adequate monitoring program to detect, report, and address SSOs and their impacts. Thus, Baykeeper believes that SSOs in addition to those identified in Exhibit A will be discovered through this enforcement action. Baykeeper puts Millbrae on notice that all SSOs from the Collection System occurring in the last five (5) years, whether specifically reported or not, will be included in this litigation. Baykeeper will include such additional violations when information becomes available.

Millbrae's discharges of raw and/or inadequately treated sewage from the Collection System in violation of the POTW Permits' discharge prohibitions are ongoing and continuous. Every day and/or occasion that Millbrae has discharged and continues to discharge raw and/or inadequately treated sewage in violation of the POTW Permits' discharge prohibitions is a separate and distinct violation of the Clean Water Act. Millbrae's violations will continue every day and/or occasion it discharges SSOs in violation of the requirements of the POTW Permits and the Clean Water Act. Millbrae 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.

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<sup>4</sup> Exhibit A sets forth the SSOs Millbrae reported in SSO reports submitted to the State Board, Regional Board, and OES, in annual SSO reports submitted to the Regional Board, in Millbrae's internal SSO reports, sewer service callouts, service call details, spreadsheets and tables summarizing SSOs, and in other correspondence to and from Millbrae indicating SSOs from its Collection System.

**B. Millbrae's Exceedances of Effluent Limitations and Failure to Monitor, Report and/or Maintain Records in Violation of the POTW Permits and the Clean Water Act**

The POTW Permits impose limitations on pollutants in the effluent discharged from the POTW to the NBSU combined outfall. 2001 POTW Permit, Effluent Limitations, C.1-C.8; 2008 POTW Permit, Effluent Limitations, IV.A.1-A.4. The POTW Permits also require sampling and analysis of the POTW influent and effluent for various constituents on a daily, weekly, monthly, and/or semi-annual basis. 2001 POTW Permit, Provisions, F.4, F.30, F.31 and Self Monitoring Program ("SMP") Part A, Sections B-D and SMP Part B, Sections I-III; 2008 POTW Permit, Provision VI.B and Attachment E, Monitoring and Reporting Program ("MRP"), Sections I-VIII and SMP Part A, Sections B-D. The POTW Permits require Millbrae to report monitoring results in self-monitoring reports submitted on a monthly basis ("Monthly SMRs") and on an annual basis ("Annual SMRs") to the Regional Board. 2001 POTW Permit, SMP Part A, Sections F.4-F.5 and SMP Part B, Sections IV.A, IV.C, and IV.D, and Attachment D, Standard Provisions, Section E; 2008 POTW Permit, Provision VI.A.2, MRP Sections XI.C-XI.E, Attachment D, Standard Provisions, Section V, and SMP Part A, Sections F.4-F.5. In addition, the POTW Permits require Millbrae to maintain monitoring records. 2001 POTW Permit, SMP Part A, Section E, and SMP Part B, Section V; 2008 POTW Permit, MRP, Section XI.B.3, and Attachment D, Standard Provisions, Section IV, and SMP Part A, Section E. Attached hereto as Exhibit B is a table setting forth Millbrae's violations of the POTW Permits' effluent limitations, monitoring requirements, and reporting and record maintenance requirements.<sup>5</sup> As explained below, Millbrae has violated and continues to violate the POTW Permits' effluent limitations, monitoring requirements, and reporting and record maintenance requirements – violations of which constitute violations of the Clean Water Act. 2001 POTW Permit, Attachment D, Standard Provisions, Section F.2; 2008 POTW Permit, Attachment D, Standard Provisions, Section I.A.1

**1. Millbrae's Exceedances of Effluent Limitations in Violation of the POTW Permits and the Clean Water Act**

The POTW Permits' effluent limitations regulate and limit the discharge of pollutants from Outfall E-001. 2001 POTW Permit, Effluent Limitations C.1-C.8; 2008 POTW Permit, Effluent Limitations, A.1-A.4. For example, the POTW Permits impose effluent limitations for various pollutants, including but not limited to fecal coliform, carbonaceous biological oxygen demand ("CBOD"), cyanide, acute toxicity, and enterococcus. 2001 POTW Permit, Effluent Limitations, C.1.a and Table 5, C.4, C.5, and C.7 and Table 6; 2008 POTW Permit, Effluent Limitations IV.A.1.a and Table 6, A.1.c, A.1.d, and A.3.

Millbrae has violated and continues to violate the effluent limitations for fecal coliform, CBOD, cyanide, acute toxicity, enterococcus, and/or other pollutants specified in the POTW

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<sup>5</sup> Exhibit B sets forth Millbrae's violations of the POTW Permits' effluent limitations, monitoring requirements, and reporting and record maintenance requirements, as indicated in Millbrae's Monthly SMRs, Annual SMRs, Regional Board inspection reports and Millbrae's responses thereto, Notices of Violation issued by the Regional Board and Millbrae's responses thereto, and in other correspondence to and from Millbrae indicating violations.

Permits.<sup>6</sup> Millbrae's effluent limitation violations are set forth in Exhibit B. Millbrae has exceeded the POTW Permits' effluent limitations at least 490 times between September 1, 2004 and March 31, 2009, in violation of the POTW Permits and the Clean Water Act. *See* Exhibit B. Baykeeper will update Millbrae's violations when additional information becomes available.

Millbrae's violations of the POTW Permits' effluent limitations are ongoing and continuous. Baykeeper believes that additional violations of the POTW Permits' effluent limitations will be discovered in the course of this enforcement action. Baykeeper therefore specifically puts Millbrae on notice that any such additional violations will be included in this litigation. Each day and/or every occasion that Millbrae has discharged and continues to discharge effluent in violation of the POTW Permits' effluent limitations is a separate and distinct violation of the Clean Water Act. These violations will continue each day and/or each occasion effluent is discharged in violation of the requirements of the POTW Permits and the Clean Water Act. Millbrae 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.

## **2. Millbrae's Failure to Comply with the POTW Permits' Monitoring Requirements**

The POTW Permits require monitoring to document compliance with waste discharge requirements and prohibitions, to facilitate self-policing in the prevention and abatement of pollution, to assist in the development of effluent limitations, discharge prohibitions, performance standards, and pretreatment and toxicity standards, and to help prepare water and wastewater quality inventories. 2001 POTW Permit, SMP Part A, Section A; 2008 POTW Permit, Attachment F, Fact Sheet, Section VI, and SMP Part A, Section A. The monitoring requirements in the 2001 POTW are set out in Parts A and B of the SMP.<sup>7</sup> *See* 2001 POTW Permit, Provision F.30. The monitoring requirements in the 2008 POTW are set out in the MRP and in SMP Part A.<sup>8</sup> *See* 2008 POTW Permit, MRP, Section I.A. The POTW Permits' SMP and MRP require constituent monitoring on the bases set forth in their various sections, including, but not limited to influent and effluent monitoring. 2001 POTW Permit, SMP Part A, Section C.1 and C.2; *Id.*, SMP Part B, Sections I-III, and Tables 1 and 2; 2008 POTW Permit, MRP, Sections II-V and Tables E-2, E-3 and E-4, and SMP Part A, Sections C.1 and C.2. The POTW Permits also require Millbrae to analyze its effluent for the 126 priority toxic pollutants ("Priority Pollutants") specified in the California Toxics Rule,<sup>9</sup> and as specified in the Regional Board's

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<sup>6</sup> Millbrae may have paid the mandatory minimum penalty imposed by the Regional Board for some of the violations set forth in Exhibit B. However, Baykeeper does not believe the mandatory civil penalty process employed by the Regional Board represents diligent prosecution of those violations pursuant to Clean Water Act Section 309(g), 33 U.S.C. § 1319(g), and Baykeeper intends to seek penalties for those violations. Baykeeper will seek injunctive and declaratory relief for all violations of the POTW Permits, the MS4 Permit and the Clean Water Act.

<sup>7</sup> The 2001 POTW specifies that if any discrepancies exist between Part A and B of the SMP, Part B prevails. *See* 2001 POTW Permit, SMP Part B, Section IV.B.1.

<sup>8</sup> The 2008 POTW specifies that if any discrepancies exist between the MRP and SMP Part A, the MRP prevails. *See* 2008 POTW Permit, MRP, Sections I.A and XI.B.1.

<sup>9</sup> *See* 40 C.F.R. § 131.38 (2000). Enclosure A of the August 2001 Letter also sets forth these Priority Pollutants. Millbrae is required to sample its effluent and analyze for the Priority Pollutants and additional pollutants specified in Enclosure A on a monthly basis or bi-annually. *See* August 2001 Letter, Table 1 (specifying sample frequency).

August 6, 2001 letter entitled *Requirement for Monitoring of Pollutants in Effluent and Receiving Water to Implement New Statewide Regulations and Policy* (“August 2001 Letter”). See 2001 POTW Permit, Provision F.4 and SMP Part B, Section II, Tables 1 and 2; 2008 POTW Permit, Special Provision VI.C.2.a and MRP, Sections I.C, IV.A and Table E-4 and FN 9; August 2001 Letter, Table 1 and Enclosure A.

Millbrae has failed and continues to fail to comply with the POTW Permits’ monitoring requirements for influent and effluent. See Exhibit B (listing these violations). For example, the POTW Permits require Millbrae to continuously monitor effluent flow at sampling point E-001. 2001 POTW Permit, SMP Part B, Section II, Table 1 and FN 2; 2008 POTW Permit, MRP, Section IV.A, Table E-4. The Regional Board’s inspection reports for the POTW indicate that the device Millbrae uses to measure effluent flow does not function properly, resulting in unreliable flow readings. Thus, Millbrae has failed and continues to fail to comply with the POTW Permits’ requirements for effluent flow monitoring. See Exhibit B. Further, the POTW Permits require Millbrae to comply with the sample preservation techniques specified in 40 C.F.R. 136. 2001 POTW Permit, SMP Part A, Section B; 2008 POTW Permit, MRP, Section I.B, and SMP Part A, Section B. For example, Millbrae must preserve influent and effluent samples at or below 4° Celsius for certain parameters, including but not limited to CBOD, fecal coliform, acute toxicity, turbidity, oil and grease, and cyanide. See 40 C.F.R. § 136.3, Table II. Millbrae must also comply with the sampling techniques specified in the POTW Permits and in 40 C.F.R. 136, including but not limited to collecting effluent samples in glass bottles for oil and grease analysis and incubating CBOD samples for a specified amount of time. 2001 POTW Permit, SMP Part B, Section II, Table 1 and FN 3; 2008 POTW Permit, MRP, Section IV.A, Table E-4 and FN 3; 40 C.F.R. § 136.3, Tables II and IB. The Regional Board’s inspection reports for 2005 and 2006 indicate that Millbrae has failed to comply with these preservation and sampling requirements, in violation of the POTW Permits. See Exhibit B (listing these violations). The inspection reports do not specify how long Millbrae has failed to comply with these requirements. However, Baykeeper hereby puts Millbrae on notice that every time it failed and continues to fail to comply with the POTW Permits’ preservation and sampling requirements in the last five (5) years is a separate violation of the POTW Permits and the CWA. Baykeeper will include additional violations of the sampling and preservation requirements of the POTW Permits for these and other parameters when information becomes available.

In addition, the POTW Permits require that samples taken for the purpose of monitoring be representative of the monitored activity. 2001 POTW Permit, Effluent Limitation C.5 (“[r]epresentative samples of the effluent shall meet the following limits for acute toxicity . . .”); 2008 POTW Permit, Attachment D, Standard Provisions, Section III.A and Effluent Limitation IV.A.3.a. The Regional Board’s 2009 inspection report for the POTW indicates Millbrae scheduled acute toxicity samples in June of 2007 around events likely to cause exceedances of effluent limitations, and thus failed to take representative samples in violation of the POTW Permits.<sup>10</sup> See Exhibit B (listing these violations). As above, the inspection reports do not

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<sup>10</sup> The Regional Board 2009 inspection report indicates that Millbrae scheduled its June 2007 acute toxicity monitoring around vapor rooting (i.e., high pressure water cleaning) of sewer lines throughout the Collection System. The Regional Board 2007 inspection report indicates that Millbrae also scheduled its November and December 2006 and its January 2007 acute toxicity monitoring around vapor rooting. As such, Millbrae also failed

specify how long Millbrae has failed to comply with this requirement. However, Baykeeper hereby puts Millbrae on notice that every time it failed and continues to fail to comply with this monitoring requirement in the last five (5) years is a violation of the POTW Permits and the CWA. Baykeeper will include such additional violations of this monitoring requirement when information becomes available.

Millbrae has also failed and continues to fail to conduct the required monitoring of chlorine residual, CBOD, dissolved oxygen (“DO”), temperature, chronic toxicity, enterococcus, ammonia, the Priority Pollutants, and/or other parameters specified in the POTW Permits. *See* Exhibit B (listing these violations). Millbrae has failed to conduct the required monitoring on at least 2,833 occasions between September 30, 2004 and July 31, 2009, in violation of the POTW Permits’ monitoring requirements and the Clean Water Act. *Id.* Baykeeper will include additional violations of the POTW Permits’ monitoring requirements for these and other parameters when information becomes available.

Millbrae’s violations of the POTW Permits’ monitoring requirements are ongoing and continuous. Baykeeper believes that additional violations of the POTW Permits’ monitoring requirements will be discovered in the course of this enforcement action. Baykeeper therefore specifically puts Millbrae on notice that any such additional violations will be included in this litigation. Baykeeper will include additional violations of the POTW Permits’ monitoring requirements when information becomes available. Every time Millbrae failed and continues to fail to monitor as required by the POTW Permits is a separate and distinct violation of the Clean Water Act. These violations will continue each time Millbrae fails to monitor in violation of the requirements of the POTW Permits and the Clean Water Act. Millbrae 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.

### **3. Millbrae’s Failure to Comply with the POTW Permits’ Reporting, Record Maintenance and SSO Reporting Requirements**

#### **i. Failure to Comply with the POTW Permits’ Reporting and Record Maintenance Requirements**

The POTW Permits contain specifications for reporting monitoring results and violations of effluent limitations in the Monthly SMRs and Annual SMRs. As with the monitoring requirements, the 2001 POTW Permit’s reporting requirements are set out in Parts A and B of the SMP, while the 2008 POTW Permit’s reporting requirements are set out in the MRP and in SMP Part A. The Monthly SMRs must be submitted according to a prescribed schedule. *See* 2001 POTW Permit, SMP Part A, Section F.4 and SMP Part B, Section IV.C; 2008 POTW Permit, MRP Sections XI.C.2 and XI.B.6, and SMP Part A, Section F.4. Each Monthly SMR must include a cover letter that sets forth the following, including but not limited to: all violations of effluent limits or other discharge requirements found during the monitoring period; details of these violations, including the parameters, magnitude, test results, frequency, and dates

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to collect representative samples for acute toxicity monitoring in these months, in violation of the POTW Permits’ monitoring requirements. *See* Exhibit B (listing these violations).

of violations; the cause of the violations; a discussion of corrective actions taken or planned; the schedule for corrective action implementation; and certification by a duly authorized representative. 2001 POTW Permit, Provision F.31 and Attachment D, Standard Provisions, Section E.1, SMP Part A, Section F.4.a, and SMP Part B, Section IV.C.1; 2008 POTW Permit, Attachment D, Standard Provisions, Section V.B, MRP Section XI.C.5.b-c, and SMP Part A, F.4.a. Each Monthly SMR must also include a compliance evaluation summary, a map or aerial photograph showing sampling and observation station locations, and tabulations of all required analyses and observations, including the parameter, sample date and time, sample station, and test result. 2001 POTW Permit, SMP Part A, Sections F.4.b-F.4.d-e and SMP Part B, Sections IV.C.2-C.4; 2008 POTW Permit, MRP Section XI.C.5.a and SMP Part A, Sections F.4.b-F.4.e.

The Annual SMRs must also be submitted according to a prescribed schedule. 2001 POTW Permit, SMP Part A, Section F.5 and SMP Part B, Section IV.D; 2008 POTW Permit, MRP Section XI.C.2 and SMP Part A, Section F.5. Each Annual SMR must contain the following: tabular and graphical summaries of monitoring data collected during the calendar year that characterize treatment plant performance and compliance with waste discharge requirements; a comprehensive discussion of treatment plant performance and compliance with waste discharge requirements; corrective actions taken or planned to achieve compliance; and a drawing or map showing the facility, flow routing and sampling and observation station locations. 2001 POTW Permit, SMP Part A, Section A.F.5.a-A.F.5.b and SMP Part B, Section IV.D; 2008 POTW Permit, MRP Sections XI.B.7 and XI.C.5, and SMP Part A, Section A.F.5.a-A.F.5.b. Each Annual SMR must also contain a list of analyses approved by the State Department of Health Services and an approved laboratory, and a list of any waived analyses. 2001 POTW Permit, SMP Part A, Section A.F.5.c; 2008 Permit, SMP Part A, Section A.F.5.c. In addition, Annual Reports must specify the amount of sludge disposed of in municipal landfills for that year, and the landfill to which it was sent. 2001 POTW Permit, Section E.2; 2008 Permit, Special Provision VI.C.5.b.7. The 2008 POTW Permit also sets forth additional information that must be included in each Annual SMR, including but not limited to: a summary of the annual evaluation of data and investigation activities to determine whether concentrations of pollutant parameters, including Priority Pollutants, have increased over past performance (2008 POTW Permit, Special Provisions VI.C.2.a); a summary of the review and evaluation of wastewater facility programs and/or capital improvement projects (*Id.*, Special Provisions VI.C.4.a.3); a summary of the review of and any changes to the Operations and Maintenance Manual (*Id.*, Special Provisions VI.C.4.b.3) and to the Contingency Plan (*Id.*, Special Provisions VI.C.4.c.3); and a progress report on meeting compliance schedules specified in the permit (*Id.*, MRP Section XI.E).

The POTW Permits also require Millbrae to maintain records that demonstrate compliance with waste discharge requirements and monitoring and reporting requirements for a minimum of 3 years. 2001 POTW Permit, SMP Part A, Section E and SMP Part B, Section V; 2008 POTW Permit, MRP, Sections XI.B.3, Attachment D, Standard Provisions, Section IV.A-C, and SMP Part A, Section E. Records maintained of parameter sampling, analyses, and observations shall include: the parameter sampled; the identity of sampling and observation stations; the date and time of the sampling and/or observations; the method of sampling; the date and time analyses are performed; the name of the personnel or contract laboratory performing the analyses; a description of the procedures and analytical methods used; the analytical method

detection limits and related quantification parameters; and the results of the analyses and/or observations. 2001 POTW Permit, SMP Part A, Section E.1 and SMP Part B, Section V.A; 2008 POTW Permit, MRP, Section XI.B.3.1, and Attachment D, Standard Provisions, Sections IV.A-B, and SMP Part A, Section E.1.

Millbrae has violated and continues to violate the POTW Permits' requirements for submittal of the Monthly SMRs and/or the Annual SMRs. *See* Exhibit B (listing these violations).<sup>11</sup> Millbrae has also failed and continues to fail to include in the Monthly SMRs and/or Annual SMRs the required reporting for chlorine residual, total suspended solids ("TSS"), CBOD, DO, temperature, acute toxicity, chronic toxicity, fecal coliform, enterococcus, ammonia, cyanide, turbidity, the Priority Pollutants, and/or other parameters specified in the POTW Permits. *Id.* In addition, Regional Board inspection reports for 2005, 2006, 2007 and/or 2009 indicate that Millbrae has failed to comply with the POTW Permits' requirements for maintaining monitoring records for pH, TSS, CBOD, turbidity, oil and grease, mercury, and/or other parameters specified in the POTW Permits.<sup>12</sup> *Id.* Millbrae has violated the aforementioned reporting and/or record maintenance requirements at least 2,680 times between September 30, 2004 and July 31, 2009, in violation of the POTW Permits and the Clean Water Act. *Id.* Baykeeper will update Millbrae's violations when additional information becomes available.

Millbrae's violations of the reporting and/or record maintenance requirements of the POTW Permits are ongoing and continuous. Baykeeper believes additional violations of the POTW Permits' reporting and record maintenance requirements will be discovered in the course of this enforcement action. Baykeeper therefore specifically puts Millbrae on notice that any such additional violations will be included in this litigation. Every time Millbrae failed and continues to fail to comply with the POTW Permits' reporting and/or record maintenance requirements is a separate and distinct violation of the Clean Water Act. These violations will continue each time Millbrae fails to report and/or maintain records in violation of the requirements of the POTW Permits and the Clean Water Act. Millbrae 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.

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<sup>11</sup> These violations also demonstrate inadequate upkeep and maintenance at the POTW. For example, the POTW Permits require that Millbrae at all times properly operate and maintain all treatment and control systems which are used to achieve compliance with permit conditions. *See* 2001 POTW Permit, Provision F.31, and Attachment D, Standard Provisions, Section D.1; 2008 POTW Permit, Standard Provisions I.D. During an inspection on August 2, 2005, the Regional Board noted the skimmer on clarifier "A" was not operating properly, and discovered a dead bird floating in the clarifier. *See* Exhibit B (listing these violations). Baykeeper puts Millbrae on notice of violations of the POTW Permits and the CWA every time Millbrae fails to properly operate and maintain the POTW's treatment and control systems.

<sup>12</sup> These Regional Board inspection reports do not specify how long Millbrae has failed to comply with the POTW Permits' record maintenance requirements. However, Baykeeper hereby puts Millbrae on notice that every time it failed and continued to fail to comply with these requirements in the last five (5) years is a separate violation of the POTW Permits and the CWA. Baykeeper will include additional violations of the record maintenance requirements of the POTW Permits for these and other parameters when additional information becomes available.

## **ii. Failure to Comply with the POTW Permits' SSO Reporting Requirements**

The 2001 POTW Permit requires Millbrae to also include with each Monthly SMR a written report of each SSO in excess of 1,000 gallons that occurred during that reporting period. 2001 POTW Permit, SMP Part B, Section IV.F.1. In addition, the 2001 POTW Permit requires Millbrae to include a summary of SSOs less than 1,000 gallons in each Annual SMR. *Id.*, Section IV.F.2.iii. Exhibit B lists Millbrae's violations of the 2001 POTW Permit's SSO reporting requirements in the last five (5) years. *See* Exhibit B. Millbrae has failed and continues to fail to report SSOs as required. Baykeeper will include additional violations of the 2001 POTW Permit's SSO reporting requirements when information becomes available.

In November of 2004, the Regional Board sent a letter to Millbrae and other sewer system authorities entitled *New Requirements for Reporting of Sanitary Sewer Overflows* ("2004 Letter"), requiring them to report SSOs electronically beginning in December of 2004.<sup>13</sup> *See* 2004 Letter, p. 1. The 2004 Letter is attached hereto as Exhibit C. In the 2004 Letter, the Regional Board stated that the reporting requirements for Collection System SSOs specified therein replace SSO reporting requirements in the SMP for all NPDES permitted facilities. *Id.*, Applicability to NPDES Permitted Facilities, p. 2. The 2004 Letter sought to change the terms of the 2001 POTW Permit. However, the Regional Board cannot modify the requirements of an NPDES permit simply by sending a letter to dischargers. Even if the 2004 Letter were a valid modification of the 2001 POTW Permit, Baykeeper puts Millbrae on notice that it has violated and continues to violate the SSO reporting requirements specified in the 2004 Letter. In 2006, the State Board issued the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems ("SSO WDR"),<sup>14</sup> which imposes requirements on Millbrae to report SSOs electronically from May 2007 to the present.<sup>15</sup> *See* SSO WDR, MRP, Sections A.1 - A.11. Section G.2 of the

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<sup>13</sup> Under the terms of the 2004 Letter, Millbrae must electronically report SSOs of 100 gallons or more within 10 business days of identification. *See* 2004 Letter, Monitoring and Reporting Program ("MRP"), Section II and Figure 1. Millbrae must also report SSOs of 1,000 gallons or more, that may imminently and substantially endanger human health, and/or that cause fish kills, within 24 hours to the Regional Board and OES. *Id.*, Section II.1.a-b and Figure 1. Millbrae is also required to keep records of SSOs of 100 gallons or less, and to submit an annual SSO report to the Regional Board by March 15 of each year. *Id.*, MRP, Sections II.3, II.5 and Figure 1.

<sup>14</sup> *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, State Water Resources Control Board Order No. 2006-0003-DWQ and Monitoring and Reporting Program ("MRP") No. 2006-0003-DWQ, as amended by Order No. WQ 2008-0002-EXEC.

<sup>15</sup> Pursuant to the SSO WDR, Millbrae is required to electronically submit an initial report within 3 business days for SSOs 1,000 gallons or more, that discharge to a drainage channel and/or surface water, and/or that discharge to a storm drain that were not fully captured and returned to the sewer system ("Category 1" SSOs). *See* SSO WDR, MRP, Sections A.1 and A.4. A final certified report for Category 1 SSOs is due within 15 calendar days of the completion of response and remediation, and must contain certain minimum information. *Id.*, MRP, Section A.4 and A.11. Millbrae must also report any SSO greater than 1,000 gallons discharged in or on waters of the State to OES and the local health department. SSO WDR, Section G.4 and MRP, Section A, Reporting to Other Regulatory Agencies. In February 2008, the State Board amended the SSO WDR to require reporting to OES, the Regional Board and the local health department within 2 hours of discovery of SSOs that reached waters, and electronic certification within 24 hours. *See* SSO WDR, as amended by Order No. WQ 2008-0002-EXEC, Monitoring and Reporting Program ("MRP"), Notification, paragraphs 1 and 2. All other SSOs ("Category 2" SSOs) must be electronically reported within 30 days of the end of the calendar month in which the SSO occurred. SSO WDR, MRP, Sections A.2, A.5 and A.9.

SSO WDR states that, unless superseded by a specific enforcement order for a specific enrollee, the requirements therein are intended to replace other mandatory routine written reports associated with SSOs. Like the Regional Board, the State Board cannot modify the requirements of an NPDES permit by issuing waste discharge requirements. Even if the SSO WDR were a valid modification of the 2001 POTW Permit, Baykeeper puts Millbrae on notice that it has violated and continues to violate the SSO reporting requirements specified in the SSO WDR. Exhibit B lists Millbrae's violations of the SSO reporting requirements set forth in the 2004 Letter, the SSO WDR and/or the 2001 POTW Permit from December 1, 2004 to September 30, 2008. Baykeeper will update Millbrae's violations when additional information becomes available.

The 2008 POTW Permit incorporates the requirements of the SSO WDR, and provides that compliance with the reporting requirements in the SSO WDR satisfies SSO reporting requirements under the terms of the permit. 2008 POTW Permit, Special Provision VI.C.5.c. Thus, a violation of the SSO WDR's reporting requirements is a violation of the 2008 POTW Permit. Exhibit B lists Millbrae's violations of the SSO reporting requirements in the SSO WDR and/or the 2008 POTW Permit from October 1, 2008 to July 15, 2009. Baykeeper will update Millbrae's violations when additional information becomes available.

Millbrae's violations of the reporting requirements of the 2004 Letter, the SSO WDR, and/or the POTW Permits are ongoing and continuous. Baykeeper believes that more violations of these SSO reporting requirements will be discovered in the course of this enforcement action. Baykeeper therefore specifically puts Millbrae on notice that any such additional violations will be included in this litigation. Baykeeper will include additional violations when information becomes available. Every time Millbrae failed and continues to fail to comply with the aforementioned SSO reporting requirements is a separate and distinct violation of the Clean Water Act. These violations will continue each time Millbrae fails to comply with the SSO reporting of the requirements of the 2004 Letter, the SSO WDR, the POTW Permits and the Clean Water Act. Millbrae 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.

**C. Millbrae's Discharges of Sewage from the Collection System to the 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 Millbrae's MS4. *See e.g.* MS4 Permit §§ A, B. Discharge Prohibition A.1 of the MS4 Permit requires that Millbrae effectively prohibit discharges of non-storm water into the MS4. As explained below, Millbrae has violated and continues to violate this provision by failing to effectively prohibit the discharge of SSOs from the Collection System into the MS4.

Millbrae's internal SSO reports, reports of SSOs submitted to the State Board, Regional Board and/or OES, and annual SSO reports generated by Millbrae and submitted to the Regional Board, indicate that Millbrae has discharged SSOs from its Collection System into the MS4 on at least 196 separate occasions in the last five (5) years. *See* Exhibit D attached hereto (identifying

dates and locations of SSOs that entered the MS4).<sup>16</sup> Millbrae violates Discharge Prohibition A.1 of the MS4 Permit and the Clean Water Act every time an SSO from the Collection System enters the MS4. Information available to Baykeeper indicates that Millbrae has been underreporting and/or misreporting the number of SSOs that enter the MS4 from the Collection System. Baykeeper puts Millbrae on notice that each discharge of SSOs into Millbrae's 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.

Millbrae's discharges of SSOs from the Collection System into the MS4 in violation of Discharge Prohibition A.1 of the MS4 Permit are ongoing and continuous. Every day and/or occasion that Millbrae has discharged and continues to discharge SSOs into the MS4 in violation of the MS4 Permit's discharge prohibitions is a separate and distinct violation of the Clean Water Act. MS4 Permit, Appendix A. Millbrae's violations will continue every day and/or occasion it discharges SSOs into the MS4 in violation of the requirements of the MS4 Permit and the Clean Water Act. Millbrae 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 Millbrae 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, Inc. at the address/number below:

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<sup>16</sup> Exhibit D sets forth the SSOs from the Collection System that reached the MS4, as indicated in Millbrae's SSO reports submitted to the State Board, Regional Board, and OES, in annual SSO reports submitted to the Regional Board, in Millbrae's internal SSO reports, sewer service callouts, service call details, spreadsheets and tables summarizing SSOs, and in other correspondence to and from Millbrae indicating SSOs from the Collection System.

Sincerely,

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

Sejal Choksi  
Baykeeper and Director of Programs  
San Francisco Baykeeper

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