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8 Attorneys for Plaintiff
CALIFORNIA RIVER WATCH

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 CALIFORNIA RIVER WATCH, an IRC
Section 501(c)(3), non-profit, public
13 benefit Corporation,

14 Plaintiff,

15 v.

16 CITY OF VACAVILLE,

17 Defendant.

Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**

(Environmental - 42 U.S.C. § 6901 *et seq.*)

18 NOW COMES Plaintiff, CALIFORNIA RIVER WATCH (“RIVER WATCH”), by and
19 through its attorneys, and for its Complaint against Defendant, CITY OF VACAVILLE
20 (“CITY”) states as follows:

21 **I. NATURE OF THE CASE**

22 1. This is a citizens’ suit for relief brought by RIVER WATCH under the Federal Resource
23 Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, specifically RCRA §
24 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), to prevent the CITY from repeated and ongoing
25 violations of RCRA. These violations are detailed in the June 1, 2016 Notice of Violations and
26 Intent to File Suit (“RCRA Notice”) made part of these pleadings and attached hereto as
27 EXHIBIT A.

28 2. RIVER WATCH alleges the CITY illegally fails to ensure that its public community

1 water system is managed to ensure protection for public health and the environment from
2 pollution. In this case, the CITY is transporting hexavalent chromium – a listed hazardous waste
3 under RCRA - through the City’s water system pipes to the drinking water taps in the CITY’s
4 homes, businesses, schools, and other places where residents and visitors access this potable
5 water. The CITY’s transport of hexavalent chromium in this case creates an imminent and
6 substantial endangerment to human health or the environment in direct violation of RCRA §
7 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). RCRA specifically includes transporters of hazardous
8 waste within the identified class of actors liable under the statute – past or present generators,
9 transporters of the waste, and the owners or operators of a treatment, storage or disposal facility -
10 of any solid or hazardous waste which may present the prohibited imminent and substantial
11 endangerment.

12 3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
13 the imposition of civil penalties, and other relief for the CITY’s violations as set forth in this
14 Complaint.

15 II. PARTIES TO THE ACTION

16 4. RIVER WATCH, is, and at all times relevant to this Complaint was, an Internal Revenue
17 Code Section 501(c)(3) non-profit, public benefit corporation organized under the laws of the
18 State of California with headquarters located in Sebastopol, California. The mailing address of
19 RIVER WATCH is 290 S. Main Street, #817, Sebastopol, California. RIVER WATCH is
20 dedicated to protecting, enhancing, and helping to restore surface and ground waters of
21 California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated
22 environs, biota, flora and fauna, and educating the public concerning environmental issues
23 associated with these environs.

24 5. Members of RIVER WATCH reside in or regularly visit central California including the
25 City of Vacaville where the facilities under the CITY’s operation and/or control which are the
26 subject of this Complaint are located. RIVER WATCH members are affected by the CITY’s
27 illegal actions as alleged herein. These members have environmental and personal health and
28 safety interests in the CITY’s drinking water which interests are or may be adversely affected

1 by the CITY's violations of the RCRA as alleged herein. Furthermore, the relief sought will
2 redress the injury in fact, likelihood of future injury and interference with the interests of RIVER
3 WATCH members.

4 6. RIVER WATCH is informed and believes, and on such information and belief alleges,
5 that Defendant City of Vacaville is now, and at all times relevant to this Complaint was, a
6 "supplier of water" as defined by 42 U.S.C. § 300f(5) and 40 C.F.R. § 121.2. The CITY
7 operates at 650 Merchant Street, Vacaville, California. At all times relevant hereto, the CITY
8 owned and operated a "public water system," as defined by 42 U.S.C. § 300f(4) and 40 C.F.R.
9 § 141.2 and permitted by the State Water Resources Control Board. RIVER WATCH is
10 informed and believes, and on such belief alleges, that the CITY has no hazardous waste permit
11 issued by any California or Federal agency for the storage, treatment or disposal of hazardous
12 or solid waste at its community water systems.

13 III. JURISDICTIONAL ALLEGATIONS

14 7. Subject matter jurisdiction is conferred upon this Court by RCRA § 7002(a)(1), 42 U.S.C.
15 § 6972(a)(1), which states in relevant part,

16 ". . . any person may commence a civil action on his own behalf (A) against any
17 person . . . who is alleged to be in violation of any permit, standard, regulation,
18 condition requirement , prohibition or order which has become effective
19 pursuant to this chapter, or (B) against any person . . . who has contributed or
20 who is contributing to the past or present handling, storage, treatment,
21 transportation or disposal of any solid or hazardous waste which may present an
22 imminent and substantial endangerment to health or the environment."

23 8. All violations and activities complained of in this Complaint occur at the public water
24 system(s) owned and operated by the CITY.

25 9. Members and supporters of RIVER WATCH reside in or regularly visit the CITY. The
26 health interests of RIVER WATCH and its members may be, have been, are being, and will
27 continue to be adversely affected by the CITY's unlawful violations as alleged herein. RIVER
28 WATCH contends there exists an injury in fact to its members, causation of that injury by the
CITY's complained of conduct, and a likelihood that the requested relief will redress that injury.

10. Pursuant to RCRA § 7002(2)(A), 42 U.S.C. § 6972(2)(A), RIVER WATCH gave notice
of the violations alleged in this Complaint more than ninety days prior to the commencement of

1 this lawsuit to: (a) the CITY, (b) the United States EPA, Federal and Regional, (c) the State of
2 California Water Resources Control Board, and (d) the State of California Department of Toxic
3 Substances Control. The RCRA Notice is attached to this Complaint as EXHIBIT A and fully
4 incorporated herein.

5 **IV. STATUTORY AND REGULATORY BACKGROUND**

6 11. The California Office of Environmental Health Hazard Assessment (OEHHA) published
7 a Public Health Goal for hexavalent chromium of 0.02 micrograms per liter ($\mu\text{g/L}$) in drinking
8 water in 2011 (*see Public Health Goals for Chemicals in Drinking Water – Hexavalent*
9 *Chromium (CrVI)*; [http://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-](http://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-support-document-public-health-goal-hexavalent)
10 [support-document-public-health-goal-hexavalent](http://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-support-document-public-health-goal-hexavalent)). California's maximum contamination limit
11 (MCL) is 10 $\mu\text{g/L}$.

12 12. RCRA's statutory goals are to protect the public from harm caused by waste disposal, to
13 encourage reuse, reduction, and recycling, and to clean up spilled or improperly stored wastes.
14 RCRA specifically protects groundwater and drinking water supplies, and requires a hazardous
15 waste permit for the storage, treatment or disposal of hazardous or solid waste such as
16 hexavalent chromium (commonly referred to as chromium 6) through a community water
17 system. The absence of such a permit poses an imminent and substantial endangerment to health
18 or to the environment under RCRA section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B).

19 **V. VIOLATIONS**

20 13. News reports out of places named Hinkley, Woburn, Flint, and Parkersburg – front page
21 tragedies - reveal the expanding threat to our drinking water too often found laced with
22 chemicals unsafe for us to consume. To our disbelief and dismay, public and private suppliers
23 of water here in California and nationwide, once considered unimpeachable utilities, are failing
24 to ensure the health and safety of the water sold to an unsuspecting American community.
25 Drinking water suppliers must stop proclaiming safe what its own testing reveals to be
26 contaminated, and must implement readily available and affordable technologies to remove
27 contaminants and re-establish the public's confidence in safe potable drinking water provided
28 to our homes and businesses. This Complaint addresses that concern.

1 14. The CITY's Department of Utilities is responsible for the acquisition, treatment, and
2 storage of potable water, operating the CITY's community water system permitted by the
3 California State Water Resources Control Board, and assigned Public Water System
4 Identification Number CA4810008.

5 15. RIVER WATCH's review of the CITY's public sampling reports reveals the presence of
6 hexavalent chromium (referred to in the CITY's sampling reports as CrVI) in the drinking water
7 it supplies to its customers.

8 16. RCRA, codified at 42 U.S.C. §§ 6901-6992k, was enacted in 1976 to protect the public
9 from harm caused by waste disposal, to encourage reuse, reduction, and recycling, and to clean
10 up spilled or improperly stored wastes. RCRA specifically protects groundwater and drinking
11 water sources. The federal Environmental Protection Agency ("EPA") waste management
12 regulations are codified at 40 C.F.R. §§ 239-282, with regulations regarding management of
13 hazardous waste beginning at 40 C.F.R. § 260. Pursuant to RCRA, California has enacted state
14 law and promulgated regulations that are at least as stringent as the federal regulations. The
15 federal and state hazardous waste laws are implemented by the California Department of Toxic
16 Substances Control ("DTSC"). Note that the California Regional Water Quality Control Board
17 – Central Valley Region's Water Quality Control Plan ("Basin Plan") designates all surface and
18 groundwater at or near the wells identified in this Notice as capable of supporting industrial and
19 domestic water supply.

20 17. RCRA defines "hazardous waste" as "a solid waste, or combination of solid wastes,
21 which because of its quantity, concentration, or physical, chemical, or infectious characteristics
22 may – (A) cause, or significantly contribute to an increase in mortality or an increase in serious,
23 irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential
24 hazard to human health or the environment when improperly treated, stored, transported, or
25 disposed of, or otherwise managed." 42 U.S.C. § 6903(5). The term "solid waste" includes "any
26 ... discarded material, including solid, liquid, semisolid, or contained gaseous material resulting
27 from industrial, commercial, mining, and agricultural operations, or community activities ..."
28 42 U.S.C. § 6903(27). RIVER WATER alleges that hexavalent chromium in the CITY's water

1 supply is a waste that is stored, transported or otherwise managed by the CITY from its water
2 supply treatment plant and facilities.

3 18. River Watch contends that the CITY's alleged storage, transport, and management of
4 hexavalent chromium in the source water drawn from its wells and surface water sources
5 identified as TWIPS WTP (Wells 1, 6, & 13), WTP, Well 15, North Bay Regional WTP, Well
6 14, Well 9, Well 8, Well 5, Well 3, Well 2, Well 16, Distribution System – SW, and Distribution
7 System – GW, and supplied through its pipes into the homes, businesses, and other public and
8 private taps of its customers in the Vacaville community, presents an imminent and substantial
9 endangerment to human health or the environment pursuant to 42 U.S.C. § 6972(a)(1)(B).

10 19. The United States National Toxicology Program, headquartered at the National Institute
11 of Environmental Health Sciences (NIH-HHS) states that while “[c]hromium is a naturally
12 occurring element found in rocks, animals, plants, soil, and volcanic dust and gases,” the form
13 of chromium known as hexavalent chromium “is generally produced by industrial processes.”
14 Hexavalent chromium is “widely used in electroplating, stainless steel production, leather
15 tanning, textile manufacturing, and wood preservation.” “Hexavalent chromium compounds
16 have been shown to cause lung cancer in humans when inhaled. The “13th Report on
17 Carcinogens” lists hexavalent chromium compounds as known human carcinogens.” “In 2014,
18 the state of California used NTP findings to establish the first in the nation drinking water
19 standard of 10 parts per billion, specifically for hexavalent chromium, not total chromium.” (*See*
20 https://www.niehs.nih.gov/health/materials/hexavalent_chromium_508.pdf).

21 20. The California Office of Environmental Health Hazard Assessment (OEHHA) published
22 a Public Health Goal for hexavalent chromium of 0.02 micrograms per liter (µg/L) in drinking
23 water in 2011 (*see Public Health Goals for Chemicals in Drinking Water – Hexavalent*
24 *Chromium (CrVI)*; [http://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-](http://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-support-document-public-health-goal-hexavalent)
25 [support-document-public-health-goal-hexavalent](http://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-support-document-public-health-goal-hexavalent)).

26 21. California's Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly
27 referred to as “Prop 65”) identified chromium (hexavalent compounds) in 1987 as one of the
28 first compounds regulated under the statute (*see* <http://oehha.ca.gov/proposition-65-list>).

1 22. California's MCL for hexavalent chromium is 10 µg/L. The CITY admits that five of its
2 eleven ground water wells have CrVI between 10 ppb and 24 ppb, and will not be reduced below
3 10 µg/L before January 1, 2020.

4 23. While hexavalent chromium has long been recognized as a potent carcinogen via
5 inhalation, there is now sufficient evidence that it is also a carcinogenic by the oral route of
6 exposure. Further, while hexavalent chromium can leach from soil into groundwater, in high
7 levels as found in the CITY's sampling (> 1 µg/L), its presence is generally attributable to
8 anthropogenic sources such as electroplating factories, leather tanneries, textile manufacturing
9 facilities, aerospace, and similar industries.

10 24. RCRA requires that the environment and public be protected from hazardous wastes
11 including those transported by the CITY via the wells and surface waters identified above. The
12 specific pollutant, hexavalent chromium, both identified and transported by the CITY,
13 constitutes hazardous waste under RCRA, and is required to be managed such that potential and
14 actual harm to the environment and public is eliminated. In addition to hexavalent chromium,
15 the CITY further identifies in its public sampling reports the list of chemicals identified in
16 Paragraph 25 below that are present in the sources of drinking water the CITY supplies. Not all
17 of the chemicals are accompanied by sampling results and the sampling report provides no
18 information concerning the synergistic impact and effect resulting from the total number and
19 amount of chemicals from each source water.

20 25. Additional listed chemicals in the CITY's public sampling report include: 1,1-
21 dichloroethane, 1,2,3-trichloropropane, 1,3 butadiene, bromomethane, chlorate, chloromethane,
22 halon 1011, HCFC-22, PFBS, PFHpA, PFHxS, PFNA, PFOA, PFOS, cobalt, molybdenum,
23 strontium and vanadium.

24 26. RIVER WATCH alleges the CITY to be a past or present transporter of pollutants, which
25 have contributed to or which are contributing to the past or present handling, storage, treatment,
26 and transportation of hazardous waste which may present an imminent and substantial
27 endangerment to health or the environment. RIVER WATCH alleges the CITY transports
28 hexavalent chromium which is a "hazardous waste" and "solid waste" under RCRA, through its

1 community public water systems. As referenced fully in the RCRA Notice, the EPA describes
2 clearly the dangers to human health and environment associated with the hazardous wastes
3 identified in this Complaint and discharged by the CITY when consumed in drinking water.

4 **VI. FIRST CLAIM FOR RELIEF**

5 **Violations of RCRA - 42 U.S.C. § 6972(a)(1)(B) –**
6 **Imminent and Substantial Endangerment to Health or to the Environment**

7 RIVER WATCH incorporates by reference the allegations of Paragraphs 1 through 26
8 as though fully set forth herein, including all allegations in the RCRA Notice. River Watch is
9 informed and believes, and on such information and belief, alleges as follows:

10 27. The pollutants identified in the preceding paragraphs of this Complaint are known
11 carcinogens or reproductive toxins, and when released into the environment in sufficient
12 quantity, pose an imminent or substantial risk to public health or to the environment in general.
13 The amount of said pollutants used, handled, stored, transported, disposed of or treated by the
14 CITY is in sufficient quantity to pose an imminent or substantial risk to environment or to human
15 health.

16 28. The CITY is of the class of entities covered by RCRA § 7002(a)(1)(B), 42 U.S.C.
17 6972(a)(1)(B) as a past and present transporter of hazardous or solid waste, and as a past and
18 present owner and operator of a water treatment facility which has contributed and is
19 contributing to the past and present treatment, transportation, and disposal of solid and hazardous
20 waste which may present an imminent and substantial endangerment to health or the
21 environment, by virtue of the activities and endangerment as alleged in the preceding paragraphs
22 of this Complaint, and by reason of the following:

- 23 a. The presence of the contaminant hexavalent chromium in the CITY's public water
24 supply system in excess of PHG and California MCLs;
- 25 b. Treating and transporting hexavalent chromium as well as other pollutants through
26 the CITY's public water system;
- 27 c. Failing to operate the CITY's public water system properly to ensure that
28 constituents in the water supply are not in excess of established PHGs or

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California MCLs;

- d. Transporting water that contains hexavalent chromium, a solid and hazardous waste, and other pollutants into homes and businesses in an amount that may pose an imminent and substantial threat to health;
- e. Disposing of water that contains hexavalent chromium, a solid and hazardous waste, and other pollutants into the environment in an amount that may pose an imminent and substantial threat to health to the environment,
- f. Being the owner or operator of the community public water system through which said chemicals of concern are transported.

29. The levels of pollutants in the CITY’s community public water system remain high above the safe levels for said constituents, creating an imminent and substantial endangerment to public health or the environment.

30. The violations by the CITY as alleged in this Complaint are ongoing and will continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by the CITY to the California State Water Resources Control Board prior to the filing of this Complaint. RIVER WATCH will amend the pleadings if necessary to address the CITY’s Federal violations which may occur after the filing of this Complaint. Each of the CITY’s violations is a separate violation of the RCRA.

31. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, the CITY will continue to violate RCRA as well as Federal standards with respect to the enumerated discharges and releases alleged herein. Further, that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect the interests of its members which are or may be adversely affected by the CITY’s violations of RCRA.

32. RIVER WATCH alleges that continuing violations of RCRA by the CITY will irreparably harm RIVER WATCH and its members, for which harm RIVER WATCH and its members have no plain, speedy or adequate remedy at law.

VIII. RELIEF REQUESTED

WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

33. Declare the CITY to have violated and to be in violation of RCRA;
34. Issue an injunction (i) ordering the CITY to immediately operate its community public water system in compliance with RCRA and (ii) enjoining the CITY from discharging chemicals and chemical constituents from the CITY’s community public water system which pose an imminent and substantial risk to human health and the environment;
35. Order the CITY to provide public notification by mail and through newspapers of general circulation within two (2) days of receipt of a laboratory report identifying a level of hexavalent chromium above 10 µg/L to parents/guardians of children, pregnant women, the elderly, and the infirm (among other at-risk individuals from hexavalent chromium in drinking water);
36. Order the CITY to revise the public document titled (“Important Information About Your Drinking Water”), (a true copy of which is attached to this Complaint as Exhibit B), to delete the text River Watch identifies in [brackets], and revise and replace the text provided under the heading “What should I do” to read:
 - Because the levels of hexavalent chromium are above the State MCL, water used for drinking and bathing poses a potential increased risk of cancer.
 - Vacaville children, seniors, and those with particular health concerns should contact their doctor to discuss whether to stop using water supplied by the City of Vacaville and seek a substitute source.
37. Order the CITY to fund a Supplemental Environmental Project providing potable drinking water to parents/guardians of children, pregnant women, the elderly, and the infirm (among other at-risk individuals from hexavalent chromium in drinking water) whose doctors provide a written request to the CITY;
38. Order the CITY to pay civil penalties per violation/per day for its violations of the RCRA;
39. Order the CITY to pay RIVER WATCH’s reasonable attorneys’ fees and costs (including

1 expert witness fees); and,

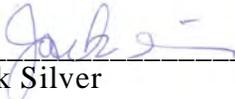
2 40. Grant such other and further relief as may be just and proper.

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4 DATED: March 13, 2017

LAW OFFICE OF JACK SILVER

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By:  _____
Jack Silver

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LAW OFFICE OF DAVID WEINSOFF

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By:  _____
David Weinsoff

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Attorneys for Plaintiff
CALIFORNIA RIVER WATCH

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EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***VIA REGISTERED MAIL -
RETURN RECEIPT REQUESTED***

June 1, 2016

Royce Cunningham - Director of Utilities
Head of Agency
City of Vacaville - Dept. of Utilities
Administrative Offices
6040 Vaca Station Road
P.O. Box 220
Elmira, CA 95625

Laura Kuhn - City Manager
Members of the City Council
City of Vacaville
650 Merchant Street
Vacaville, CA 95625

Re: Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act

Dear Mr. Cunningham, Ms. Kuhn, Members of the City Council and Head of Agency:

NOTICE

News reports out of places named Hinkley, Woburn, Flint, and Parkersburg – front page tragedies - reveal the expanding threat to our drinking water too often found laced with chemicals unsafe for us to consume. To our disbelief and dismay, public and private suppliers of water here in California and nationwide, once considered unimpeachable utilities, are failing to ensure the health and safety of the water sold to an unsuspecting American community. Drinking water suppliers must stop proclaiming safe what its own testing reveals to be contaminated, and must implement readily available and affordable technologies to remove contaminants and re-establish the public's confidence in safe potable drinking water provided to our homes and businesses. This Notice addresses that concern.

On behalf of California River Watch ("River Watch"), this letter provides statutory notification ("Notice") to the City of Vacaville ("the City") of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*, relating to the continuing pollution transported through groundwater

City of Vacaville

Notice of Violations Under RCRA

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June 1, 2016

pumped from City wells and surface water sources to its residents and customers in Vacaville, California. The City's Department of Utilities is responsible for the acquisition, treatment, and storage of potable water, operating the City's community water system permitted by the California State Water Resources Control Board, and assigned Public Water System Identification Number CA4810008.

RCRA requires that a private party provide 90 days prior notice to the alleged violator, the Administrator of the EPA, and the State in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment. RCRA requires, among its provisions, that hazardous waste be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment.

As detailed in this Notice, River Watch's review of the City's public sampling reports during the period September 10, 2013 to June 18, 2014 reveals the presence of the pollutant hexavalent chromium (referred to in the City's sampling reports as CrVI) in the drinking water it supplies to its City customers. This Notice identifies considerable public data provided to the State of California by the City, including the level of CrVI found in the drinking water supplies, the specific wells sampled, the dates on which sampling occurred, and the public health standards (where available) applicable to each pollutant. This data is the foundation for, and supports River Watch's allegation that, the City's transport of hazardous waste from the location of the source water to the tap creates an imminent and substantial endangerment to human health or the environment in violation of RCRA.

RCRA provides that enforcement of the statute's requirements relating to "cradle to grave" regulation can be ensured by private parties acting under the citizen suit provision of the statute (*see* 42 U.S.C. § 6972(a)(1)(B)). River Watch is exercising such citizen enforcement to enforce compliance by the City with all RCRA permitting and regulatory requirements. This RCRA Notice regarding alleged violations of the statute includes sufficient information to permit the City to identify the following:

1. Specific Permit, Standard, Regulation, Condition, Requirement, or Order Which has Allegedly Been Violated.

RCRA, codified at 42 U.S.C. §§ 6901-6992k, was enacted in 1976 to protect the public from harm caused by waste disposal, to encourage reuse, reduction, and recycling, and to clean up spilled or improperly stored wastes. RCRA specifically protects

City of Vacaville

Notice of Violations Under RCRA

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groundwater and drinking water sources. The federal Environmental Protection Agency (“EPA”) waste management regulations are codified at 40 C.F.R. §§ 239-282, with regulations regarding management of hazardous waste beginning at 40 C.F.R. § 260. Pursuant to RCRA, California has enacted state law and promulgated regulations that are at least as stringent as the federal regulations. The federal and state hazardous waste laws are implemented by the California Department of Toxic Substances Control (“DTSC”). Note that the California Regional Water Quality Control Board – Central Valley Region’s Water Quality Control Plan (“Basin Plan”) designates all surface and groundwater at or near the wells identified in this Notice as capable of supporting industrial and domestic water supply.

RCRA defines “hazardous waste” as “a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may – (A) cause, or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.” 42 U.S.C. § 6903(5). The term “solid waste” includes “any ... discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, or community activities ...” 42 U.S.C. § 6903(27). River Watch alleges that CrVI in the City water supply is a waste that is stored, transported or otherwise managed by the City from its water supply treatment plant and facilities.

River Watch contends that the City’s alleged storage, transport, and management of CrVI in the source water drawn from its wells and surface water sources identified as TWIPS WTP (Wells 1, 6, & 13), WTP, Well 15, North Bay Regional WTP, Well 14, Well 9, Well 8, Well 5, Well 3, Well 2, Well 16, Distribution System – SW, and Distribution System – GW, and supplied through its pipes into the homes, businesses, and other public and private taps of its customers in the Vacaville community, presents an imminent and substantial endangerment to human health or the environment pursuant to 42 U.S.C. § 6972(a)(1)(B).

The following federal and California references support River Watch’s allegation:

- The United States National Toxicology Program, headquartered at the National Institute of Environmental Health Sciences (NIH-HHS) states that while “[c]hromium is a naturally occurring element found in rocks, animals, plants, soil, and volcanic dust and gases,” the form of chromium known as hexavalent

Notice of Violations Under RCRA

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June 1, 2016

chromium “is generally produced by industrial processes.” Hexavalent chromium is “widely used in electroplating, stainless steel production, leather tanning, textile manufacturing, and wood preservation.” “Hexavalent chromium compounds have been shown to cause lung cancer in humans when inhaled. The “13th Report on Carcinogens” lists hexavalent chromium compounds as known human carcinogens.” “In 2014, the state of California used NTP findings to establish the first in the nation drinking water standard of 10 parts per billion, specifically for hexavalent chromium, not total chromium.” (*See https://www.niehs.nih.gov/health/materials/hexavalent_chromium_508.pdf*).

- The California Office of Environmental Health Hazard Assessment (OEHHA) published a Public Health Goal for hexavalent chromium of 0.02 micrograms per liter (µg/L) in drinking water in 2011 (*see Public Health Goals for Chemicals in Drinking Water – Hexavalent Chromium (CrVI)*; <http://oehha.ca.gov/water/public-health-goal-fact-sheet/final-technical-support-document-public-health-goal-hexavalent>).
- California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly referred to as “Prop 65”) identified chromium (hexavalent compounds) in 1987 as one of the first compounds regulated under the statute (*see <http://oehha.ca.gov/proposition-65-list>*).

Note that while hexavalent chromium has long been recognized as a potent carcinogen via inhalation, there is now sufficient evidence that it is also a carcinogenic by the oral route of exposure. Further, while hexavalent chromium can leach from soil into groundwater, in high levels as found in the City’s sampling (> 1 µg/L), its presence is generally attributable to anthropogenic sources such as electroplating factories, leather tanneries, textile manufacturing facilities, aerospace, and similar industries.

2. The Activity Alleged to Constitute a Violation.

River Watch sets forth narratives in this Notice describing with particularity the activities leading to the alleged violations. In summary, RCRA requires that the environment and public be protected from hazardous wastes including those transported by the City via the wells and surface waters identified in Paragraph 1 above. The specific pollutant, hexavalent chromium, both identified and transported by the City, constitutes hazardous waste under RCRA, and is required to be managed such that potential and actual harm to the environment and public is eliminated. Hexavalent chromium is allegedly present in the following sources of City drinking water:

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- TWIPS WTP (Wells 1, 6 & 13) (Facility Identification # 90001)

Sample Point ID - 4810008001

Sample Point Name - TWIPS WTP Eff.

Sample Date - May 26, 2014

Sample Amount – 5.4 µg/L

Sample Point ID - 4810008001

Sample Point Name - TWIPS WTP Eff.

Sample Date – September 10, 2013

Sample Amount – 6.9 µg/L

- WTP (Facility Identification # 91801)

Sample Point ID - 4810008801

Sample Point Name – EP #11:WTP Eff.

Sample Date – May 26, 2014

Sample Amount – 0.61 µg/L

Sample Point ID - 4810008801

Sample Point Name – EP #11: WTP Eff.

Sample Date – June 18, 2014

Sample Amount – 0.78 µg/L

Sample Point ID - 4810008801

Sample Point Name – EP #11: WTP Eff.

Sample Date – September 10, 2013

Sample Amount – 0.98 µg/L

- Well 15 (Facility Identification # 91802)

Sample Point ID - 4810008802

Sample Point Name – EP #32 – Well 15 Treated

Sample Date – March 12, 2014

Sample Amount – 11 µg/L

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Sample Point ID - 4810008802

Sample Point Name – EP #32 – Well 15 Treated

Sample Date – September 10, 2013

Sample Amount – 12 µg/L

- North Bay Regional WTP (Facility Identification # 91804)

Sample Point ID - 4810008804

Sample Point Name – EP #27: North Bay Regional WTP Eff.

Sample Date – December 4, 2013

Sample Amount – 0.15 µg/L

Sample Point ID - 4810008804

Sample Point Name – EP #27: North Bay Regional WTP Eff.

Sample Date – March 12, 2014

Sample Amount – 0.13 µg/L

Sample Point ID - 4810008804

Sample Point Name – EP #27: North Bay Regional WTP Eff.

Sample Date – June 18, 2014

Sample Amount – 0.12 µg/L

Sample Point ID - 4810008804

Sample Point Name – EP #27: North Bay Regional WTP Eff.

Sample Date – September 10, 2013

Sample Amount – 0.07 µg/L

- Well 14 (Facility Identification # 91805)

Sample Point ID - 4810008805

Sample Point Name – EP #23: Well 14 Treated

Sample Date – May 26, 2014

Sample Amount – 19 µg/L

Sample Point ID - 4810008805

Sample Point Name – EP #23: Well 14 Treated

Sample Date – September 10, 2013

Sample Amount – 18 µg/L

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- Well 9 (Facility Identification # 91807)

Sample Point ID - 4810008807

Sample Point Name – EP #21: Well 9 Treated

Sample Date – March 12, 2014

Sample Amount – 16 µg/L

Sample Point ID – 4810008807

Sample Point Name – EP #21: Well 9 Treated

Sample Date – September 10, 2013

Sample Amount – 16 µg/L

- Well 8 (Facility Identification # 91808)

Sample Point ID - 4810008808

Sample Point Name – EP #20: Well 8 Treated

Sample Date – December 4, 2013

Sample Amount – 10 µg/L

Sample Point ID - 4810008808

Sample Point Name – EP #20: Well 8 Treated

Sample Date – June 18, 2014

Sample Amount – 7.7 µg/L

- Well 5 (Facility Identification # 91811)

Sample Point ID - 4810008811

Sample Point Name – EP #17: Well 5 Treated

Sample Date – March 12, 2014

Sample Amount -2.8 µg/L

Sample Point ID - 4810008811

Sample Point Name – EP #17: Well 5 Treated

Sample Date – September 10, 2013

Sample Amount -2.4 µg/L

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- Well 3 (Facility Identification # 91812)

Sample Point ID - 4810008812

Sample Point Name - EP #16: Well 3 Treated

Sample Date – March 12, 2014

Sample Amount – 13 µg/L

Sample Point ID - 4810008812

Sample Point Name - EP #16: Well 3 Treated

Sample Date – September 10, 2013

Sample Amount – 14 µg/L

- Well 2 (Facility Identification # 91813)

Sample Point ID - 4810008813

Sample Point Name - EP #15: Well 2 Treated

Sample Date – March 12, 2014

Sample Amount – 4.4 µg/L

Sample Point ID - 4810008813

Sample Point Name - EP #15: Well 2 Treated

Sample Date – September 10, 2013

Sample Amount – 3.5 µg/L

- Well 16 (Facility Identification # 91815)

Sample Point ID - 4810008815

Sample Point Name – EP #31: Well 16 Treated

Sample Date – December 4, 2013

Sample Amount – 20 µg/L

Sample Point ID - 4810008815

Sample Point Name – EP #31: Well 16 Treated

Sample Date – June 18, 2014

Sample Amount – 18 µg/L

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- Distribution System - SW (Facility Identification # 99001)

Sample Point ID – 4810008991

Sample Point Name – DBP2-2:1000 Ulatis Dr

Sample Date – October 31, 2013

Sample Amount – 0.22 µg/L

Sample Point ID – 4810008991

Sample Point Name – DBP2-2:1000 Ulatis Dr

Sample Date – December 4, 2013

Sample Amount – 0.16 µg/L

Sample Point ID – 4810008991

Sample Point Name – DBP2-2:1000 Ulatis Dr

Sample Date – March 12, 2014

Sample Amount – 9.8 µg/L

Sample Point ID – 4810008991

Sample Point Name – DBP2-2:1000 Ulatis Dr

Sample Date – June 18, 2014

Sample Amount – 2 µg/L

Sample Point ID – 4810008992

Sample Point Name – DPB2-1:Hidden Valley Lane

Sample Date – December 4, 2013

Sample Amount – 1.2 µg/L

Sample Point ID – 4810008992

Sample Point Name – DPB2-1:Hidden Valley Lane

Sample Date – March 12, 2014

Sample Amount – 2.2 µg/L

Sample Point ID – 4810008992

Sample Point Name – DPB2-1:Hidden Valley Lane

Sample Date – June 18, 2014

Sample Amount – 0.74 µg/L

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Sample Point ID – 4810008992

Sample Point Name – DPB2-1:Hidden Valley Lane

Sample Date – September 10, 2013

Sample Amount – 0.81 µg/L

- Distribution System - GW (Facility Identification # 99002)

Sample Point ID – 4810008987

Sample Point Name – TCR #16: 811 Eubanks Dr

Sample Date – March 12, 2014

Sample Amount – 15 µg/L

Sample Point ID – 4810008987

Sample Point Name – TCR #16: 811 Eubanks Dr

Sample Date – September 10, 2013

Sample Amount – 12 µg/L

Sample Point ID – 4810008989

Sample Point Name – TCR #15: Winding Way

Sample Date – March 12, 2014

Sample Amount – 11 µg/L

Sample Point ID – 4810008989

Sample Point Name – TCR #15: Winding Way

Sample Date – September 10, 2013

Sample Amount – 16 µg/L

Sample Point ID – 4810008990

Sample Point Name – TCR #13: 1000 Hitchcock Dr

Sample Date – March 12, 2014

Sample Amount – 16 µg/L

Sample Point ID – 4810008990

Sample Point Name – TCR #13: 1000 Hitchcock Dr

Sample Date – September 10, 2013

Sample Amount – 16 µg/L

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Sample Point ID – 4810008994
Sample Point Name – TCR #25: Genentech
Sample Date – March 12, 2014
Sample Amount – 13 µg/L

Sample Point ID – 4810008994
Sample Point Name – TCR #25: Genentech
Sample Date – September 10, 2013
Sample Amount – 15 µg/L

Sample Point ID – 4810008997
Sample Point Name – TCR #10: Arbor Oaks Park
Sample Date – March 12, 2014
Sample Amount – 9.2 µg/L

Sample Point ID – 4810008997
Sample Point Name – TCR #10: Arbor Oaks Park
Sample Date – September 10, 2013
Sample Amount – 0.1 µg/L

Sample Point ID – 4810008999
Sample Point Name – TCR #8: Southwood Ct
Sample Date – March 12, 2014
Sample Amount – 4.7 µg/L

Sample Point ID – 4810008999
Sample Point Name – TCR #8: Southwood Ct
Sample Date – September 10, 2013
Sample Amount – 0.08 µg/L

In addition to hexavalent chromium, the City further identifies in its public sampling reports the list of chemicals below that are present in the sources of drinking water the City supplies. Not all of the chemicals are accompanied by sampling results and the sampling report provides no information concerning the synergistic impact and effect resulting from the total number and amount of chemicals from each source water.

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Additional Listed Chemicals in the Public Sampling Report:

1,1-dichloroethane
1,2,3-trichloropropane
1,3 butadiene
Bromomethane
chlorate
chloromethane
Halon 1011
HCFC-22
PFBS
PFHpA
PFHxS
PFNA
PFOA
PFOS
chromium
cobalt
molybdenum
strontium
vanadium

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

The entity responsible for the alleged violations identified in this Notice is the City of Vacaville, referred to as “the City” throughout this Notice.

4. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activities Occurred.

The range of dates covered by this Notice is from May 31, 2011, to May 31, 2016. River Watch may from time to time update this Notice to include all violations of RCRA by the City which occur during and after this time period. Some violations are continuous, and therefore each day constitutes a violation.

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

The entity giving this Notice is California River Watch, referred to herein as “River Watch.” River Watch is an IRC § 501(c)(3) non-profit, public benefit Corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch’s northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch members residing and/or recreating in the City’s customer-based area of Vacaville and the surrounding watershed have a vital interest in bringing the City’s operations into compliance with RCRA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to:

Jack Silver, Esq.
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Tel. 707-528-8175
Email: lh28843@sbcglobal.net

David J. Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

RECOMMENDED REMEDIAL MEASURES

River Watch requests full investigation by the City of the drinking water supplied through the wells identified in this Notice, including the following actions:

- a. A survey of “at risk” recipients. At risk recipients are those City customers receiving CrVI-tainted water above the OEHHA maximum allowable dose of 8 µg/day;
- b. A survey of “compromised” recipients. A compromised recipient is one whose health is at a higher risk of CrVI exposure than the general public. Compromised recipients include, but are not limited to, infants, children, the elderly, and those who are immuno-compromised;

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- c. Providing bottled water or point-of-use purified water to compromised recipients until CrVI in recipient water is reduced to safe levels; and
- d. Reducing the CrVI in recipient water to safe levels.

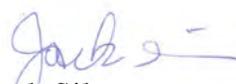
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who may reside, work, and/or recreate in the affected community identified herein. Their health, property rights, use, and enjoyment of this area may be specifically impaired by the City's alleged violations of RCRA as set forth in this Notice.

RCRA provides for citizen enforcement actions against any "person ... including a past or present generator, past or present transporter ... who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal or any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). This provision of the statute provides for injunctive relief. Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Section 3008 of the Act, 42 U.S.C. § 6928. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of RCRA to obtain the relief provided for under the law.

RCRA specifically provides a **90-day "notice period"** to promote resolution of disputes. River Watch encourages the City to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the City has eliminated the hazardous and solid wastes identified in this Notice from its water supply, River Watch will have cause to file a citizen's suit under RCRA when the 90-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

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Service List

Administrator

U.S. Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

Regional Administrator

U.S. Environmental Protection Agency, Region 9

75 Hawthorne Street

San Francisco, CA 94105

Executive Director

State Water Resources Control Board

P.O. Box 100

Sacramento, California 95812-0100

Director

California Department of Toxic Substances Control

P.O. Box 806

Sacramento, CA 95812-0806

Gerald L Hobrecht, Esq.

Office of the City Attorney

City of Vacaville

650 Merchant Street

Vacaville, CA 95688

EXHIBIT B

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

Este informe contiene información muy importante sobre su agua potable.
Tradúzcalo o hable con alguien que lo entienda bien.

New State of California's Hexavalent Chromium Drinking Water Standard

The State of California passed a new maximum contaminant level (MCL) for hexavalent chromium. On July 1, 2014 a new California MCL of 0.010 mg/L (10 parts per billion (ppb)) for hexavalent chromium became effective. In accordance with state regulations, the City started quarterly monitoring of all wells for hexavalent chromium by January 1st, 2015. Water sample results received over the last four (4) quarters showed hexavalent chromium levels of <0.0002 – 0.024 mg/L (<0.2 – 24.0 ppb). Some of these results exceed the State's new MCL of 0.010 mg/L (10 ppb).

At the same time, the hexavalent chromium level in our groundwater supply currently continues to meet the United States Environmental Protection Agency (US EPA) MCL for total chromium, which includes hexavalent chromium, at 0.1 mg/L (100 ppb).

The State of California passed SB 385 on September 4, 2015 which requires water systems to prepare a Corrective Action Plan and grants a period of time to achieve compliance with the new State MCL. The State requires compliance by January 1, 2020. The City of Vacaville's Corrective Action Plan was submitted on October 30, 2015 and is currently being reviewed by the State Division of Drinking Water.

Although this is not an emergency, as our customers, you have a right to know what happened, what you should do, and what the City is doing to address hexavalent chromium and meet the new State MCL.

We routinely monitor for the presence of drinking water contaminants in our water supplies sources, and in the treated drinking water distributed to our customers. We will continue to monitor for the level of hexavalent chromium and provide you with regular notices, at least twice a year.

What happened?

The City of Vacaville gets its drinking water from two surface water sources (Lake Berryessa through the Putah South Canal and the Sacramento Delta through the Northbay Aqueduct), and from eleven (11) deep groundwater wells. All sources provide water into the City's combined distribution system when they are in operation. Of these sources, water from five of the eleven deep wells naturally contain hexavalent chromium above the new California MCL. [Prior to the State lowering the MCL from 0.050 mg/L to 0.010 mg/L in 2014, the City of Vacaville met all drinking water standards.]

What should I do?

- **You do not need to use an alternate water supply (e.g., bottled water).**
- This is not an immediate risk. If it had been, you would have been notified immediately. However, *some people who drink water containing hexavalent chromium in excess of the MCL over many years may have an increased risk of getting cancer.*
- If you have other health issues or concerns regarding your consumption of this water, you may wish to consult your doctor.

What is being done?

The City of Vacaville is taking steps to provide water with hexavalent chromium at or below the MCL. However, adding hexavalent chromium treatment to the wells will take considerable time and money. As previously mentioned, we have a plan for achieving full compliance with the new MCL before the January 1, 2020 deadline.

Future notices will provide updated information on actions being taken in accordance with the compliance plan. Updated information can also be found on the City's Website at: <http://www.cityofvacaville.com/index.aspx?page=810>

If you have any questions, please contact Tony Pirondini, Water Quality Manager at 707-469-6439, or email him at tony.pirondini@cityofvacaville.com, or call the Utilities Department main line at 707-469-6400.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this public notice in a public place or distributing copies by hand or mail.

This letter is delivered to you from City of Vacaville Public Water System.

State Water System ID#: 48-10008

Date: 1st Quarter, 2016