



December 28, 2023

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Maria-Elena Giner, Commissioner
International Boundary & Water Commission
United States Section
4191 North Mesa St.
El Paso, TX 79902

South Bay International Treatment Plant
2995 Clearwater Way
San Diego, CA 92154

Veolia Water North America–West, LLC
PO Box 430239
San Diego, CA 92143

Veolia Water North America-West LLC
Agent for Service of Process
CT Corporation system
330 N. Brand Blvd,
Glendale, CA 91203

Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter

Dear Commissioner Giner:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (“CERF”) and San Diego Coastkeeper (“Coastkeeper”) regarding the United States Section of the International Boundary & Water Commission and Veolia Water North America – West LLC (collectively “IBWC”) violations of the Clean Water Act¹ and National Pollutant Discharge Elimination System Permit (“NPDES”) Order No. R9-2014-0009, NPDES No. CA0108928, and Order No. R9-2021-0001, NPDES No. CA0108928 (“Permit”), as amended by Order No. R9-2023-0009. This letter puts the IBWC on notice of its violations of the NPDES permit for the South Bay International Wastewater Treatment Plant (“SBIWTP”) and associated infrastructure (collectively “the Facility”). As explained below, IBWC is liable for violations of its NPDES permit and thus the Clean Water Act (“CWA”).

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen’s civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This notice letter (“Notice Letter”) is being sent to you as the responsible Owner and/or Operator of the Facility and as the registered agent for the Owner and/or Operator. This Notice Letter is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act as notice of CERF and Coastkeeper’s intention to file a federal enforcement action against the IBWC for violations of its NPDES permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

¹ Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

1. Background

1.1 CERF and Coastkeeper

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. CERF's mailing address is 1140 S. Coast Highway 101, Encinitas, CA 92024, and telephone number is 760-942-8505.

San Diego Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 8305 Vickers St., Suite 209, San Diego, California 92111, and phone number 619-609-0860. Founded in 1995, Coastkeeper's mission is to protect and restore the coastal and inland waters of the San Diego region. To further these goals, Coastkeeper actively seeks federal and state agency implementation and enforcement of the Clean Water Act, and, where necessary, directly initiates enforcement on behalf of itself and its members.

CERF and Coastkeeper members live, work, recreate, and/or otherwise use and enjoy the areas in and around the waters into which the Facility discharges, the Tijuana River, Tijuana River Estuary, and the Pacific Ocean in Imperial Beach, California (collectively "Receiving Waters"). Members of CERF use the Receiving Waters to swim, boat, kayak, surf, paddle, bird watch, view wildlife, fish, hike, bike, walk, run, and for general aesthetic enjoyment, education and scientific research. Additionally, members of CERF use the Receiving Waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The discharges of pollutants from the Facility in violation of the NPDES permit impair each of these uses. Discharges of wastewater laden with sewage and other pollutants are ongoing and continuous. Thus, the interests of CERF and Coastkeeper's members have been, are being, and will continue to be adversely affected by the Facility Owners and/or Operators' failure to comply with the Clean Water Act.

1.2 The Facility's Permit Coverage

The Facility is a Federally Owned Treatment Work owned by the IBWC, and includes several canyon collector structures, in addition to the sewage treatment plant itself, located at 2995 Clearwater Way, San Diego, CA, 92154. Since May 2021, Morgan Rogers has been the legally responsible official for the Facility, and since September 2020, Thomas Stickles has submitted the self-monitoring reports to the eSMR on behalf of the Facility. IBWC contracts with Veolia North America to operate and maintain the Facility.

The Facility discharges treated, partially treated and at times untreated wastewater into the Pacific Ocean through the South Bay Ocean Outfall ("SBOO"). The Facility also routinely discharges waste via spill events, overflows, and bypasses of the canyon collector systems, which continue north in the natural drainages, polluting the Tijuana River Valley and Estuary, the Tijuana River, and the Pacific Ocean at San Diego beaches near the mouth of the Tijuana

River.²

Through its ownership and operation of the SBIWTP and appurtenant canyon collector systems, IBWC engages in acts and/or omissions that result in the discharge of waste to waters of the State and U.S., therefore subjecting the Facility to CWA coverage.³ The CWA prohibits the discharge of any pollutant into the waters of the United States without a permit.⁴ Because the CWA applies to federal and civilian facilities alike, the Facility is subject to the CWA and required to hold and maintain a Permit. Pursuant to the CWA, the Facility operates under NPDES permit No. CA0108928. The Permit was first issued on November 14, 1996, and last renewed on May 12, 2021. The Facility was previously regulated by Order No. R9-2014-0009, as amended by Order Nos. R9-2014-0094, R9-2017-0024 and R9-2019-0012, and NPDES Permit No. CA0108928 adopted on June 26, 2014. The currently operable permit is Order No. R9-2021-0001, as Amended by Order No R9-2023-0009, which is set to expire on June 30, 2026.

The Permit regulates the Facility's discharges from the SBOO at Discharge Point No. 001 ("DP-001"), as well as, inter alia, Spill Events, defined as any "discharge, or any other type of emission or release, of waste from any portion of the Facility due to system overflow, flow stoppage, system leaks and breaks, operational failure and/or infrastructure failure."⁵ However, Spill Events do not include (1) wet weather flows that bypass the canyon collectors, and (2) any portion of dry weather flows which exceed the maximum design capacity of the canyon collector and are not diverted by the canyon collector.⁶ As such, "[a] dry weather Canyon Collector Transboundary Flow Event also constitutes a Spill Event when transboundary flows less than or equal to the canyon collector's maximum design capacity are not captured by the canyon collector for treatment at the SBWITP and disposal through the SBOO (i.e., dry weather canyon collector Spill Event)."⁷

The Permit sets forth various discharge prohibitions, effluent limitations for the Facility's discharges from the SBOO, and receiving water limitations. As discussed below, the Facility continuously fails to comply with the Permit's effluent limitations, receiving water limitations, and discharge prohibitions, among other Permit terms, violating the CWA. These ongoing and continuous violations result in devastating impacts to southern California residents and ecosystems.

1.3 The Receiving Waters

The Facility discharges waste to the Pacific Ocean, the Tijuana River, Tijuana River Estuary, and the Pacific Ocean at various San Diego beaches near the mouth of the Tijuana

² Permit Fact Sheet at F-7.

³ Permit Fact Sheet at F-64–65.

⁴ 33 U.S.C. § 1311.

⁵ Permit § 6.3.2.1.1.1.

⁶ Permit § 6.3.2.1.1.2; *see also* Fact Sheet § 6.2.2.1.4. at F-50.

⁷ Permit § 6.3.2.1.1.2.

River.⁸ The Facility discharges effluent into the Pacific Ocean at DP-001, within California state waters, offshore from a densely populated coastal city, Imperial Beach, California. Spill Events regulated by the Permit flow into the Tijuana River Estuary, the Tijuana River, and the Pacific Ocean at San Diego beaches near the mouth of the Tijuana River less than two miles from Imperial Beach. The Imperial Beach coastal region hosts over 370 species of birds including marbled godwit sanderlings, western sandpipers, double-crested cormorants, California Brown Pelicans, and sensitive species such as the California terns and light-footed clapper rails.⁹ Marine life such as dolphins, whales, sea lions, sea turtles, rays, sharks, octopi, and an abundance of fish visit or reside within these coastal waters.

Further, the mouth of the Tijuana River intersects with the Pacific Ocean at Imperial Beach, forming a significant and valuable estuary that supports the southern California coastal ecosystem and beyond. The Tijuana River Estuary stands as one of the few remaining coastal wetlands in California, a state where more than 90% of wetlands have succumbed to development. Wetlands such as the Tijuana River Estuary serve as natural filtration systems, effectively mitigating the impact of pollutants. They also act as carbon sinks, absorbing greenhouse gases and contributing to climate mitigation efforts. These habitats provide homes for a diverse array of species and serve as vital breeding grounds for both terrestrial and aquatic migratory species. Further, the Tijuana River Estuary is a sanctuary for endangered species such as the salt marsh bird's beak and the California gnatcatcher, underscoring its significance in preserving biodiversity and the delicate balance of nature.

The Tijuana River Estuary also holds the prestigious designation of being a Ramsar-protected wetland. This designation stems from an international treaty aimed at safeguarding the most critical wetlands on a global scale.¹⁰ Ramsar wetlands gain this special status due to the extraordinary ecosystem services they provide. Failing to adhere to permitting requirements in such a sensitive location intensifies the gravity of the violations. Marine scientists estimate that between 70-90% of marine fish and shellfish spend a portion of their lives in an estuary.¹¹ The Ramsar designation not only underscores the ecological importance of the Tijuana River Estuary but also emphasizes the significance of strict CWA compliance to ensure the Estuary's preservation and the continuation of its invaluable ecosystem services.

The Water Quality Control Plan for the San Diego Basin ("San Diego Basin Plan" or "Basin Plan") identifies the Beneficial Uses of water bodies in the region. The Beneficial Uses for

⁸ Permit Fact Sheet at F-7.

⁹ *Visiting*, CITY OF IMPERIAL BEACH,

<https://www.imperialbeachca.gov/35/Visiting#:~:text=The%20estuary%20is%20filled%20with,and%20even%20a%20pink%20flamingo!>

¹⁰ See <https://www.ramsar.org>

¹¹ PECONIC ESTUARY PARTNERSHIP, *Estuaries 101*, <https://www.peconicestuary.org/peconic-estuary/estuaries-101/>; NOAA FISHERIES, *Estuary Habitat*, <https://www.fisheries.noaa.gov/national/habitat-conservation/estuary-habitat#:~:text=Most%20of%20the%20fish%20and,80%20percent%20of%20recreational%20catch.>

the Tijuana River include Industrial Service Supply; Contact Water Recreation; Non-contact Water Recreation; Preservation of Biological Habitats of Special Significance; Warm Freshwater Habitat; Wildlife Habitat; and Rare, Threatened, or Endangered Species. The Beneficial Uses for the Tijuana River Estuary include: Contact Water Recreation, Non-contact Water Recreation, Commercial and Sports Fishing; Preservation of Biological Habitats of Special Significance; Estuarine Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species; Marine Habitat; Migration of Aquatic Organism; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.¹² Finally, the Beneficial Uses for the Pacific Ocean include Industrial Service Supply; Navigation; Contact Water Recreation; Non-contact Water Recreation; Commercial and Sports Fishing; Preservation of Biological Habitats of Special Significance; Wildlife Habitat; and Rare, Threatened, or Endangered Species; Marine Habitat; Aquaculture; Migration of Aquatic Organism; Spawning, Reproduction, and/or Early Development; and Shellfish Harvesting.¹³

The Tijuana River is listed as impaired under Section 303(d) of the Clean Water Act for ammonia, total nitrogen, phosphorus, trace elements, benthic community effects, cadmium, chlorpyrifos, diazinon, eutrophic conditions, indicator bacteria, dissolved oxygen, malathion, pesticides, sedimentation/siltation, solids, surfactants, synthetic organics, and trash. The Tijuana River Estuary is listed as impaired under Section 303(d) of the Clean Water Act for eutrophic conditions, nickel, lead, pesticides, thallium, toxicity, turbidity, and trash.¹⁴

Multiple segments of the Pacific Ocean shoreline are impaired for numerous pollutants. Below is the list of impaired shoreline segments at or near the Facility’s discharge locations:

TABLE 1: SECTION 303(d) IMPAIRED WATERS NEAR THE SBOO OUTFALL		
Receiving Water Name	Location	Impaired for
Pacific Ocean Shoreline	Otay Valley HA, at Carnation Ave and Camp Surf Jetty	Indicator Bacteria
Pacific Ocean Shoreline	Imperial Beach Pier	total coliform for SHELL, PCBs, and trash
Pacific Ocean Shoreline	Tijuana HU, at end of Seacoast Drive	Indicator bacteria (enterococcus for REC-1 and total coliform for SHELL beneficial use)
Pacific Ocean Shoreline	Tijuana HU, at 3/4-mile North of Tijuana River	Indicator bacteria (enterococcus for REC-1 and

¹² Basin Plan Table 2-2.

¹³ *Id.* Table 2-3.

¹⁴ [California 2020-2022 Integrated Report, https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html.](https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html)

		total coliform for SHELL beneficial use)
Pacific Ocean Shoreline	Tijuana HU, at Cortez Avenue	Indicator Bacteria (total coliform for SHELL beneficial use)
Pacific Ocean Shoreline	Tijuana HU, at Tijuana River mouth	Indicator Bacteria (enterococcus, fecal coliform, and total coliform)
Pacific Ocean Shoreline	Tijuana HU, at Monument Road	Indicator Bacteria (enterococcus, fecal coliform, and total coliform for REC-1 and total coliform for SHELL beneficial use)
Pacific Ocean Shoreline	Tijuana HU, at the international border	Indicator Bacteria (total coliform for SHELL beneficial use)

1.4 The Impacts from Pollutants

The United States/Mexico border has been dealing with a sewage and industrial run-off pollution problem since the 1930s. After decades of population growth and increasing pollution, Mexico and the United States finally agreed in 1990 to build infrastructure to address the sewage issue, pursuant to international treaty. In 1996, the United States built an advanced primary treatment facility; however, the Facility did not discharge within its Permit limitations. As a result of litigation, initiated in 2001 and settled in 2004, the Facility updated its infrastructure in 2010 to include an activated sludge secondary treatment process to improve the effluent quality.

When untreated wastewater first arrives at the Facility, it first enters a primary treatment facility before entering its second stage; however, if the flow rate between the primary and secondary system exceeds 49.85 MGD, the effluent bypasses secondary treatment and is discharged directly into the SBOO and the Pacific Ocean.¹⁵ Although Morgan Rogers, treatment plant Operator, told the Coronado Times that “all flows into the plant are still treated and discharged through a pipeline to 3.5 miles offshore,”¹⁶ this statement is misleading. If effluent

¹⁵ “If flow from the primary treatment units to the secondary treatment units exceeds 49.85 MGD, primary effluent flows exceeding 49.85 MGD bypass the polymer addition and activated sludge processes and discharge directly to the SBOO.” Permit at § 2.1.

¹⁶ Morgan Rogers, *Op-Ed: In response to “A Practical Solution to Ocean Pollution*, CORONADO NEWS, <https://thecoronadonews.com/2023/08/op-ed-in-response-to-a-practical-solution-to-ocean-pollution/>

from the primary treatment is higher than the secondary treatment can handle, effluent is only partially treated before entering the ocean. As reported to the Regional Board at its December 18, 2023 Special Meeting, the Facility has been accepting flows above and beyond its secondary treatment capacity for over a year.

The types of pollutants received by the Facility include, but are not limited to heavy metals, pesticides, bacteria and viruses, sediment, trash, and banned chemicals within the United States such as DDT and PCBs. Even after treatment, these pollutants often persist in concentrations far exceeding the Permit's effluent limitations and are discharged into the Pacific Ocean through the SBOO.¹⁷

As directly stated in the Permit, flows from Mexico,

[w]hich can be comprised of raw sewage, treated and untreated wastewater, highly polluted storm water runoff, industrial and commercial waste, trash, and dry weather potable water discharges from the Tijuana River watershed, pose one of the most significant threats to water quality and beneficial uses of waters in the San Diego Region. The introduction of sewage, trash, polluted sediment, industrial and commercial waste, heavy metals and/or other pollutants into the Tijuana River Valley via transboundary flows could severely harm the beneficial uses of the Tijuana River, the Tijuana River Estuary, and the Pacific Ocean. Transboundary Flow Events negatively impact the Tijuana River Valley's wetlands and riparian areas and biota, endanger public health, and constrain local coastal economies.¹⁸

Discharges of these pollutants from the Facility result in adverse impacts to wildlife and closure of public beaches from the border up to Silver Strand and Coronado. High levels of sewage in coastal waters are a threat to public health, not only for individuals who may unknowingly recreate in these waters, but also to people in the community who are exposed to aerosolized sewage bacteria. Imperial Beach residents have observed a rise in fish and marine life mortality following heavy rain. Even after secondary treatment, as explained below, the Facility effluent regularly exceeds Permit limitations, compounding any existing water quality issues. Specifically, residents have reported dead pelicans, sea lions, dolphins, and fish that wash up onto the shoreline.¹⁹ These polluted discharges result in beach closures and advisories, negatively impacting CERF and Coastkeeper members and the public. **There have been over 700 consecutive days of beach closures in and around Imperial Beach since the beginning of 2022 to today.**²⁰

¹⁷ See, Exhibit 1, enclosed herewith.

¹⁸ Permit Fact Sheet at F-65.

¹⁹ Ruth Klamper, *Marine Life Mortality and Pollution Levels in Oceans*, CORONADO TIMES, <https://coronadotimes.com/news/2017/06/10/marine-life-mortality-increases-pollution-levels-rise-san-diego-beaches/>

²⁰ Rocio De La Fe, *South Bay residents frustrated with ongoing sewage contamination and beach closures*, CBS8, <https://www.cbs8.com/article/news/local/south-bay-residents-feeling-frustrated-with-sewage-contamination-and-beach-closures/509-dbf8317a-fe69-47ed-813a-aa5f6e731765>

At the October 2023 California Coastal Commission²¹ meeting, many experts spoke about this water contaminant human health issue. A recent study conducted by the world-renowned Dr. Kimberly Prather indicates that when these effluents are deposited into the ocean, the sea spray aerosol becomes contaminated with bacteria and viruses. This tainted aerosol then travels through the air to reach nearby humans and animals, who subsequently inhale the toxins. Without any contact with the Receiving Waters, Imperial Beach residents are exposed to dangerous sewage bacteria and risk falling ill. Dr. Kimberly and Matthew Dixon conducted analysis using their urgent care admission data and found that during rain events and high discharge events generally, there is an uptake in respiratory and intestinal illnesses of 560%.

In the words of esteemed scientist Thor Heyerdahl, “to destroy the ocean is to kill our planet – a dead planet serves no nation.”²² IBWC’s failure to comply with its Permit actively contributes to the degradation of the Pacific Ocean – this is an issue that transcends border boundaries and international disputes and deserves treatment as such.

2. The Facility’s Site and Related Discharges of Pollutants

2.1 The Facility Site Description

The Facility is located in the Tijuana River Watershed (“Watershed”) on the border between Mexico and the United States near the port of San Ysidro. Three-fourths of the Watershed lies within Mexico and the remaining one-fourth within southern California. The predominant river in the Watershed is the Tijuana River, which empties into the Tijuana River Estuary, collectively known as the Tijuana River Valley (“Valley”). The lower six miles of the Tijuana River, and its Estuary, are listed on the CWA section 303(d) impaired water bodies list, impacted by the excessive levels of pollutants noted in Section 1.3 above.

As noted in Section 1.2, *supra*, the Facility is comprised of any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature, including the 75-acre SBIWTP, five diversion structure canyon collectors, two pump stations, two junction boxes, and 2 outfall structures (Figure 1 below). IBWC and Veolia own and/or exercise control over pipes and conveyances between diversion structures, pump stations, and the wastewater treatment plant. “Through the ownership and operation of the SBIWTP and appurtenant canyon collector systems, the Discharger engages in acts and/or omissions that result in the discharge of waste to waters of the State and U.S.”²³ As such, IBWC and Veolia control the operation and maintenance of the canyon collector systems and have a measure of control over the waste.²⁴

²¹ https://cal-span.org/meeting/ccc_20231011/.

²² Third United Nations Conference on the Law of the Sea, 1st Meeting, *Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (Summary Records of Plenary Meetings of the First and Second Sessions, and of Meetings of the General Committee, Second Session)* (Dec. 1973) [cleaned up].

²³ Permit Fact Sheet at F-64–65.

²⁴ *Id.* F-66.

The canyon collectors were constructed to divert dry weather transboundary flows for treatment and discharge through the SBOO. Flows captured by the canyon collectors are conveyed by gravity or via pump to the SBIWTP headworks for treatment and, eventually, disposal through the SBOO. Spills, overflows, and bypasses of the canyon collector systems continue north into the Tijuana River Valley and Estuary, the Tijuana River, and the Pacific Ocean at San Diego beaches near the mouth of the Tijuana River.²⁵

The maximum design capacity for each of the five canyon collector systems is as follows:²⁶

TABLE 2: CANYON COLLECTOR SYSTEM DESIGN CAPACITIES		
Canyon Collector System	Average Flow (MGD)	Peak Flow (MGD)
Goat Canyon	2.33	7
Smuggler's Gulch	4.67	14
Canyon del Sol	0.67	2
Silva's Drain	0.33	1
Stewart's Drain	1.67	5

After the Facility treats the wastewater, the Facility discharges effluent first into the South Bay Land Outfall (“SBLO”) pipe. The SBLO starts at the SBIWTP and ends at the mouth of Goat Canyon, where it connects to the SBOO.²⁷ The SBOO then carries the waste over three nautical miles to its terminus, emptying into the Pacific Ocean off the coast near Imperial Beach, California. Although over three nautical miles, the pipe terminates within the waters of the United States due to its angle towards the international border.²⁸

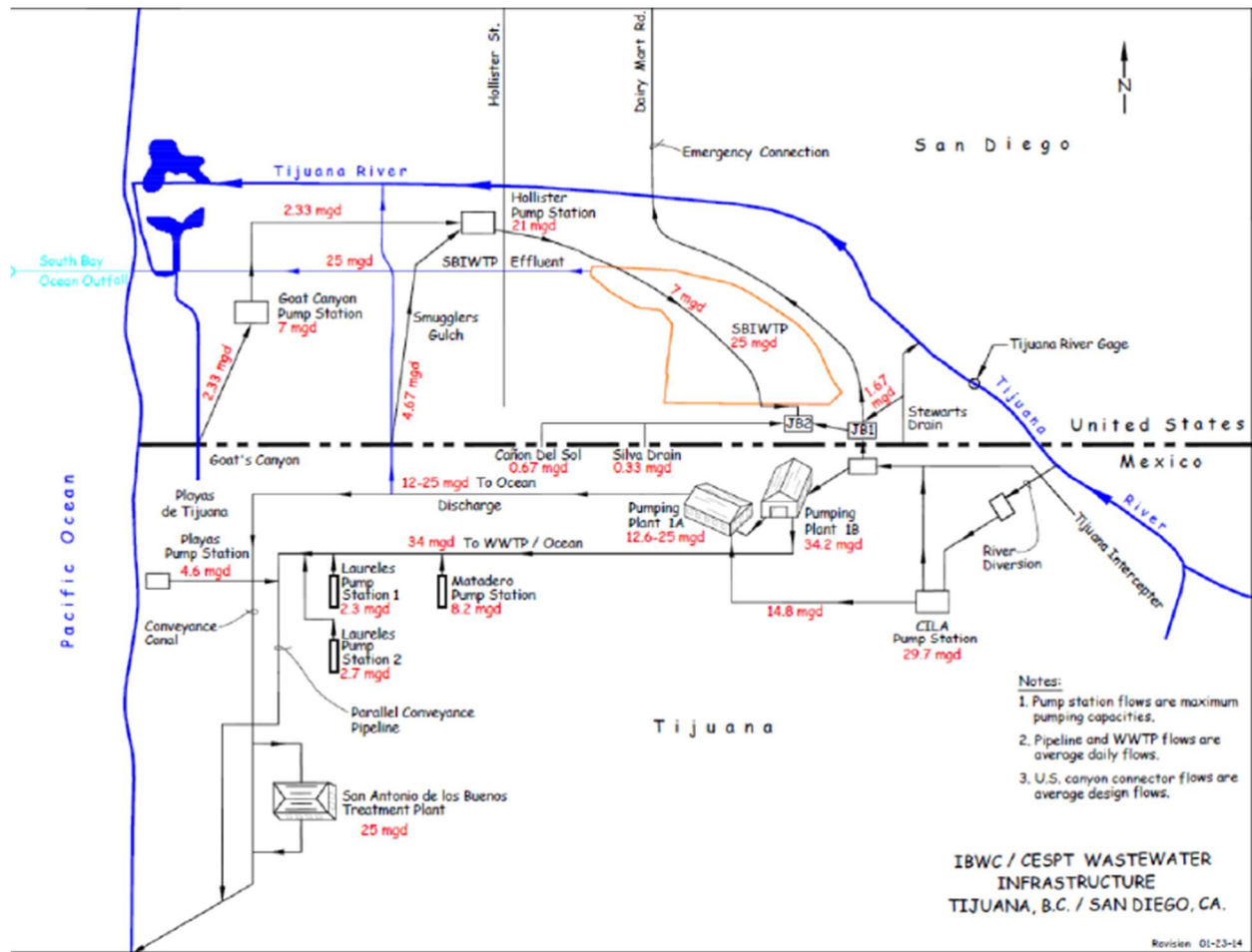
²⁵ Permit Fact Sheet at F-5 to F-7.

²⁶ *Id.*

²⁷ *Id.* at § 2.2, at F-8.

²⁸ Although the Point Loma Wastewater Treatment Plant also discharges through the SBOO, the Facility’s effluent is tested prior to any commingling, thus the self-monitoring reports reflect only discharge from the Facility.

FIGURE 1: FACILITY SITE AND SURROUNDING REGION.



2.1 Pollutants and Pollutant Sources

The Facility only monitors for some of the pollutants associated with these waste streams, as directed by the monitoring requirements of the Permit. However, the Facility’s discharges consistently exceed the Permit’s specified effluent limits for these contaminants. Table 3 below lists the pollutants for which the Facility frequently exceeds its Permit effluent limitations, and a short summary of the impacts of those pollutants on ecosystems and human health.

TABLE 3: POLLUTANTS AND EFFECT ON ECOSYSTEMS	
Pollutant	Effect on Ecosystem and/or Humans
Carbonaceous Biochemical Oxygen Demand 5-day @ 20°C ("CBOD")	CBOD monitors the oxygen that would be consumed by the effluent. When CBOD is exceeded, the effluent depletes the receiving water's oxygen level, which can have disastrous effects on the surrounding ecosystem. Not only does low oxygen affect nearby animals and plants, but it can also create a more hospitable environment for harmful bacteria to multiply and prevent human recreation in the water.
Total Suspended Solids (TSS)	TSS measures the amount of sediment being carried by the effluent. Sediment clogs aquatic animal's gills, blocks sunlight from reaching plants, and damages shellfish.
Settleable Solids	This determines how the sludge in the effluent will settle when it reaches the ecosystem. Exceeding this limitation can also clog gills, block sunlight, and damage shellfish.
Flow Rate	When the Facility exceeds its flow rate, the amount of effluent discharged is exceeded. By increasing the flow amount, the Facility undermines all effluent limitations as the Permit effluent limitations are designed for its Permit flow. Thus, if the Facility discharges more flow, it also discharges additional sediment and toxins, whether in compliance with its effluent limitations or not.
Turbidity	Turbidity is the measure of cloudiness or haziness in the effluent. Exceeding this limitation can also clog gills, block sunlight, and damage shellfish.
Benzidine	This is a carcinogen, toxic to humans and animals.
DDT/DDD/DDE, Sum of P, P & O,P Isomers ("DDT")	This insecticide has disastrous effects on wildlife, including death, impairing the ability to reproduce, and causing illness. The chemical has been banned in the US since 1972. It is a possible carcinogen, toxic to human beings.
Heptachlor Epoxide	An insecticide banned by the US in 1974 due to it being a carcinogen and its persistence in the food chain.

Hexachlorobenzene	An insecticide banned by the US in 1965 due to it being a probable carcinogen and its effects on human health such as liver disease and skin lesions.
Polychlorinated Biphenyls (“PCB”s)	A chemical banned by the US in 1979 and toxic to humans. It is a carcinogen that affects the immune, reproductive, nervous, and endocrine system.
Toxaphene	A chemical banned by the US in 1982 and toxic to humans. This chemical affects the human nervous system.

A significant quantity of the flow routed into, and handled by, the Facility is composed of raw sewage from Tijuana. Thus, the Facility spills, leaks, fails to capture, partially treats, and/or directly discharges high levels of bacteria and pathogens. Indeed, the Tijuana River Valley monitoring requirements of the Permit “are based on the need to identify the impacts from pathogens, toxic pollutants, and trash that bypass the canyon collector systems and enter the Tijuana River Valley,” and will provide information regarding the flows which reach the Pacific Ocean and/or travel to nearby beaches with recreational beneficial uses.²⁹ In order for a waterbody to attain recreational beneficial uses, it must meet bacterial water quality objectives of the Basin Plan and/or Ocean Plan.

3. Violations of the Clean Water Act and NPDES Permit

The CWA prohibits the discharge of any pollutant into a water of the United States without a permit.³⁰ If granted a permit, the discharger must comply with all permit limitations and terms. Each and every violation of an NPDES permit is a violation of the CWA for which the permittee is liable, including liability for civil penalties.³¹

Pursuant to Order R9-2014-0009, IBWC, as the owner/operator, is liable for ongoing violations of the Permit, and civil penalties and injunctive relief are available remedies. Specifically, as detailed below, the Facility fails to comply with the Permit’s (1) effluent limitations; (2) receiving water limitations; (3) discharge prohibitions; (4) reporting requirements for the self-monitoring reports; (5) requirement to provide access to regional scientific studies; and (5) Tijuana River Valley Monitoring Report (“TRVMP”) submission requirements.

3.1 Discharges in Exceedance of Permit Effluent Limitations

The Facility continuously discharges pollutants that result in exceedances of the effluent

²⁹ Permit Fact Sheet at F-66.

³⁰ See 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1).

³¹ Permit Attachment D § 1.1.1.

limitations in its Permit.³² Per Permit Section 4.1.1.1. the Facility “shall maintain compliance” with the effluent limitations therein. As reflected in Exhibit 1, the Facility continuously fails to comply with these effluent limitations. At least **500 effluent limitation** violations have been identified between November 1, 2018 and July 31, 2023. As discussed in Sections 1.4 and 2.2 these effluent limitations place the ecosystem and public health at risk. Significantly, these exceedances include chemicals that have been prohibited in the United States owing to their exceptionally hazardous characteristics, such as DDT and PCBs. Indeed, there have been at least 130 instances of violations involving extremely dangerous, banned chemicals within the United States.

The effluent limitation violations are often orders of magnitude above the prescribed discharge limit. For example, for PCB effluent data in 2023, the violations have been at least 22,122% over the Permit limit. Likewise, the Benzidine discharge amount exceeds the Permit limit in 2023 by at least 15,052%. As noted in Section 1.3, the Receiving Waters are already impaired for PCBs. The discharge of PCBs in exceedance of the Permit limit directly contributes to this impairment.

These violations are continuous and ongoing. Every time IBWC discharges in exceedance of the effluent limitations constitutes a separate and distinct violation of the Permit and CWA. IBWC has been in violation since at least November 1, 2018. CERF and Coastkeeper will update the dates of violations when additional information and data become available.

3.2 Violations of Permit Receiving Water Limitations

The Permit sets forth certain receiving water limitations based on water quality objectives contained in the Basin Plan and Ocean Plan. Specifically, the discharge of waste from the Facility “shall not cause or contribute to violation” of the limitations in the Pacific Ocean.³³ Section 1.3, *supra*, details the many designated Beneficial Uses of the Receiving Waters, which include contact recreation at the beach segments of the Pacific Ocean.

To protect these Beneficial Uses, Permit Section 5.1. specifies bacterial objectives for fecal coliform and enterococci which apply between the shoreline and a distance of three nautical miles from the shoreline, throughout the water column. For fecal coliform at any monitoring location (1) the “thirty-day geometric mean of fecal coliform density [can]not [] exceed 200 CFU per 100 milliliters (mL) calculated based on the five most recent samples from each site; [2] [a] single sample maximum [can]not [] exceed 400 CFU per 100 mL.” For Enterococci, the stations cannot, on a six-week rolling geometric mean, “exceed 30 CFU per 100 mL, calculated weekly” or “[a] statistical threshold value of 110 CFU per 100 mL not to be exceeded by more than 10 percent of samples collected in a calendar month, calculated in a static manner.”³⁴

³² Exhibit 1, enclosed herewith.

³³ Permit § 5.1.

³⁴ *Id.* § 5.1.1.1.1–2.

Additionally, Permit Section 5.1.1.3 requires that for locations where shellfish may be harvested for human consumption, “the median total coliform density (CFU) shall not exceed 70 per 100 ml throughout the water column, and not more than 10 percent of the samples shall exceed 230 per 100 ml.”³⁵

The previously applicable Permit also included bacterial water quality objectives. In the 2014 Permit, the 30-day geometric mean based on the mean of the five most recent samples must not have exceeded 1,000 per 100 mL for total coliform, 200 per 100 mL for fecal coliform, and 35 per 100 mL for enterococcus. Single sample maximums could not exceed 10,000 per 100 mL for total coliform, 400 per 100 mL for fecal coliform, 104 per 100mL for enterococcus, and for total coliform density, 1,000 per 100 mL when fecal coliform/total coliform ratio exceeds 0.1. For areas where shellfish may be harvested for human consumption, the bacteria water quality objective was the same as the current Permit.³⁶ At the time these objectives were applicable, the Facility routinely violated them.

Information available to Coastkeeper and CERF strongly indicate the Facility has discharged and continues to discharge bacteria and pathogens far in excess of the Permit’s bacterial objectives, which cause or contribute to the bacteria impairments of the Pacific Ocean. There are two pathways through which the Facility discharges bacteria which negatively impacts ocean waters: 1) directly into the ocean via the SBOO at DP-001, and 2) via dry weather canyon collector Spill Events, which flow through the Tijuana River and Estuary and into the Pacific Ocean at the mouth of the Tijuana River.

The Facility remains in a shocking state of disrepair. According to IBWC itself, the Facility’s multiple, ongoing infrastructure and maintenance failures have resulted in the regular discharge of untreated and partially treated sewage from the SBOO and canyon collectors. According to IBWC’s own update to the Regional Board, as of September, 2023:

- Only 1 of 6 influent pumps is operable, leading to 25 MGD of untreated sewage flowing into the Tijuana River contributing to extreme contamination of the estuary;
- Only 2 of 7 Activated Sludge Tanks (ASTs) are operable, negatively impacting the quality of the effluent discharged through the Facility’s ocean outfall, which fails to meet permit standards;
- Only 1 of 2 Waste Activated Sludge (WAS) Pumps is running (and it is running inefficiently), also resulting in partially treated sewage being discharged through ocean outfall;
- Only 1 of 2 Unstabilized Sludge Storage Tanks (USST) are operating (and it is operating at 50% capacity), also resulting in partially treated sewage being discharged through ocean outfall;

³⁵ *Id.* § 5.1.1.3.

³⁶ Order No. R9-2014-0009, As Amended by Order Nos. R9-2014-0094, R9-2017-0024, and R9-2019-0012, § V.A.1.

- 0 of 4 pumps are operable at the Hollister canyon collector pumping station, resulting in the surge tank filling with sediment, and transboundary untreated sewage flows through the canyons into the Tijuana River and Estuary;
- 1 of 5 pumps at the primary non-potable water pump station are operable, and 0 of 4 pumps are operable at the secondary pump station, hindering the ability of Facility to pump treated effluent to other plant processes, which negatively impacts all plant processes and components.³⁷

IBWC provided an update at the recent special Regional Board meeting, but the update was equally bleak. Thus, IBWC and Veolia, as owners and/or operators of the Facility, have failed to properly operate and maintain the Facility. This ongoing failure directly results in the regular discharge of untreated and partially treated sewage through both the SBOO and canyon collectors, which correspondingly resulted in the discharge of bacteria in violation of the Permit's bacterial objectives.³⁸

The Facility discharges exceptionally high bacteria levels via dry weather canyon collector Spill Events. The Permit itself notes that IBWC “discharged, discharges, or is suspected of discharging waste in the form of transboundary flows and other waste through the canyon collector systems it owns, operates, and maintains.”³⁹ This applies to dry weather flows covered by the Permit. “Dry weather transboundary flows at the Stewart’s Drain canyon collector have been increasing in frequency due to infrastructure issues in Mexico, as well as the SBIWTP. Between November 2020 and February 2021, there were 19 dry weather transboundary flows at the Stewart’s Drain canyon collector resulting in the release of over 1.2 million gallons of untreated wastewater to waters of the U.S. and/or State.”⁴⁰ Notably, the design capacity of Stewart’s Drain is 1.67 million gallons per day.⁴¹ As such, these nineteen dry weather transboundary flows over a three month period totaled less than the Stewart’s Drain daily capacity, and therefore each of these nineteen discharges of untreated wastewater constitute a dry weather canyon collector Spill Event covered by the Permit.

Further still, these nineteen Spill Events transpired over a short three-month period at one canyon collector. Information available to Coastkeeper and CERF indicate that these dry weather canyon collector Spill Events frequently occur at multiple canyon collectors. Multiple illustrative examples are further discussed in Section 3.3, *infra*.

Moreover, each of these dry weather canyon collector Spill Events discharges extremely

³⁷ IBWC Presentation, *South Bay International Wastewater Treatment Plant, Plant Status Post-Tropical Storm Hilary*.

³⁸ See, e.g., Notice of Violation No. R9-2023-0162.

³⁹ Fact Sheet § 7.2.2; *see also* FN 4 at F-65 (Investigative Order No. R9-2020-0030 “contained extensive findings regarding the Discharger’s discharge of waste through the canyon collector systems and the impact of those discharges on downstream waters of the state. Order No. R9-2020-0030 was rescinded on February 25, 2021.”)

⁴⁰ Permit Fact Sheet at F-66.

⁴¹ Permit Fact Sheet at F.7.

high levels of bacteria. Although IBWC fails to collect bacterial data corresponding to each such Spill Event, the Facility's own monitoring data provides several representative examples. For example, during the January 7, 2022 Spill Event, Enterococcus levels at Stewart's Drain measured 5,000,000 cfu/100ml, over 45,000 times higher than the Basin Plan objective, and Fecal Coliform measured 3,500,000 cfu/100ml, 1,750 times higher than the Basin Plan objective.⁴² These heavily polluted discharges flow into the Tijuana River, and thereafter into the Pacific Ocean. IBWC's own shoreline receiving water monitoring data, which show consistent exceedances of the Permit's bacterial objectives, strongly evidences that the Facility's polluted discharges have caused or contributed to the bacteria impairments for numerous Pacific Ocean shoreline segments near the mouth of the Tijuana River.⁴³

As acknowledged by the IBWC, due to the Facility's state of disrepair, the Facility also regularly discharges untreated and partially treated sewage from the SBOO. Like the canyon collector discharges, these SBOO discharges also contain extremely high concentrations of bacteria in excess of the Permit's bacterial objectives.⁴⁴ Information available to Coastkeeper and CERF indicate these offshore discharges regularly contain concentrations of bacteria similar to those of dry weather canyon collector Spill Events.

IBWC's own offshore receiving water monitoring data strongly evidences that the Facility's polluted SBOO discharges have caused or contributed to ongoing exceedances of bacterial objectives in Permit section 5.1. in and around the offshore/kelp monitoring stations.⁴⁵

As reflected in Exhibit 1, the Facility's monthly monitoring reports for 2023 and 2022 reveal consistent violations of the receiving water bacterial objectives. Additionally, despite the prior Permit iteration's less stringent requirements, according to the Facility's own monitoring data, samples exceeded bacteria water quality objectives for all months in 2021 except September and October; all months in 2020 except for October and December; and all months in 2019 except for August, September, and October. Indeed, the Facility has complied with the Permit's bacteria objectives in only eight months of the last sixty.

The Facility's receiving water violations not only surpass the bacteria objectives; they exceed it in some cases by more than 200 times the objective. For example, in January 2023, in a region where shellfish may be harvested for human consumption, total coliform levels exceeded the bacterial objectives by a factor of 229 in 77 instances.⁴⁶ Similarly, at the shoreline monitoring locations, Enterococci exceeded the objectives by a factor of at least 50 in at least 22 instances. In July 2023, results mirrored those from January, with total coliform levels at shoreline monitoring stations exceeding the objectives by a factor of at least 200 times, on over twenty occasions, and enterococci levels exceeded the shoreline bacterial objectives by a factor of 92 on at least seventeen

⁴² See Exhibit 6.

⁴³ See Exhibit 4; see also Table 1, *supra*.

⁴⁴ See Exhibit 1.

⁴⁵ See Exhibit 4.

⁴⁶ See Exhibit 4.

occurrences.

These chronic violations of bacterial receiving water limitations also exacerbate the consequences of the Facility's effluent exceedances, placing both ecosystems and the humans at significant risk. Given that the Receiving Waters are already impaired for enterococcus, fecal coliform, and total coliform as explained in Section 1.3, *supra*, compliance with the Permit's bacterial objectives should be of utmost priority.

The magnitude of these failures at the shoreline locations, especially during the summer months like July, emphasizes the negative effect. The failure to meet these objectives results in a direct threat to human health through contaminating shellfish beds and exposing the public to harmful levels of bacteria when engaging in direct contact water recreation. Shoreline activities are popular because they are easily accessible. During summer months, when children are not in school and families vacation at the beach, the shoreline is a popular tourist and local destination. However, the chronic bacteria exceedances – both at the Facility discharge point and within the receiving water – have resulted in over 700 days of beach closures.

3.3 Transboundary Flows in Violation of Basin Plan Discharge Prohibitions

The Permit prohibits the discharge of waste not (1) treated by secondary treatment and (2) not in compliance with effluent limitations, per Discharge Prohibition 3.1.⁴⁷ For dry weather canyon collector Spill Events,⁴⁸ if the Facility implements its Spill and Transboundary Flow Event Prevention and Response Plan (“Spill Prevention Plan”), the Facility is deemed in compliance with Discharge Prohibition 3.1 (referred to in this letter as the Spill Prevention Plan exception).⁴⁹ Discharge Prohibition 3.3 requires the Facility to comply with the *Water Quality Control Plan for the San Diego Basin* (“Basin Plan”) chapter 4 discharge prohibitions.⁵⁰ There is no safe harbor provision for compliance with Discharge Prohibition 3.3, and as such, the Spill Prevention Plan exception does not exempt the Facility from the Basin Plan discharge prohibitions.

The chapter 4 Basin Plan Waste Discharge Prohibition (5) states, in relevant part: “The discharge of waste to inland surface waters, except in cases where the quality of the discharge complies with applicable receiving water quality objectives, is prohibited.”⁵¹ Chapter 3 of the Basin Plan confirms the California Toxics Rule (“CTR”) is a “water quality criteria” that applies to California inland surface waters, enclosed bays, and estuaries.⁵² The Tijuana River is an inland surface water, and the Tijuana River Estuary constitutes an estuary, both of which are subject to

⁴⁷ Permit § 3.1.

⁴⁸ A dry weather Canyon Collector Spill Event is defined in the Permit as a dry weather Spill Event when transboundary flows less than or equal to the canyon collector's maximum design capacity is not captured by the canyon collector for treatment at the SBWTP and disposal through the SBOO. Permit § 6.3.2.1.1.2.

⁴⁹ Permit § 3.1.1.

⁵⁰ Permit § 3.3.

⁵¹ Basin Plan, p. 4-31.

⁵² Basin Plan, p. 3-34 to 3-35.

the Basin Plan Discharge Prohibition, and therefore CTR.⁵³ Thus, the Facility's dry weather canyon collector discharges must meet CTR Water Quality Objectives.⁵⁴

The Basin Plan establishes Bacteria Water Quality Objectives for inland receiving waters as well. For contact recreation waters, the receiving water limit for *Enterococci* is 30 cfu/100ml 30-day geometric mean or 110 cfu/100 ml statistical threshold value ("STV"). For non-contact recreation waters, the receiving water limit for Fecal Coliform is 2,000 cfu/100 ml 30-day geometric mean or 4,000 cfu/100ml STV.⁵⁵

Canyon collector transboundary flows frequently and continuously discharge into the Tijuana River Valley at levels well above these Water Quality Objectives.⁵⁶ For example, during the January 7, 2022 transboundary flow event, bacteria levels at Stewart's Drain exceeded Basin Plan Water Quality Objectives by orders of magnitude - *Enterococcus* measured 5,000,000 cfu/100ml, over 45,000 times higher than the Basin Plan objective, and fecal coliform measured 3,500,000 cfu/100ml, 1,750 times higher than the Basin Plan objective.⁵⁷ These extremely polluted discharges flowed into the Tijuana River, Tijuana River Estuary, and eventually the Pacific Ocean at the mouth of the Tijuana River. When Canyon Collector Transboundary Flows result in the bypass or overflow of a canyon collector in dry weather and do not exceed the maximum design capacity of the canyon collector, such flows result in a Spill Event.⁵⁸ Because IBWC routinely fails to upload monitoring data to CIWQS, and in light of IBWC's failure to identify Spill Events, it is difficult to identify Canyon Collector Transboundary Flow Events that also constitute Spill Events.

Nevertheless, it is clear that IBWC canyon collectors are frequently inoperable and therefore many Canyon Collector Transboundary Flow Events constitute Spill Events. For example, on March 7, 2023, IBWC notified the Regional Board that the Goats Canyon and Smugglers Gulch Canyon Collectors were both "out of service" due to excessive sediment buildup. These canyon collectors remained offline until March 10th, while 8 million gallons of transboundary flows reached surface waters.⁵⁹ Similarly, Canyon Collector Daily Inspection logs show canyon collectors are routinely not "operational" while flows bypass the collectors. For example, on January 2, 2022, Goat Canyon was not operational and .375 cubic feet per second was flowing through the collector from Mexico.⁶⁰ On January 19, 2022, Goat Canyon collector was not operational and .833 cubic feet per second bypassed the collector. IBWC reported Spill Events on February 23, 2022 at Goat Canyon and Smuggler's Gulch. These are just a few examples of the Facility's chronic and ongoing infrastructure issues that result in frequent Spill Events.

Though IBWC failed to sample these Spill Events, the Facility has routinely sampled dry

⁵³ Basin Plan at 3-34.

⁵⁴ Permit, § 3.3

⁵⁵ Basin Plan at 3-15, 3-16.

⁵⁶ See Exhibits 5 and 6.

⁵⁷ See Exhibit 6.

⁵⁸ Permit, p. F-51.

⁵⁹ See Morgan Rogers email to sandiego@waterboards.gov dated March 10, 2023.

⁶⁰ IBWC Canyon Collector Daily Inspection Forms, January 2022.

weather canyon collector transboundary flows (some of which also constitute Spill Events) at Stewart's Drain. These samples consistently exceed applicable Water Quality Objectives.⁶¹ It is therefore more likely than not that the Spill Events at Goat Canyon, Smuggler's Gulch, and other canyon collectors similarly exceed numerous Water Quality Objectives, including but not limited to those for: nitrogen, phosphorus, bacteria (including *Enterococcus* and Fecal Coliform), lead, turbidity, dissolved oxygen, and pH.⁶²

Additionally, on February 8, 2022, the Facility experienced a sanitary sewer overflow at the Hollister pump station – which pumps water from the Smuggler's Gulch and Goat Canyon Collectors. Data from this Spill is therefore a good proxy for dry weather Smuggler's Gulch and Goat Canyon Collector Spill Events. As expected, the Hollister pump station data reflects multiple Water Quality Objective exceedances: *Enterococcus* measured 11,000 MPN/100ml, and Fecal Coliform measured 4,000 MPN/100ml. Phosphorus levels were at 6.75 mg/L, almost 68 times the Water Quality Objective of .1 mg/L, and Nitrogen was 57 mg/L, 57 times the Water Quality Objective. Because the Permit requires IBWC to comply with the Basin Plan Discharge Prohibitions, and, as noted above, Discharge Prohibition (5) prohibits the discharge of waste unless in compliance with Water Quality Objectives, IBWC's Spill Event discharges to the Tijuana River and Tijuana River Estuary constitute ongoing Permit violations.

Unfortunately, such dry weather Spill Events are commonplace. Each and every time the Facility discharges into the Tijuana River and/or Estuary in violation of Discharge Prohibition 3.3 constitutes a distinct violation of the Permit and CWA. Thus, each Spill Event constitutes a violation of Discharge Prohibition 3.3. These Discharge Prohibition violations are ongoing and will continue every time IBWC discharges polluted water during its Spill Events in exceedance of applicable Basin Plan Water Quality Objectives. IBWC has been in violation of Discharge Prohibition 3.3 (and the corollary discharge prohibition in the prior iteration of its Permit) since at least December 28, 2018. Coastkeeper and CERF will update the dates of violations when additional information and data become available.

3.4 Failure to Submit Self-monitoring Reports in Accordance with Permit Requirements

As reflected in Exhibits 2 and 3, the Facility has failed to report the self-monitoring reports in accordance with the Permit in a multitude of ways, all of which deprive the public of access to information about their local waters.

The Permit requires that the Facility upload all self-monitoring reports to the California Integrated Water Quality System ("CIWQS").⁶³ For monthly monitoring reports, the deadline for submission is the first calendar month following the month of sampling, for quarterly it is May 1,

⁶¹ Exhibits 5 and 6 (enclosed herewith).

⁶² See Exhibits 5 and 6.

⁶³ Permit Attachment E § 7.2.1.

August 1, November 1, and February 1.⁶⁴ For both the monthly and quarterly reports, the Facility must “arrange all reported data in tabular format.”⁶⁵ The data must also be “summarized to clearly illustrate whether the Facility is operating with interim and/or final effluent limitations.”⁶⁶ The Facility must “attach a cover letter” to the self-monitoring reports, which “identify[ies] violations of the waste discharge; discuss[es] corrective actions taken or planned; and proposed time schedule for corrective actions.”⁶⁷ Finally, the Facility must “add all violations . . . to CIWQS under the Violations tab.”⁶⁸

The Facility does not present all testing parameters in the prescribed tabulated format.⁶⁹ Since December 2020, the Facility has consistently neglected to include the monthly percentage removal of CBOD and TSS in the tabulated format, a mandatory requirement outlined in the Permit. Moreover, the Facility has omitted reporting chronic toxicity data in the tabulated reports since 2019, which is also a clear violation of the Permit. Failing to disclose the results in the specified sections of the Permit deprives the public of an opportunity to stay informed and aware of their water quality conditions.

Shockingly, the Facility has also neglected to document a staggering total of 239 effluent violations as mandated by the Permit in the specified violations tab on CIWQS.⁷⁰ These omissions have the disconcerting effect of misleading the public by fostering a false impression that fewer violations have occurred than the actual number. The Facility is legally required to promptly report violations in accordance with the Permit's explicit requirements. This requirement is not only a legal mandate but a crucial aspect of public trust and accountability.

The reports additionally exhibit a critical deficiency in failing to detail the corrective actions taken for effluent violations within both the self-monitoring cover letter and the violations tab.⁷¹ In a startling number of instances, amounting to at least 235 violations, the Facility neglected to report infractions in either the violations tab or cover letter. Consequently, corrective actions, as mandated by the Permit, were not documented, and possibly not implemented.

Further, over the past five years, the Facility has consistently failed to provide the necessary corrective action descriptions in the cover letter, the designated location specified in the Permit for such information. These lapses in identifying corrective actions, in the correct location, deprive the public of vital insights into the Facility's plans to rectify pollutant loading into the Receiving Waters. This withholding of crucial information directly undermines one of the CWA's fundamental objectives, which is to inform the public about the steps taken to mitigate and reduce

⁶⁴ Permit Attachment E § 7.2.3.

⁶⁵ Permit Attachment E § 7.2.7.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Permit Attachment E § 7.2.7.

⁶⁹ See Exhibit 2, enclosed herewith; Permit Attachment E § 7.2.7.1.

⁷⁰ Exhibit 2; Permit Attachment E § 7.2.7.3.

⁷¹ Exhibit 2; Permit Attachment E § 7.2.7.2.

pollutant loading into our natural environment.

Another issue arises from the Facility's consistent failure to generate and upload cover letters accompanying quarterly reports over the past five years.⁷² These cover letters serve a critical purpose in summarizing Permit compliance on a monthly or quarterly basis and providing a centralized platform for highlighting any instances of non-compliance to the Regional Board and public.

The Facility also failed to submit a report for August 2019 monthly self-monitoring report entirely. The uploaded data represents the quarterly information only. Further, in November 2019, the flow reported in the tabulated format fails to match the flow reported on the cover letter. Given that the flow on the cover letter exceeds the effluent limitation, and the tabulated amount does not, the report only serves to confuse the public and regulators.

Lastly, numerous reports were submitted after the deadline or not at all (Exhibit 3).⁷³ The Permit provides a one-month grace period from the end of the sampling date to when it must be posted to CIWQS. Therefore, IBWC's reporting violations are all the more egregious. IBWC's failure to submit six monthly monitoring reports in 2022 due to a purported software error is likewise inexcusable. "[M]onitoring and reporting requirements are far from 'bare' procedure . . . rather they serve the public's best substantive interest in clean water and the environment."⁷⁴

Further, "these permit violations deprive the public both of information about past discharges and likely future ones" because the public, Coastkeeper, CERF, and residents cannot locate discharge information as outlined in the Permit.⁷⁵ Neglecting to adhere to these procedural obligations erodes the public trust and conveys the message that the government is indifferent to its citizens' ability to monitor the quality of the waters they enjoy. The Facility's failure to follow procedural requirements in reporting violations undermines the CWA's goal to keep the public informed about the discharges into their waterways. Not only can these violations alone form the basis of a CWA citizen suit, but, more importantly, they prevent the public from accessing relevant, complete, accurate, and timely information pertinent to their interest in clean water. *Id.* As a federal agency, IBWC should faithfully execute the letter and spirit of the CWA – not actively frustrate its purpose.

Each time IBWC fails to timely submit reports constitutes a Permit violation. As reflected in Exhibits 2 and 3, IBWC's violations are numerous and ongoing.

⁷² Permit Attachment E § 7.2.7.2. Although some CIWQS entries suggest a cover letter was uploaded, upon further inspection, the cover letter simply re-iterated the monthly monitoring report information and not the quarterly. *See* Monthly Self-monitoring report for 2019 Quarter 4.

⁷³ Due dates for the reports are found in Permit Attachment E § 7.2.3.

⁷⁴ *Inland Empire Waterkeeper v. Corona Clay Co.*, 17 F.4th 825, 833 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 1444 (2022).

⁷⁵ *Id.*

3.5 Failure to Adequately Provide Access to Required Scientific Research

The Permit states that the Facility is to participate in the Coastal Remote Sensing Study (“CRSS”) until the scheduled completion of the study on June 30, 2023. Further, the Facility must include the results of the Coastal Remote Sensing Study in the Biennial Ocean Receiving Water Monitoring Reports (“Biennial Ocean Report”).⁷⁶

The Facility’s Biennial Ocean Report failed to include the results of the CSSR in the 2022 report; depriving the public of meaningful information regarding the intersection of oceanographic data and potential impacts to the SBOO outfall discharge. In late 2022, the Facility was to make a recommendation to the Regional Board about the value of the study. Without reporting the results of the study in the required report, the Facility has deprived the public of meaningful participation, especially when the recommendation is presented to the Board. Further, this failure to follow Permit terms also amounts to a violation of the CWA – a pertinent term that allows meaningful public comment on future studies aimed at better understanding our region’s water quality variables and affecting parameters. Unless and until IBWC complies with the Permit’s reporting and disclosure requirements, it will remain in daily violation of the Permit. IBWC’s violation of the Permit’s monitoring and reporting requirements is ongoing.

3.6 Failure to Submit the TRVMP within 90 Days of the Effective Date of Order No. R9-2021-0001.

The Facility was to develop and issue a TRVMP Work Plan “no later than 90 days after the effective date” of the Permit.⁷⁷ However, the Facility has yet to issue a work plan over two years after the effective date of the Permit. Further, the Permit required the Facility to implement the TVRMP within 90 days after the submission of the plan; thus, by failing to submit the TRVMP, for years, the Facility has failed to monitor the Tijuana Valley as dictated in its Permit.

The TVRMP requires the Facility to set up monitoring locations, identify parameters to be analyzed, for both the water column and sediment, and make a quality assurance plan to meet project goals. By failing to submit this plan and subsequently implement it, the Facility has deprived the public of valuable information about a tidal wetland of global importance. Further, an important purpose of the TVRMP was to provide information on the canyon collectors, which (as noted above) have historically been a significant source of pollution into the estuary and Pacific Ocean. Therefore, the failure to monitor and obtain data surrounding these areas likely exacerbates the sewage overflow issue and results in delays to finding a workable solution to the high bacterial objective exceedances.

⁷⁶ Permit at E-70

⁷⁷ Permit at E-63

4. Relief Sought for Violations of the CWA

In light of the Facility's continuing, egregious CWA violations, CERF and Coastkeeper will seek injunctive relief preventing further violations pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, penalties, and such other relief as permitted by law. Pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), CERF and Coastkeeper will seek to recover their litigation costs, including attorneys' and experts' fees.

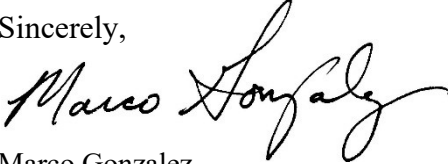
5. Conclusion


CERF and Coastkeeper are willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, CERF and Coastkeeper intend to file a citizen suit under Section 505(a) of the Clean Water Act for IBWC's violations of the Permit. CERF and Coastkeeper have retained legal counsel to represent it in this matter. Please direct all communications to CERF and Coastkeeper's counsel:

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If you wish to pursue settlement discussions in the absence of litigation, please contact Coast Law Group LLP immediately.

Sincerely,

Marco Gonzalez
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Attorneys for Coastal Environmental
Rights Foundation


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VIA U.S. MAIL

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Electronic Enclosures: Exhibits 1-6