



September 27, 2017

Via Certified Mail and Registered Mail, Return Receipt Requested

Edward Drusina, Commissioner
International Boundary and Water Commission – U.S. Section
4171 North Mesa, Suite C-100
El Paso, TX 79902-1441

Steve Smullen, Area Manager
Veolia Water North America – West, LLC
PO Box 430239
San Diego, CA 92143

Re: Notice of Intent to Sue for Violations of Clean Water Act & Notice of Imminent and Substantial Endangerment and Intent to Sue for Violations of the Resource Conservation and Recovery Act by International Boundary and Water Commission and Veolia Water North America – West LLC.

Dear Commissioner Drusina and Mr. Smullen:

The City of Imperial Beach, the San Diego Unified Port District (“District”), and the City of Chula Vista, by and through their counsel listed below, (collectively, “Claimants”) hereby give notice to the United States Section of the International Boundary Water Commission (“IBWC”) and Veolia Water North America – West, LLC (“Veolia”) (collectively, “Dischargers”) of imminent and ongoing violations of the federal Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and of Claimants’ intent to sue resulting from unpermitted discharges and discharges from wastewater collection facilities in violation of the National Pollution Discharge Elimination System (“NPDES”) permit CA0108928 and California Waste Discharge Requirement Order R9-2014-0009 as amended by Order R9-2014-0094 (collectively, “Discharge Permit”). Additionally, Claimants hereby give notice that the IBWC’s and Veolia’s contribution to the handling, transport, and disposal of solid and hazardous wastes in the Tijuana River Valley constitutes an imminent and substantial endangerment to human health and the environment under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.* This notice is without prejudice to any additional rights the Claimants may have and/or claims Claimants may assert against the IBWC, Veolia, or any other parties.

As part of an international effort to control transboundary water pollution emanating from Mexico and crossing into the United States in and around the Tijuana River Valley, the IBWC is responsible for the operation of the South Bay International Wastewater Treatment Plant (“SBIWTP” or “Plant”). IBWC contracts with Veolia for the day to day operation of SBIWTP and

the U.S-side collection facilities that divert wastewater into the Plant. As a matter of course, pollutants are frequently discharged from wastewater collection facilities called “canyon collectors” that operate under the SBIWTP Discharge Permit. Additionally, IBWC flood control infrastructure regularly discharges wastewater and pollutants into the altered course of what is now the mainstem Tijuana River. Both types of flow events cause water containing dangerous pollutants and wastes, including, but not limited to, raw sewage, metals, and chemicals (hereinafter, “wastewater”) to deposit to land adjacent to the treatment works, and to discharge to the Tijuana River and Estuary, and ultimately to the Pacific Ocean. These discharges occur in violation of the Plant’s Discharge Permit and in the absence of a discharge permit in violation of the CWA, and pose an imminent and substantial endangerment to human health and the environment in violation of RCRA.

The City of Imperial Beach is a California General Law City and municipal corporation, duly organized and existing by virtue of the laws of the State of California.¹ The City has the power to sue and be sued.² The City is located in San Diego County, and is bordered by the Tijuana River Valley to the South, the City of San Diego to the West, San Diego Bay to the North, and the Pacific Ocean to the West. Imperial Beach depends on beach and ocean access for its tourist economy, and its constituents rely on those facilities for recreation. Among other injuries, Imperial Beach is deprived of tax revenue, and its residents are deprived of the use and enjoyment of those facilities when the pollution that is the subject of this Notice causes beach closures and restrictions.

The City of Chula Vista is a California Charter City and municipal corporation, duly organized and existing by virtue of the laws of the State of California³ and the Charter of the City of Chula Vista. The City has the power to sue and be sued.⁴ The City is located in San Diego County, California, adjacent to the San Diego Bay, and in close proximity to the Tijuana River Valley and Imperial Beach. Chula Vista constituents regularly use and enjoy the beach and ocean in and around Imperial Beach. Among other injuries, Chula Vista’s citizens are deprived of that use and enjoyment when the pollution that is the subject of this Notice causes beach closures and restrictions.

The San Diego Unified Port District is a public entity created by the San Diego Unified Port District Act.⁵ The Port District is the successor to the powers vested in the cities that make up the Unified Port District, and the powers of those cities related to these properties are vested in the Port District, including the right to sue and be sued.⁶ The District is a trustee for the people of the State of California, and holds and manages tidelands and submerged lands in and around San Diego Bay and certain portions of the Pacific Ocean for the benefit of the people of the State of California, and specifically, “for the promotion of commerce, navigation, fisheries, and recreation.”⁷ The Port District is authorized to use its powers and authority to protect and enhance physical access, natural

¹ See Cal. Gov. Code § 34450, *et seq.*

² *Id.* at § 34501.

³ See *id.* at § 34450, *et seq.*

⁴ *Id.* at § 34501.

⁵ Cal. Harb. & Nav. Code, Appendix 1, § 1 *et seq.*)

⁶ *Id.* at § 70.

⁷ *Id.* at App. 1, §§2, 4, 5, 5.5, 87.

resources, and water quality.⁸ The Port District holds and exercises land management authority over portions of the beach and submerged lands under the Pacific Ocean that are negatively impacted when the pollution that is the subject of this Notice contaminates those resources. Among other injuries, the natural resources held in trust by the District suffer damages when such pollution is present, and the District suffers lost revenue due to beach closures and restrictions.

Each of the Claimants is located in, adjacent to, and/or near the Tijuana River and Estuary, and the Pacific Ocean, in southwestern San Diego County, California. The influx of pollutants to the Tijuana River Valley has caused ongoing, severe pollution problems that have injured property within and near the Claimants' jurisdictions. Moreover, these problems have negatively impacted the Claimants and their constituents, in part due to beach and ocean closures that threaten the public health and welfare, thereby diminishing local economic activity and tax revenue, stigmatizing and devaluing real estate in the region, causing lost business and recreational opportunities, and other impacts. The Claimants will continue to be harmed by these ongoing violations of the CWA and RCRA.

Pursuant to 33 U.S.C. § 1365(b) and 42 U.S.C. § 6972(b)(2)(A), Claimants hereby give notice of their intent to sue the IBWC and Veolia for violations of the CWA and RCRA after 60 days and 90 days of this letter, respectively, unless IBWC and Veolia enter into a binding agreement to cease all illegal discharges of pollutants and disposal of solid and hazardous wastes, and to fully and promptly remediate all current and imminent violations.

I. FACTUAL BACKGROUND

The Tijuana River watershed drains into the Tijuana River, which flows North and crosses the international border near San Ysidro, San Diego, California, eventually emptying into the Pacific Ocean at Imperial Beach, California. Water moving through the watershed crosses the international border via the Tijuana River channel into IBWC's concrete flood control conveyance that diverts the River westerly, away from its historical northerly course. Surface water also moves across the border at several canyons and ravines located to the West of the River. Fugitive wastewater from the City of Tijuana, Baja California, Mexico, is among the waters that move through the drainage. This wastewater contains multiple pollutants and wastes. This problem is exacerbated by inadequate wastewater collection facilities in Tijuana.

IBWC is the federal agency charged with addressing transboundary issues arising out of agreements between the United States and Mexico, including the Treaty of February 3, 1944, for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande. In recognition of the sanitation problems arising out of Mexico's insufficient wastewater collection and treatment infrastructure, IBWC assumed responsibility for treating wastewater generated in Mexico. To that end, IBWC's SBIWTP treats approximately 25 million gallons per day ("Mgpd") of wastewater originating in Mexico, and is permitted to discharge that treated wastewater via the South Bay Ocean Outfall ("SBOO") – and only the SBOO⁹ – which is located several miles offshore of San

⁸ *Id.*

⁹ California Regional Water Quality Control Board San Diego Region, Order No. R9-2014-0009 as Amended by Order No. R9-2014-0094; NPDES No. CA0108928: Waste Discharge Requirements for the United States Section of the International Boundary & Water Commission, South Bay International

Diego, California. SBIWTP has the capacity to treat twice that volume to secondary treatment standards, and a peak primary treatment capacity of up to 100 Mgalpd.¹⁰

To address fugitive wastewater that escapes Tijuana's wastewater collection system and flows into the United States, IBWC constructed five "canyon collectors" at locations West of where the Tijuana River crosses the border. The canyon collectors are situated in natural drainage channels that are tributaries to surface waters, specifically the current course of the Tijuana River and its Estuary. As described in the Discharge Permit,

[c]anyon collectors are concrete channels and basins designed to capture transboundary dry weather flows from Mexico in canyons and ravines draining north across the international border into the United States. There are five canyon collector systems: Goat Canyon Diversion Structure, Smugglers Gulch Diversion Structure, Silva Drain Canyon Collector, Canyon del Sol Collector, and Stewarts Drain Canyon Collector. Captured dry weather flows from these collectors are diverted to the [SBIWTP] for treatment and disposal through the SBOO. Any quantity of flows in the canyons exceeding the maximum design capacity of the canyon collectors overflows the structure and continues flowing north, potentially polluting the Tijuana River, the Tijuana River Valley and Estuary, and Pacific Ocean waters at south San Diego beaches.¹¹

The canyon collectors are part and parcel to the treatment works of the SBIWTP, and are explicitly regulated by the Discharge Permit.¹² They are designed such that fugitive flows collect in a concrete channel, which directs them to a drain regulated by a valve. When flow in the channel exceeds capacity, or when the valve is closed as during rain events,¹³ wastewater containing pollutants escapes from the collector and either deposits those materials adjacent to the collector facilities, or discharges them to the natural drainages, and subsequently the Tijuana River and Estuary, in violation of the Discharge Permit, the CWA, and RCRA.

Within the main river channel and in Yogurt Canyon (the westernmost transboundary drainage; IBWC has not constructed a canyon collector at this drainage), regular wastewater flow events cause severe and extensive pollution. Such events typically occur due to failures of the wastewater diversion infrastructure in Mexico, which IBWC co-manages with its Mexican counterpart, the Comision Internacional de Limites y Agua (CILA). Upon such failures, sewage, industrial waste, and other materials that should have been conveyed to the SBIWTP instead continue through the river channel, which flows into the United States and through IBWC's concrete-lined channel (hereinafter referred to as "flood control conveyance" or "conveyance").

Wastewater Treatment Plant, Discharge to the Pacific Ocean via the South Bay Ocean Outfall, 4 (2014) ("Discharge Permit").

¹⁰ *Id.*, at F-7.

¹¹ *Id.*, at F-5.

¹² *Id.*, at F-38; see also 33 U.S.C. § 1292(2)(A) (the term "treatment works" means any devices and systems used in the storage, treatment, recycling, and *reclamation* of municipal sewage or industrial wastes of a liquid nature (emphasis added)).

¹³ Veolia, Spill and Transboundary Flow Event Prevention and Response Plan, 7, attachment E(i) at 2 (2014).

The conveyance terminates 0.9 miles downstream of the border, at which point wastewater discharges, without undergoing any water quality treatment, into what has become the altered course of the Tijuana River (since construction of the flood control infrastructure) immediately East of the SBIWTP.¹⁴

These transboundary pollution discharges are often highly destructive, given their volume and given that they typically flow through the unlined main river channel directly into the Tijuana Estuary at Yogurt Canyon. Although the point at which the flood control conveyance discharges occur is located within a stone's throw of the SBIWTP, the SBIWTP does not detain that pollution or divert it into the SBIWTP for treatment – despite the frequency of transboundary pollution events that warrant such infrastructure. Accordingly, that untreated wastewater and its constituent wastes and pollutants simply deposit into the River Valley, or flow through the River, where they pool on riverbanks, invade private property, and flow eventually to the Pacific.

II. CLEAN WATER ACT VIOLATIONS

a. The CWA and Applicable Discharge Prohibitions.

A primary purpose of the Clean Water Act is to eliminate all discharges of pollutants to navigable waters.¹⁵ The National Pollution Discharge Elimination System (NPDES) is a permitting program under the Clean Water Act that allows discharges of pollutants under certain conditions.¹⁶ The Clean Water Act defines a “discharge of a pollutant” as the addition of any pollutant to navigable waters from a point source.¹⁷ Discharge of a pollutant without or in violation of a NPDES permit is a violation of the Clean Water Act.¹⁸ Federal entities, including IBWC, are subject to the Clean Water Act and state implementation thereof.¹⁹

The Clean Water Act defines a point source as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container...”²⁰ The canyon collectors include concrete channels and conveyances that collect and transport wastewater from one point to another, and therefore are point sources within the meaning of the Clean Water Act. The flood control conveyance is also a point source. It is a discrete concrete channel with banked sides, which extends from the U.S./Mexico border to approximately 0.9 miles downstream of the border. It was constructed to redirect river flows away from the natural river course, where high flows would injure residential areas, to mostly uninhabited lowlands outside of the natural river course.

“Navigable waters” are defined as the “waters of the United States, including the territorial seas.” Discharges from the concrete flood control conveyance enter the Tijuana Riverbed in its

¹⁴ IBWC, Tijuana River Flood Control Project (TRFCP), *available at* https://www.ibwc.gov/Mission_Operations/TJ_River_FCP.html.

¹⁵ 33 U.S.C. § 1251(a)(1).

¹⁶ *See, e.g.*, 33 U.S.C. § 1342.

¹⁷ 33 U.S.C. § 1362(12).

¹⁸ 33 U.S.C. § 1311(a).

¹⁹ 33 U.S.C. § 1323.

²⁰ 33 U.S.C. § 1362(14).

altered course, and flow through to main River channel and Estuary, and ultimately the Pacific Ocean. Discharges from the canyon collectors enter the Tijuana River and/or Estuary directly, or enter ravines and natural drainages that are tributaries of those receiving waters. Each of these waterways is a navigable water within the meaning of the Clean Water Act because it is “navigable” in the traditional sense of the word, or because it is a tributary to a navigable water that significantly affects the physical, biological and chemical integrity that navigable water.²¹

The Discharge Permit prohibits the discharge of pollutants from the SBIWTP facility at any point source other than the SBOO.²² Any discharge of pollutants from the canyon collectors is a discharge other than from the SBOO, and is therefore a violation of the Discharge Permit.

b. Description of Continuing and Imminent CWA Violations.

i. Unpermitted Discharges from the Concrete Flood Control Conveyance

IBWC spill reports to the San Diego Regional Water Quality Control Board (the “Board”) demonstrate routine and substantial discharges from IBWC’s flood control conveyance into the unimproved Tijuana River Valley, including to areas that, prior to construction of the flood control conveyance, were not part of the natural river course.²³ Because IBWC does not hold a NPDES permit for discharges of pollutants from its flood control infrastructure, all discharges from the flood control conveyance, including those listed in Table 1, constitute unpermitted discharges of pollutants in violation of 33 U.S.C. § 1311(a). IBWC, which maintains jurisdiction over its flood control conveyance, is the discharger responsible for such violations.

Known discharges from the flood control conveyance are not regularly sampled for the complete range of water quality parameters necessary to understand the full impact of these pollution events. However, routine bacteriological sampling at Dairy Mart Bridge, just downstream of the termination of the conveyance, indicates that, at a minimum, pollutants including e. coli, total coliforms, and enterococcus are present in virtually every flow event that discharges from the flood control conveyance into surface water in the riverbed.

²¹ See, e.g., *N. Cal. River Watch v. City of Healdsburg*, 496 F.3d 993, 996 (9th Cir.2007) (interpreting *Rapanos v. United States*, 547 U.S. 715 (2006)) (ponds that seeped into a river significantly affected the physical, biological, and chemical integrity of the river and were therefore navigable waters within meaning of CWA); *Cal. Sportfishing Protection Alliance v. Chico Scrap Metal, Inc.*, 124 F.Supp.3d 1007, 1017-18 (E.D. Cal. 2015) (ravine flowing into creek flowing into river was a navigable water); *Eoff v. E.P.A.*, 2015 WL 2405658 (E.D. Ark. 2015) (seasonal creek with 20 flow events per year is a water of the United States); *U.S. v. HVI Cat Canyon, Inc.*, 213 F.Supp.3d 1249, 1266-71 (discussing the liberal interpretation of “waters of the United States” standard).

²² See Discharge Permit at 1, Table 2 (naming only one discharge location under the permit, i.e. the SBOO).

²³ San Diego Regional Water Quality Control Board, International Boundary and Water Commission Spill Reports available at http://www.swrcb.ca.gov/sandiego/water_issues/tijuana_river_valley_strategy/spill_report.shtml.

Table 1 describes known dry-weather discharges from the flood control conveyance based on IBWC reporting to the San Diego Regional Water Quality Control Board.²⁴ Additional discharges occur during virtually every wet weather event, but IBWC does not report wet weather discharges to the Board. Despite that lack of reporting, the available data demonstrates routine sewage-laden flows that, coupled with their substantial volume, demonstrate an extremely grave lack of pollution-control infrastructure.

Date	Volume (Gal.)	Vector	Description
9/12/2017	192,000	Flood Control Conveyance	Malfunction of level sensors at Pump Station CILA
9/9/2017	3.9 million	Flood Control Conveyance	Water system overflow exceed capacity of Pump Station CILA
8/17/2017	121,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
8/7/2017	76,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
7/31/2017	1.72 million	Flood Control Conveyance	Power fluctuations at Pump Station CILA forced shutdown of that facility
6/12/2017	66,000	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
6/10/2017	161,670	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
6/9/2017	42,800	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
5/25/2017	335,000	Flood Control Conveyance	Shutdowns at Pump Station CILA
5/21/2017	400,000	Flood Control Conveyance	Traffic accident resulting in shutdown at pump station CILA
2/24/2017	256 million	Flood Control Conveyance	Failure at Diversion/pump station CILA
7/4/2016	33,000	Flood Control Conveyance	Unknown
7/2/2016	1.32 million	Flood Control Conveyance	Unknown
4/5/2016	4.86 million	Flood Control Conveyance	Unknown
2/12/2016	370,000	Flood Control Conveyance	River flow exceeded capacity of pump station CILA
1/2016	27.28 million	Flood Control Conveyance	Eleven distinct spills attributable to potable water line break and pump station capacity exceedance

²⁴ San Diego Regional Water Quality Control Board, International Boundary and Water Commission Spill Reports *available at* http://www.swrcb.ca.gov/sandiego/water_issues/tijuana_river_valley_strategy/spill_report.shtml.

Date	Volume (Gal.)	Vector	Description
12/11/2015	2.06 million	Flood Control Conveyance	Clogged intake screen at CILA diversion
11/19/2015	1.31 million	Flood Control Conveyance	Clogged intake screen at CILA diversion
10/17-18/2015	1.3 million	Flood Control Conveyance	Motor pump failure at pump station CILA
10/14/2015	1.124 million	Flood Control Conveyance	Motor control failure at pump station CILA
10/13/2015	1.35 million	Flood Control Conveyance	Pump failures
9/19-22/2015	7.74 million	Flood Control Conveyance	Pump station CILA breakdowns
8/1-8/2015	Unknown	Flood Control Conveyance	Five distinct spills due to clogged intake screens at diversion
2/3-16/2015	Unknown	Flood Control Conveyance	Five distinct spills due to trash clog at diversion intake screen.
1/2015	Unknown	Flood Control Conveyance	Ten distinct spills due to trash clog at diversion intake screen.

ii. Canyon Collector Discharges in Violation of Discharge Permit

IBWC's monthly reports to the San Diego Regional Water Quality Control Board and documentation of daily inspections of the canyon collectors describe nearly continuous unpermitted discharges from the canyon collectors. Each of the discharges listed in Table 2 constitutes an illegal discharge in violation of the Discharge Permit and the Clean Water Act. Thus, the standard violated for each of the wastewater discharge events listed in Table 2 is California Waste Discharge Requirement R9-2014-00094 as amended by R9-2014-0094, NPDES Permit No. CA0108928, at section III. A., and 33 U.S.C. § 1311(a). IBWC as owner of the SBIWTP treatment works and Veolia as operator of the SBIWTP treatment works are the dischargers responsible for the discharges listed.

Water quality samples of these discharges are collected infrequently. There are more than three hundred documented discharges since August 2015. While sampling data is available for only eight discharges, the pollutants present in each of the sampled discharges are largely uniform. This demonstrates a likelihood that these pollutants are present in virtually all the unsampled discharges. Indeed, the Discharge Permit contemplates that wastewater flows entering the canyon collectors and discharged therefrom are attributable to many sources, including wastewater effluent treated in Mexico (and not necessarily to the standards required by the Clean Water Act), potable water leaks, sewer line leaks and spills, discharges from unsewered areas, and other failures and breakdowns of the wastewater collection infrastructure in Mexico, and therefore requires sampling for specific pollutant parameters likely to be present in those discharges when

sampling takes place.²⁵ The wastewater discharges described in Table 2 contain several pollutants, including, at a minimum, biological oxygen demand; total suspended solids; total dissolved solids; turbidity; Ph; total Nitrogen; total Phosphorous; enterococcus; fecal coliforms and other coliforms; dissolved oxygen; pesticides; surfactants; priority pollutants as specified in 40 C.F.R. § 131.38; toxics; and likely many others.

Despite data gaps, the very fact of these discharges is evidence of a disturbing pattern of untreated wastewater emptying to the natural drainages that are tributaries to the Tijuana River, Estuary, and Pacific Ocean. Despite the regularity with which the discharges occur and are documented, nothing has been done to remedy the underlying cause: insufficient capacity at the canyon collectors to handle typical and expected wastewater flows through the natural drainages – despite the fact that the SBIWTP is operating below capacity and could have treated this wastewater had it been captured.²⁶ Until the canyon collectors have been retrofitted to handle normal wastewater flows, in wet or dry weather, pollutants will continue to discharge from SBIWTP facilities and ultimately to the Pacific Ocean.

Claimants note that the data presented below is incomplete: records of canyon inspections date back only to 2015, when daily canyon collector inspections became obligatory under the Discharge Permit as renewed on August 1, 2014. The canyon collectors are known to have regularly discharged wastewater prior to 2015.

Table 2 represents Type A and Facilities Spills that were reported in IBWC’s monthly report.²⁷ The pollutants present in each of these discharges are listed, where sampling data is available from CIWQS. The receiving water is indicated.

Date	Location	Gallons (est.)	Pollutants Present²⁸	Receiving Water
6/27/2017	Canyon del Sol	<5,500,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; Methylene Blue Active Substances; pH; P; TDS; total N; TSS; turbidity; Cr; Cu; bromodichloromethane; bromoform; chloroform; dibromochloromethane; 2,4,6-trichlorophenol; bis(2-ethylhexyl)phthalate; butyl benzyl	Tijuana River

²⁵ Discharge Permit at E-33.

²⁶ *See id.* at F-7.

²⁷ Data from monthly spill report letters unless otherwise noted. Available at <http://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportEsmrAtGlanceServlet?inCommand=reset> (search for facility name “South Bay International Wastewater Treatment Plant”).

²⁸ From sampling data attached to IBWC Monthly available on CIWQS, unless otherwise noted.

Date	Location	Gallons (est.)	Pollutants Present²⁸	Receiving Water
			phthalate; Di-n-butyl phthalate; asbestos structures; 2,3,7,8-TCDD	
	Canyon del Sol	<5,500,000	Sampling report not posted to CIWQS as of 9/19/17	Tijuana River
5/24/2017	Stewart's Drain	3,800	No samples recovered ²⁹	Tijuana River
5/21/2017	Stewart's Drain	1,560	No samples recovered ³⁰	Tijuana River
4/30/2017	Goat Canyon	645,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Pb; chloroform; 1,4-dochlorobenzene; tetrachloroethene; toluene; Hg; Sb; Ar; Be; Cd; Cr; Pb; Se; Ag; Tl; Zn; Aldrin; HCH-gamma (Lindane); 4,4-DDT; Dieldrin; Heptachlor; benzene; chlorobenzene; 1,1-dichloroethene; toluene; trichloroethene	Goat Canyon Drainage
4/24/17	Stewart's Drain	12,850	Enterococcus; Fecal Coliforms; Total Coliforms; BOD; DO; Methylene blue; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Zn; chloroform; 1,4-Dichlorobenzene; tetrachloroethene; toluene;	Tijuana River
3/1/2017	Goat Canyon	145,000	Ammonia as N; BOD; Carbonaceous BOD; Chlorine; floatables; Methylene blue; pH; P; TSS; TDS; turbidity; VSS; Al; Cu; Fe; Mg; Ni; Zn; trash	Goat Canyon Drainage
9/5/2016	Canyon Del Sol	390	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; Ni; Sb; Zn; TCE; Hg; Ar; Be; Cd; Cr; Cu; Pb; Se; Ag; Tl; Zn; benzene; chlorobenzene; 1,1-dichloroethene; toluene; trichloroethene; acenaphthene; 2-chlorophenol; 4-chloro-3-methylphenol; 1,2-dichlorobenzene; 2,4-	Canyon del Sol drainage

²⁹ IBWC, Monthly Spill Report for May 2017 (June 30, 2017).

³⁰ *Id.*

Date	Location	Gallons (est.)	Pollutants Present²⁸	Receiving Water
			dinitrotoluene; 4-nitrophenol; N-nitrosodi-n-propylamine; pentrahydrochlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	
1/28/2016	Stewart's Drain	2,200	Enterococcus; fecal coliforms; total coliforms; BOD; DO; methylene blue active substances; pH; P; TDS; total N; TSS; turbidity; Cu; Hg; Ni; Zn; bromodichloromethane; chloroform; dibromochloroethane; 1,4-dichlorobenzene; tetrachloroethene; toluene	Stewart's Drain Drainage
4/19/2015	Canyon Del Sol	2,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; methylene blue active substances; pH; P; TDS; total N; TSS; turbidity; Cu; Ni; Zn; Sb; Ar; Be; Cd; Cr; Pb; Se; Ag; Tl; Hg; Aldrin; HCH-gamma (Lindane); 4,4-DDT; Dieldrin; Heptachlor; benzene; chlorobenzene; 1,1-Dichloroethene; toluene; trichloroethene; Acenaphthene; 2-chlorophenol; 4-chlor-3-methylphenol; 1,4-dichlorobenzene; 2,4-dinitrotoluene; 4-nitrophenol; N-nitrosodi-n-propylamine; pentrahydrochlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	Tijuana River

Table 3 describes discharges from the canyon collectors that were documented in daily inspection reports, but not in IBWC's monthly Monitoring Results reports. These discharges are reported by inspectors as either "signs of sewage overflows in [the] past 24 hours," or as flows that were observed to have broken containment from the canyon collector. Beyond the daily canyon collector inspection reports, there is no investigation by the dischargers as to the cause of these discharges, no estimate of the total volume of the discharge, no estimate of the volume of the discharge that flowed to the Tijuana River and beyond, and no water quality sampling of the discharged wastewater to identify constituent pollutants. The receiving water for each discharge in Table 3 is the natural drainage channel for which the pertinent canyon collector is named, which are tributaries to the Tijuana River or Estuary, and ultimately the Pacific Ocean. The Dischargers are invited to refer to their Daily Canyon Collector Inspection Reports to pinpoint each of the discharges listed below.

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
1	5/19/2017	Smuggler's Gulch
2	5/7/2017	Goat Canyon
3	5/7/2017	Smuggler's Gulch
4	5/7/2017	Canyon del Sol
5	5/7/2017	Silva Drain
6	5/7/2017	Stewart's Drain
7	4/29/2017	Canyon del Sol
8	3/1/2017	Smuggler's Gulch
9	2/28/2017	Goat Canyon
10	2/28/2017	Smuggler's Gulch
11	2/27/2017	Goat Canyon
12	2/27/2017	Canyon del Sol
13	2/27/2017	Stewart's Drain
14	2/27/2017	Smuggler's Gulch
15	2/27/2017	Silva Drain
16	2/26/2017	Smuggler's Gulch
17	2/20/2017	Goat Canyon
18	2/20/2017	Smuggler's Gulch
19	2/19/2017	Goat Canyon
20	2/19/2017	Canyon del Sol
21	2/19/2017	Stewart's Drain
22	2/19/2017	Smuggler's Gulch
23	2/19/2017	Silva Drain
24	2/18/2017	Goat Canyon
25	2/18/2017	Canyon del Sol
26	2/18/2017	Stewart's Drain
27	2/18/2017	Smuggler's Gulch
28	2/18/2017	Silva Drain
29	2/12/2017	Goat Canyon
30	2/7/2017	Goat Canyon
31	2/7/2017	Canyon del Sol
32	2/7/2017	Stewart's Drain
33	2/7/2017	Smuggler's Gulch
34	2/7/2017	Silva Drain
35	1/24/2017	Goat Canyon
36	1/24/2017	Smuggler's Gulch
37	1/24/2017	Canyon del Sol
38	1/24/2017	Silva Drain
39	1/24/2017	Stewart's Drain
40	1/23/2017	Goat Canyon
41	1/23/2017	Smuggler's Gulch
42	1/23/2017	Canyon del Sol

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
43	1/23/2017	Silva Drain
44	1/23/2017	Stewart's Drain
45	1/22/2017	Goat Canyon
46	1/22/2017	Smuggler's Gulch
47	1/22/2017	Canyon del Sol
48	1/22/2017	Silva Drain
49	1/22/2017	Stewart's Drain
50	1/21/2017	Goat Canyon
51	1/21/2017	Smuggler's Gulch
52	1/20/2017	Goat Canyon
53	1/20/2017	Canyon del Sol
54	1/20/2017	Stewart's Drain
55	1/20/2017	Smuggler's Gulch
56	1/20/2017	Silva Drain
57	1/19/2017	Goat Canyon
58	1/19/2017	Canyon del Sol
59	1/19/2017	Stewart's Drain
60	1/19/2017	Smuggler's Gulch
61	1/19/2017	Silva Drain
62	1/14/2017	Goat Canyon
63	1/14/2017	Canyon del Sol
64	1/14/2017	Stewart's Drain
65	1/14/2017	Smuggler's Gulch
66	1/14/2017	Silva Drain
67	1/13/2017	Goat Canyon
68	1/13/2017	Canyon del Sol
69	1/13/2017	Stewart's Drain
70	1/13/2017	Smuggler's Gulch
71	1/13/2017	Silva Drain
72	1/12/2015	Goat Canyon
73	1/12/2017	Smuggler's Gulch
74	1/12/2017	Canyon del Sol
75	1/11/2017	Goat Canyon
76	1/10/2017	Goat Canyon
77	1/10/2017	Canyon del Sol
78	1/9/2017	Canyon del Sol
79	1/8/2017	Goat Canyon
80	1/8/2017	Stewart's Drain
81	1/6/2017	Goat Canyon
82	1/6/2017	Canyon del Sol
83	1/6/2017	Stewart's Drain
84	1/6/2017	Smuggler's Gulch
85	1/2/2017	Goat Canyon

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
86	1/1/2017	Goat Canyon
87	1/1/2017	Smuggler's Gulch
88	1/1/2017	Canyon del Sol
89	1/1/2017	Silva Drain
90	1/1/2017	Stewart's Drain
91	12/31/2016	Goat Canyon
92	12/31/2016	Smuggler's Gulch
93	12/31/2016	Canyon del Sol
94	12/31/2016	Silva Drain
95	12/30/2016	Goat Canyon
96	12/30/2016	Smuggler's Gulch
97	12/30/2016	Stewart's Drain
98	12/27/2016	Goat Canyon
99	12/25/2016	Goat Canyon
100	12/25/2016	Smuggler's Gulch
101	12/24/2016	Goat Canyon
102	12/24/2016	Smuggler's Gulch
103	12/24/2016	Stewart's Drain
104	12/23/2016	Goat Canyon
105	12/23/2016	Smuggler's Gulch
106	12/23/2016	Canyon del Sol
107	12/23/2016	Silva Drain
108	12/23/2016	Stewart's Drain
109	12/22/2016	Goat Canyon
110	12/22/2016	Smuggler's Gulch
111	12/22/2016	Canyon del Sol
112	12/22/2016	Silva Drain
113	12/22/2016	Stewart's Drain
114	12/17/2016	Canyon del Sol
115	12/17/2016	Silva Drain
116	12/17/2016	Stewart's Drain
117	12/17/2016	Goat Canyon
118	12/17/2016	Smuggler's Gulch
119	12/16/2016	Goat Canyon
120	12/16/2016	Smuggler's Gulch
121	12/16/2016	Canyon del Sol
122	12/16/2016	Silva Drain
123	12/16/2016	Stewart's Drain
124	11/28/2016	Goat Canyon
125	11/28/2016	Smuggler's Gulch
126	11/28/2016	Canyon del Sol
127	11/28/2016	Silva Drain
128	11/28/2016	Stewart's Drain

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
129	11/27/2016	Goat Canyon
130	11/27/2016	Smuggler's Gulch
131	11/27/2016	Canyon del Sol
132	11/27/2016	Silva Drain
133	11/27/2016	Stewart's Drain
134	11/22/2017	Goat Canyon
135	11/22/2017	Smuggler's Gulch
136	11/22/2017	Canyon del Sol
137	11/22/2017	Silva Drain
138	11/22/2017	Stewart's Drain
139	11/21/2016	Goat Canyon
140	11/21/2016	Smuggler's Gulch
141	11/21/2016	Canyon del Sol
142	11/21/2016	Silva Drain
143	11/21/2016	Stewart's Drain
144	11/20/2016	Silva Drain
145	9/22/2016	Goat Canyon
146	9/22/2016	Smuggler's Gulch
147	9/22/2016	Stewart's Drain
148	9/21/2016	Goat Canyon
149	9/21/2016	Smuggler's Gulch
150	9/21/2016	Canyon del Sol
151	9/21/2016	Silva Drain
152	9/21/2016	Stewart's Drain
153	9/20/2016	Goat Canyon
154	9/20/2016	Smuggler's Gulch
155	9/20/2016	Canyon del Sol
156	9/20/2016	Silva Drain
157	9/20/2016	Stewart's Drain
158	7/7/2016	Silva Drain
159	5/8/2016	Goat Canyon
160	5/8/2016	Smuggler's Gulch
161	5/8/2016	Canyon del Sol
162	5/8/2016	Silva Drain
163	5/8/2016	Stewart's Drain
164	5/7/2016	Goat Canyon
165	5/7/2016	Smuggler's Gulch
166	5/7/2016	Canyon del Sol
167	5/7/2016	Silva Drain
168	5/7/2016	Stewart's Drain
169	5/6/2016	Goat Canyon
170	5/6/2016	Smuggler's Gulch
171	5/6/2016	Canyon del Sol

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
172	5/6/2016	Silva Drain
173	5/6/2016	Stewart's Drain
174	4/10/2016	Goat Canyon
175	4/10/2016	Smuggler's Gulch
176	4/10/2016	Canyon del Sol
177	4/10/2016	Silva Drain
178	4/10/2016	Stewart's Drain
179	4/8/2016	Goat Canyon
180	4/8/2016	Smuggler's Gulch
181	4/7/2016	Goat Canyon
182	4/7/2016	Smuggler's Gulch
183	4/7/2016	Silva Drain
184	4/7/2016	Stewart's Drain
185	3/12/2016	Goat Canyon
186	3/12/2016	Smuggler's Gulch
187	3/12/2016	Canyon del Sol
188	3/12/2016	Silva Drain
189	3/12/2016	Stewart's Drain
190	3/9/2016	Goat Canyon
191	3/8/2016	Goat Canyon
192	3/8/2016	Smuggler's Gulch
193	3/8/2016	Canyon del Sol
194	3/8/2016	Silva Drain
195	3/8/2016	Stewart's Drain
196	3/7/2016	Goat Canyon
197	3/7/2016	Smuggler's Gulch
198	3/7/2016	Canyon del Sol
199	3/7/2016	Silva Drain
200	3/7/2016	Stewart's Drain
201	3/6/2016	Goat Canyon
202	3/6/2016	Smuggler's Gulch
203	3/6/2016	Canyon del Sol
204	3/6/2016	Silva Drain
205	3/6/2016	Stewart's Drain
206	2/2/2016	Goat Canyon
207	2/1/2016	Goat Canyon
208	2/1/2016	Smuggler's Gulch
209	2/1/2016	Canyon del Sol
210	2/1/2016	Silva Drain
211	2/1/2016	Stewart's Drain
212	1/31/2016	Canyon del Sol
213	1/31/2016	Silva Drain
214	1/31/2016	Stewart's Drain

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
215	1/29/2016	Stewart's Drain
216	1/24/2016	Canyon del Sol
217	1/24/2016	Stewart's Drain
218	1/16/2016	Goat Canyon
219	1/10/2016	Goat Canyon
220	1/10/2016	Smuggler's Gulch
221	1/9/2016	Goat Canyon
222	1/9/2016	Smuggler's Gulch
223	1/9/2016	Canyon del Sol
224	1/9/2016	Silva Drain
225	1/9/2016	Stewart's Drain
226	1/8/2016	Goat Canyon
227	1/8/2016	Smuggler's Gulch
228	1/8/2016	Canyon del Sol
229	1/8/2016	Silva Drain
230	1/8/2016	Stewart's Drain
231	1/7/2016	Goat Canyon
232	1/7/2016	Smuggler's Gulch
233	1/7/2016	Canyon del Sol
234	1/7/2016	Silva Drain
235	1/7/2016	Stewart's Drain
236	1/6/2016	Goat Canyon
237	1/6/2016	Smuggler's Gulch
238	1/6/2016	Canyon del Sol
239	1/6/2016	Silva Drain
240	1/6/2016	Stewart's Drain
241	1/5/2016	Goat Canyon
242	1/5/2016	Smuggler's Gulch
243	1/5/2016	Canyon del Sol
244	1/5/2016	Silva Drain
245	1/5/2016	Stewart's Drain
246	1/4/2016	Goat Canyon
247	1/4/2016	Smuggler's Gulch
248	1/4/2016	Canyon del Sol
249	1/4/2016	Silva Drain
250	1/4/2016	Stewart's Drain
251	12/29/2015	Goat Canyon
252	12/29/2015	Smuggler's Gulch
253	12/29/2015	Stewart's Drain
254	12/28/2015	Goat Canyon
255	12/23/2015	Goat Canyon
256	12/23/2015	Smuggler's Gulch
257	12/23/2015	Canyon del Sol

Table 3 – Other Canyon Collector Overflows		
#	Date	Canyon Collector
258	12/23/2015	Silva Drain
259	12/23/2015	Stewart's Drain
260	12/22/2015	Goat Canyon
261	12/22/2015	Smuggler's Gulch
262	12/22/2015	Canyon del Sol
263	12/22/2015	Silva Drain
264	12/22/2015	Stewart's Drain
265	12/20/2015	Goat Canyon
266	12/20/2015	Smuggler's Gulch
267	12/19/2015	Goat Canyon
268	12/19/2015	Smuggler's Gulch
269	12/14/2015	Goat Canyon
270	12/14/2015	Smuggler's Gulch
271	12/14/2015	Canyon del Sol
272	12/14/2015	Silva Drain
273	12/14/2015	Stewart's Drain
274	11/28/2015	Goat Canyon
275	11/28/2015	Smuggler's Gulch
276	11/28/2015	Canyon del Sol
277	11/28/2015	Silva Drain
278	11/28/2015	Stewart's Drain
279	11/27/2015	Goat Canyon
280	11/27/2015	Smuggler's Gulch
281	11/16/2015	Goat Canyon
282	11/15/2015	Goat Canyon
283	11/15/2015	Smuggler's Gulch
284	11/15/2015	Canyon del Sol
285	11/15/2015	Stewart's Drain
286	11/10/2015	Goat Canyon
287	11/10/2015	Smuggler's Gulch
288	11/4/2015	Canyon del Sol
289	11/4/2015	Stewart's Drain
290	11/1/2015	Goat Canyon
291	10/6/2015	Goat Canyon
292	10/6/2015	Smuggler's Gulch
293	10/6/2015	Canyon del Sol
294	10/6/2015	Silva Drain
295	10/6/2015	Stewart's Drain
296	10/5/2015	Goat Canyon
297	10/5/2015	Smuggler's Gulch
298	10/5/2015	Canyon del Sol
299	10/5/2015	Silva Drain
300	10/5/2015	Stewart's Drain

#	Date	Canyon Collector
301	9/17/2015	Goat Canyon
302	9/17/2015	Smuggler's Gulch
303	9/16/2015	Goat Canyon
304	9/16/2015	Smuggler's Gulch
305	9/16/2015	Canyon del Sol
306	9/16/2015	Silva Drain
307	9/16/2015	Stewart's Drain
308	9/15/2015	Goat Canyon
309	9/15/2015	Smuggler's Gulch
310	9/15/2015	Canyon del Sol
311	9/15/2015	Silva Drain
312	9/15/2015	Stewart's Drain
313	8/30/2015	Goat Canyon

c. CWA Monitoring Violations.

i. Monitoring Requirements

The Discharge Permit contains substantial monitoring and reporting requirements that trigger when treated or untreated wastewater discharges from the SBIWTP other than from the SBOO. Pertinent here, discharges from the canyon collector systems are classified in two ways:

1. Facilities Spill Events are defined as “discharges of treated or untreated wastewater or other material from the Discharger’s facilities, including, but not limited to, the entire wastewater conveyance [system] ... owned and operated by the Discharger.”
2. Type A Flow Events are “dry weather transboundary treated or untreated wastewater or other flow through a conveyance owned and operated by the United States Government into Smuggler[sic] Gulch, Goat Canyon, Canyon del Sol, Stewart’s Drain, or Silva Drain and not diverted into the canyon collector system for treatment at the [SBIWTP].”³¹ While these classifications trigger distinct monitoring and reporting requirements for the discharges, both are violations on the Discharge Permit’s prohibition against discharges except at the SBOO.

Under the plain language of the Permit, a dry weather discharge from a canyon collector conveyance may be both a Facilities Spill Event and a Type A Flow Event. Wet weather discharges from the canyon collector systems fall under the definition of Facilities Spill Events. Each type of discharge event induces distinct, but overlapping, monitoring and reporting requirements.

Additionally, both Type A and Facilities Spill Events *of any volume* that reach surface waters and/or a drainage channel tributary to a surface water that are not fully captured and returned to the SBIWTP are classified as Category 1 discharges.³² Dischargers are under extensive reporting requirements in the immediate aftermath of a Category 1 discharge, including preliminary and certified spill reports to the Regional Board, DEH, local municipalities, and other interested parties within three and fifteen days of the spill, respectively.³³ The specific information required in these reports is listed in the Discharge Permit.³⁴

The dischargers must also submit monthly status reports on the general operations of the SBIWTP, including on whether Type A or Facilities Spill events occurred that month. The specific information that must be included for each type of spill is identified in the Discharge Permit.³⁵

ii. Monitoring Violations

Each of the discharges listed in Table 2 is underreported, having been reported only in the Daily Canyon Collector Inspection Reports. The Dischargers are in violation of the Discharge

³¹ *See id.*, VI. C. 2. a., at 17-18.

³² *Id.*, VI. D. 2. d. i. a., at 28 (emphasis added).

³³ *See id.*, VI. D. 2. d. iii – iv, at 29-31.

³⁴ *Id.*

³⁵ *Id.*, VI. C. 2. a., 17-18.

Permit sections VI. C. 2. d. iii. and iv. for each spill from SBITWP treatment works facilities, including the canyon collectors, listed above, for which no preliminary and/or certified report containing the information identified in those sections was submitted to the Regional Board, and other relevant stakeholders.

III. IMMINENT AND SUBSTANTIAL ENDANGERMENT UNDER RCRA

To the extent that the wastewater flows described herein are not subject to a NPDES permit, they are illegal under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* Like those described in Table 2, canyon collector discharges deposit solid and/or hazardous waste near the collectors. Transboundary wastewater discharge events through the flood control conveyance and Yogurt Canyon dispose of solid and/or hazardous wastes in and near the River Valley. RCRA provides that:

any person [may] commence a civil action on his own behalf . . . against any person, including the United States and any other governmental instrumentality or agency. . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment . . .³⁶

This provision explicitly allows the consideration of environmental or health effects arising from waste and authorizes suit any time there may be a present threat – an imminent and substantial endangerment – to health or environment.³⁷

a. IBWC and Veolia are Subject to RCRA Enforcement.

IBWC and Veolia are “persons” subject to RCRA citizen suit enforcement. RCRA explicitly defines “person” to include “corporation[s]” and “each department, agency and instrumentality of the United States.”³⁸ Veolia is a corporation. IBWC is organized as an agency of the United States. They therefore meet the definition of a person subject to suit under RCRA. Moreover, the citizen suit provisions explicitly make the federal government subject to RCRA citizen enforcement actions.³⁹

³⁶ 42 USC § 6972(a)(1)(B).

³⁷ *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 485 (1996).

³⁸ 42 USC § 6903(15).

³⁹ 42 USC § 6972(a)(1)(B).

b. The Wastewater Discharging to the Tijuana River Valley Contains Solid and Hazardous Wastes.

The wastewater constituents that deposit near the canyon collectors or flow through the concrete flood control conveyance and Yogurt Canyon constitute solid or hazardous waste within the meaning of RCRA. “Solid waste” includes “any garbage, refuse, sludge from a waste treatment plant . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities.”⁴⁰

The term “hazardous waste” means 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.⁴¹

Although RCRA excludes from its coverage disposal of domestic sewage and industrial waste that would be subject to a NPDES permit,⁴² the wastewater that is the subject of this notice frequently discharges to land, rendering the Clean Water Act NPDES permitting program inapplicable to those discharges.

The wastewater flows that sweep through the City of Tijuana bring with them industrial waste, pesticides, metals, and other discarded solid waste materials that ultimately flow into the United States. Moreover, sampling of these flow events show them to contain several acute hazardous and/or toxic solid wastes as defined by RCRA and U.S. Environmental Protection Agency regulations.⁴³ These include, but are not limited to:

- Aldrin (P004)
- Nitrogen (P076, P078)
- Lindane (U129)
- Chloroform (U044)
- DDT (U061)
- Dieldrin (P037)
- Heptachlor (P059)
- Benzene (U019)
- Chlorobenzene (U037)

⁴⁰ 42 U.S.C. § 6903(27).

⁴¹ 42 U.S.C. § 6903(5).

⁴² See 42 U.S.C. § 6903(27) (The term solid waste “does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33...”).

⁴³ See 40 C.F.R. § 261.30 (defining hazardous wastes as solid waste); 40 CFR § 261.33 (listing hazardous and toxic wastes; EPA hazardous waste number listed parenthetically).

- Toluene (U220)
- 2,4-dinitrotoluene (U105)
- Nitrophenol (U170)
- Phenol (U188)

The wastes found in these flows pose a substantial present and potential hazard to human health or the environment when disposed of improperly. These substances, which broadly include pathogens, metals, industrial process chemicals, and others, are known to cause acute illness, increased risk of cancer, death, and other maladies in humans. Human exposure to these contaminants is likely when, after they are discharged to land, subsequent flow events wash residuals into the Tijuana River and Estuary, and the Pacific Ocean. The materials contained in the canyon collector discharges are hazardous and solid wastes within the meaning of RCRA.

c. IBWC and Veolia Have Contributed and Continue to Contribute to the Handling, Transportation, and Disposal of Hazardous Wastes from the Canyon Collectors.

IBWC and Veolia have and continue to contribute to the handling and transport of solid and/or hazardous wastes contained in transboundary wastewater influent from the moment such influent enters the canyon collector system, and during the flow of that material through IBWC-owned and Veolia-operated conveyance structures toward the canyon collector drains. These are described in detail in Tables 2 and 3. IBWC and Veolia have contributed and continue to contribute to the disposal⁴⁴ of solid and/or hazardous wastes contained in the transboundary wastewater when that wastewater overflows, leaks, or spills from the conveyance structures and is deposited on land or into the Tijuana River and/or Estuary, or to the natural drainages that are tributaries to those waters.

d. IBWC Has Contributed and Continues to Contribute to the Handling, Transportation, and Disposal of Hazardous Wastes Via Yogurt Canyon and the Flood Control Conveyance.

The failure of existing wastewater collection, conveyance, and treatment facilities in Mexico is the overwhelming cause of transboundary wastewater flow events in the concrete flood control conveyance and Yogurt Canyon. Table 1, above, lists the most recent of these events in the flood control conveyance; Table 4, below, describes additional reported discharges from Yogurt Canyon, an unimproved drainage to the West of the canyon collectors, near International Friendship Park. Most of these events are attributable to failures of existing diversion facilities in the Tijuana River from which IBWC collects the wastewater it treats at SBIWTP – including, but not limited to, the known incapacity of the CILA diversion structure and CILA pump station to capture wet weather or emergency flows and move them into the wastewater conveyance

⁴⁴ 42 USC § 6903(3) (defining “disposal” as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters).

infrastructure. The discharges in Tables 1 and 4 deposit solid and/or hazardous wastes onto land and into the Tijuana River and Estuary in violation of RCRA.

Date	Volume (Gal.)	Vector	Description
6/20/2017	100,000	Yogurt Canyon	Clogged manhole at Playas de Tijuana
10/26/2016	875,000	Yogurt Canyon	Unknown
7/2015	Unknown	Yogurt Canyon	Unknown

IBWC is integral to the design, construction, operation, maintenance, and monitoring of the CILA diversion and the rest of the transnational wastewater collection, conveyance, and treatment system. To that end, IBWC spends (1) substantial sums ensuring the collection and treatment of wastewater from Mexico; (2) provides technical expertise in the design and operation of such facilities; (3) develops operating protocols for existing wastewater collection facilities in Mexico; (4) coordinates with CILA on the operation of the entire transnational wastewater collection, conveyance, and treatment infrastructure; and (5) represents the United States’ interests in addressing transnational pollution issues. Moreover, IBWC through its operation of the flood control conveyance, moves and discharges solid and hazardous wastes from the flood control conveyance into the unlined portion of the Tijuana River Valley in the United States, including those discharges described in Table 1. Such activities contribute to the handling and transport of solid and/or hazardous waste in Mexico, and the handling, transport and disposal of solid and/or hazardous waste in the United States, including those wastewater disposal events that are the subject of this Notice as described in Tables 1 and 4.

e. The Wastewater Discharges to the Tijuana River Valley are Imminent and Substantial Endangerments to Human Health and the Environment.

Human and environmental exposure to the toxins, pesticides, and other solid and/or hazardous wastes contained in discharges from the canyon collectors and via flood control conveyance and Yogurt Canyon warrant extreme concern. The nature of this threat is grave: many of these waste materials are known contributors to irreversible and/or incapacitating illnesses, can cause or contribute to increases in mortality. Table 5 describes the health effects of exposure to some, but not all, of the waste materials that are known to be contained in the wastewater flow events that are the subject of this Notice.

Waste Material	Human Health Impacts
Aldrin/dieldrin	Long term exposure can result in headaches, dizziness, irritability, vomiting, or uncontrollable muscle movements. Some sensitive people seem to develop a

⁴⁵ All information from the Agency for Toxic Substances and Disease Registry, U.S. Center for Disease Control, Toxic Substances Portal – Public Health Statements, available at <https://www.atsdr.cdc.gov/substances/index.asp>

Waste Material	Human Health Impacts
	condition in which Aldrin or dieldrin causes the body to destroy its own blood cells. EPA has determined that Aldrin and dieldrin are probable human carcinogens. Animal studies show that these substances can cause changes to the nervous system, reproductive system, kidneys, and liver and reduce the ability to fight infection. Acute exposure can cause convulsions and death.
DDT	Ingestion, inhalation and topical exposure affects the nervous system, causing excitability, tremors, seizures, sweating, headache, nausea, vomiting, and dizziness. People exposed for a long time to small amounts of DDT had some changes in the levels of liver enzymes in the blood. Studies have showed reductions in the duration of lactation and increased chance of having a pre-term baby.
Benzene	Acute exposure can result in death. Lower levels can cause drowsiness, dizziness, rapid heart rate, headaches, tremors, confusion, and unconsciousness. Ingestion can cause vomiting, irritation of the stomach, dizziness, sleepiness, convulsions, rapid heart rate, coma, and death. Topical exposure can cause redness and sores. Benzene causes problems in the tissues that form blood cells, especially the bone marrow. These effects can disrupt normal blood production and cause a decrease in important blood components, anemia, excessive bleeding, and leukemia. Reproductive hazards include irregular menstruation, decreased ovary size, low birth weight, and bone damage in fetuses.
Toluene	Incoordination, cognitive impairment, and vision and hearing loss may become permanent with repeated exposure. Exposure during pregnancy may lead to retardation of mental abilities and growth in children. Other health effects of potential concern may include immune, kidney, liver, and reproductive effects. Reproductive effects include spontaneous abortion.
Arsenic	Large oral doses in water cause death. Other effects include decreased production of red and white blood cells, which may cause fatigue, abnormal heart rhythm, blood-vessel damage resulting in bruising, and impaired nerve function causing a “pins and needles” sensation in your hands and feet. Skin changes include darkened skin and the appearance of small “corns” or “warts” on the palms, soles, and torso, and are often associated with changes in the blood vessels of the skin. Arsenic is a known carcinogen, and may cause skin, liver, bladder, and lung cancers.
Antimony	Antimony in drinking water can cause vomiting and abdominal pain. Stomach ulcers have been seen in animals exposed to antimony in drinking water for several months. Antimony can also cause eye irritation if it gets in the eye. Lung cancer has been observed in some studies of workers, and mice breathing high concentrations of antimony.
Lead	Long-term exposure of adults to lead at work has resulted in decreased performance in some tests that measure functions of the nervous system. Lead exposure may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people. Lead exposure may also cause anemia. At high levels of exposure,

Table 5 – Certain Health Hazards of Subject Wastewater Discharges⁴⁵	
Waste Material	Human Health Impacts
	lead can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High-level exposure in men can damage the organs responsible for sperm production. It is probably carcinogenic to humans.
Cadmium	Eating food or drinking water with very high cadmium levels severely irritates the stomach, leading to vomiting and diarrhea, and sometimes death. Eating lower levels of cadmium over a long period of time can lead to a build-up of cadmium in the kidneys. If the build-up of cadmium is high enough, it will damage the kidneys. Exposure to lower levels of cadmium for a long time can also cause bones to become fragile and break easily.
Thallium	Thallium affects the nervous system, lung, heart, liver, and kidney if large amounts are eaten or drunk for short periods of time. Temporary hair loss, vomiting, and diarrhea can also occur and death may result after exposure to large amounts of thallium for short periods. Thallium can be fatal from a dose as low as 1 gram.
Mercury	Exposure to mercury can cause permanent brain damage, with symptoms such as personality changes (irritability, shyness, nervousness), tremors, changes in vision (constriction (or narrowing) of the visual field), deafness, muscle incoordination, loss of sensation, and difficulties with memory. Mercury damages the kidneys, as well as the stomach and intestines, producing symptoms of nausea, diarrhea, or severe ulcers.
Heptachlor	Studies have shown a number of harmful health effects when animals were fed heptachlor. The effects observed in animals include damage to the liver, excitability, and decreases in fertility. Animals fed heptachlor throughout their lifetime had more liver tumors than animals that ate food without heptachlor. EPA and the International Agency for Research on Cancer have classified heptachlor as a possible human carcinogen.
Phenol	Ingestion of liquid products containing concentrated phenol can cause serious gastrointestinal damage and even death. Application of concentrated phenol to the skin can cause severe skin damage. Short-term exposure to high levels of phenol has caused irritation of the respiratory tract and muscle twitching in animals. Longer-term exposure to high levels of phenol caused damaged to the heart, kidneys, liver, and lungs in animals.

The vectors for exposure to these and other hazardous wastes and pollutants in the Tijuana River Valley and canyon collectors render the potential for human exposure to them an imminent and substantial endangerment to human health. Any discharged material that flows into the canyon collectors, and necessarily near the drainages that are tributary to the Tijuana River and Estuary, has the potential to be swept into those drainages and discharged to those waters. Once in those waterways and/or deposited on land downstream, recreators in the River and Estuary can potentially be exposed, as can surfers, beachgoers and other beach and ocean users in Imperial Beach and elsewhere in California.

IV. PERSONS RESPONSIBLE FOR VIOLATIONS

The flood control conveyance and all of the canyon collectors are owned by the U.S. Section of the International Boundary and Water Commission. The SBIWTP and the canyon collectors are operated by Veolia Water North America – West, LLC. Therefore, IBWC and Veolia are responsible for the Clean Water Act and Resource Conservation and Recovery Act violations as described herein.

V. RELIEF SOUGHT & PENALTIES

The Claimants seek permanent cessation of the violations set forth herein and the resulting water pollution entering their jurisdictions and impacting their property and constituents. Claimants believe that a negotiated settlement that includes provisions for immediate design and construction of infrastructural upgrades, a compliance schedule, compliance monitoring, and other provisions, would be superior to litigation. However, Claimants are prepared to litigate these violations.

If the parties are unable to reach an enforceable settlement within 60 days of this notice letter, the Claimants intend to file suit in the United States District Court for the Southern District of California under the Clean Water Act. The Claimants will seek injunctive relief, civil penalties, fees, and costs of the litigation, and any other relief allowable by the court. Clean Water Act violators are subject to civil penalties of up to \$52,414.00 per violation per day for each violation of the Clean Water Act.⁴⁶

Additionally, the Claimants intend to initiate RCRA litigation if these matters are not resolved within 90 days of this Notice letter.⁴⁷ The Claimants will seek abatement of the imminent and substantial endangerment, fees, costs, and any other relief allowable by the court.

VI. PERSONS GIVING NOTICE

The City of Imperial Beach, by and through its attorneys Sher Edling LLP, gives this Notice of Intent to Sue pursuant to 33 U.S.C. section 1365(b) and 42 U.S.C. section 6972(a)(1)(B). The City's contact information is as follows:

825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Tel: (619) 423-8300

The name, address, and phone number for the City's legal counsel, who is giving notice on behalf of the City, is:

⁴⁶ 40 CFR § 19.4, Table 2.

⁴⁷ 42 USC § 6972(B)(2)(A).

Matthew K. Edling
Timothy R. Sloane
Victor M. Sher
Sher Edling LLP
425 California St. Suite 810
San Francisco, CA 94104
matt@sheredling.com
tim@sheredling.com
vic@sheredling.com
Tel: (628) 231-2500

Please direct all correspondence to the City of Imperial Beach related to this notice to Sher Edling LLP.

The San Diego Unified Port District, by and through its General Counsel, gives this Notice of Intent to Sue pursuant to 33 U.S.C. section 1365(b) and 42 U.S.C. section 6972(a)(1)(B). The Port District's contact information is as follows:

3165 Pacific Highway
San Diego, CA 92101
Tel: (619) 686-6200

The name, address, and phone number for the Port District's legal counsel, who is giving notice on behalf of the Port District, is:

Thomas A. Russell
John N. Carter
Office of the General Counsel
3165 Pacific Highway
San Diego, CA 92101
trussell@portofsandiego.org
jcarter@portofsandiego.org
Tel: (619) 686-6200

Please direct all correspondence to the San Diego Unified Port District related to this notice to the Port District's General Counsel.

The City of Chula Vista, by and through the City Attorney for the City of Chula Vista, gives this Notice of Intent to Sue pursuant to 33 U.S.C. section 1365(b) and 42 U.S.C. section 6972(a)(1)(B). The City's contact information is as follows:

276 Fourth Avenue
Chula Vista, CA 91910
Tel: (619) 691-5031

The name, address, and phone number for the City's legal counsel, who is giving notice on behalf of the City, is:

Glen R. Googins
Bart J. Miesfeld
Office of the City Attorney
276 Fourth Avenue
Chula Vista, CA 91910
ggoogins@chulavistaca.gov
bmiesfeld@chulavistaca.gov
Tel: (619) 691-5037

Please direct all correspondence to the City of Chula Vista related to this notice to the City Attorney.

VII. CONCLUSION

Please contact the undersigned if you have questions concerning this letter or the Clean Water Act and Resource Conservation and Recovery Act violations described herein. We look forward to resolving this matter as soon as possible.

Sincerely,



MATTHEW K. EDLING

Sher Edling LLP
Victor M. Sher
Matthew K. Edling
Timothy R. Sloane

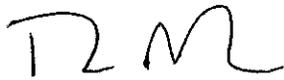
Attorneys for the City of Imperial Beach



GLEN R. GOOGINS

Office of the City Attorney
Glen R. Googins
Bart J. Miesfeld

Attorneys for the City of Chula Vista



THOMAS A. RUSSELL

Office of the General Counsel
Thomas A. Russell
John N. Carter

Attorneys for the San Diego Unified Port District

September 27, 2017

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cc via certified mail:

Scott Pruitt, EPA Chief Administrator
Environmental Protection Agency, 1101A
12000 Pennsylvania Ave. N.W.
Washington, DC 20460

Alexis Strauss, Acting EPA Regional Administrator
US EPA Pacific Southwest, Region 9
75 Hawthorne St.
San Francisco, CA 94105

U.S. Attorney General Jeff Sessions
U.S. Dept. of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530-0001

Eileen Sobeck, Executive Director
California State Water Resources Control Board
PO Box 100
Sacramento, California 95812-0100

Director Barbara A. Lee
California Department of Toxic Substances Control Headquarters
PO Box 806
Sacramento, CA 95812-0806

Veolia Water North America-West, LLC
Agent for Service of Process
CT Corporation System (C0168406)
818 W 7th St., Suite 930
Los Angeles, CA 90017