



October 28, 2016

Via E-mail and Certified Mail, Return Receipt Requested

Mayor Samuel Henderson
City of Gulfport
Gulfport City Hall
2401 53rd St. South
Gulfport, FL 33707
shenderson@mygulfport.us

Mr. Don Sopak
City of Gulfport
Director, Public Works Department
Gulfport City Hall
2401 53rd St. South
Gulfport, FL 33707

Re: Sixty-Day Notice of Violations of Clean Water Act and Notice of Intent to File Suit

Dear Mr. Henderson and Mr. Sopak:

I am writing on behalf of Suncoast Waterkeeper (“SCWK”), Our Children’s Earth Foundation (“OCE”) and Ecological Rights Foundation (“ERF”) to notify you of serious and ongoing violations of the federal Clean Water Act (“CWA”) at the publicly owned treatment works (collectively, “the POTW”) which provide for the collection and treatment of sanitary sewage produced by the City of Gulfport (“Gulfport”). The POTW includes the following wastewater treatment facilities (Facilities) and associated wastewater collection/transmission systems (Systems) owned and operated by the City of St. Petersburg, Pinellas County, and/or Gulfport.

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|--|-------------------|
| Albert Whitted Water Reclamation Facility | 601 8th Ave. S.E. |
| Northwest Water Reclamation Facility | 7500 26th Ave. N. |
| Southwest Water Reclamation Facility | 3800 54th Ave. S. |
| City of Gulfport Sanitary Sewer System | |
| Pinellas County Wastewater Collection System | |

The purpose of this letter is further to provide notice of SCWK, OCE and ERF's intent to file a civil action against Gulfport sixty days (60) days after the date of this letter.

I. IDENTITY OF PERSONS GIVING NOTICE AND THEIR COUNSEL

In accord with 40 C.F.R. section 135.3(b), SCWK hereby gives notice of the names, addresses, and telephone numbers of the person giving notice, which are SCWK, OCE and ERF.

SCWK is a non-profit public benefit corporation with members throughout the Tampa Bay area, dedicated to protecting and restoring the Florida Suncoast's waterways through enforcement, fieldwork, advocacy, and environmental education for the benefit of the communities that rely upon these precious coastal resources. SCWK has been registered as a non-profit corporation in Florida since 2012 and has maintained its good and current standing in Florida since that time. SCWK is licensed member of Waterkeeper Alliance, Inc., an international non-profit environmental organization, made up of over 300 separate Waterkeeper programs, such as Suncoast Waterkeeper.

OCE is a non-profit public benefit corporation with members throughout the United States, including Florida and specifically the Tampa Bay area, dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improving environmental quality for the public benefit. Another aspect of OCE's mission is to participate in environmental decisionmaking, enforce environmental laws (including via citizen suits), both federal and state, to reduce pollution, and to educate the public concerning those laws and their enforcement.

ERF is a non-profit public benefit corporation with members across the United States, including Florida and specifically the Tampa Bay area. Among other work it does, ERF focuses on protecting surface waters from pollution and degradation. ERF represents citizens who are striving to protect waterways from pollution and secure the multitude of public and private benefits that follow from clean, vibrant waters: safe drinking water, abundant and diverse wildlife populations, healthy recreational opportunities, and economic prosperity from commercial, sport and subsistence fishing; and other commercial activities that depend on clean water. To further its environmental advocacy goals, ERF actively seeks federal and state agency implementation of state and federal water quality related laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members.

SCWK, OCE and ERF's members use the ocean and bay waters and other waters adjoining and in Gulfport for body contact water sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation. These SCWK, OCE and ERF members are concerned about water quality and are and will continue to be adversely affected by Gulfport's sewage discharge violations. SCWK, OCE and ERF may be contacted at:

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Suncoast Waterkeeper
P.O. Box 1028
Sarasota, FL 34230
Tel: (941) 275-2922
E-mail: jbloom@suncoastwaterkeeper.org

Our Children's Earth Foundation
1625 Trancas St. #2218
Napa, CA 94558-9998
Tel: (510) 910-4535
E-mail: annie.beaman@gmail.com

Ecological Rights Foundation
867 "B" Redwood Drive
Garberville, California, 95542.
Tel: (707) 923-4372.
E-mail: ecorights@earthlink.net

SCWK, OCE and ERF have retained the following legal counsel to represent them in this matter:

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Fax: (866) 574-2169
E-mail: bloomesq1@gmail.com

Christopher A. Sproul, Esq.
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
Tel: (415) 533-3376
Fax: (415) 358-5695
E-mail: csproul@enviroadvocates.com

Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, CA 95061
Telephone: (831) 454-8216
Email: evensons@ecologylaw.com

All communications should be addressed to legal counsel at the above addresses.

II. FACTUAL BACKGROUND

Gulfport is a municipality incorporated under the laws of the State of Florida and a person within the meaning of Section 403.031(5), Fla. Stat. Approximately 80% of Gulfport is served by Gulfport's own wastewater collection system, while Pinellas County serves the remaining 20%. All wastewater collected in Gulfport is ultimately discharged to St. Petersburg's WRFs for treatment. St. Petersburg owns and operates the WRFs. The WRFs and all wastewater collection facilities including those owned and operated by Gulfport, which convey wastewater to the WRFs are publicly owned treatment works as defined in CWA section 212(2)¹ and 40 C.F.R. section 125.58(s) and are hereinafter collectively referred to as the POTW.

The CWA prohibits the discharge of pollutants by any person to waters of the United States except in compliance with a permit duly issued under the CWA. CWA § 301(a), 33 U.S.C. § 1311(a). The CWA authorizes EPA, or states with permit programs approved by EPA, to issue National Pollutant Discharge Elimination System (NPDES) permits allowing for the discharge of pollutants into waters of the United States. CWA § 402, 33 U.S.C. § 1342.

The stormwater element of the federal NPDES program is mandated by CWA § 402(p), 33 U.S.C. §1342(p), and implemented through federal regulations including 40 C.F.R. section 122.26. EPA has approved the State of Florida's Department of Environmental Protection (DEP) to administer an NPDES permit program in Florida. DEP is authorized under Section 403.0885 of the Florida Statutes (F.S.) and Rule 62-624 of the Florida Administrative Code (F.A.C.) to implement the NPDES program. As part of this program, DEP has determined that a Municipal Separate Storm Sewer System (MS4) permit is required for the operation of Gulfport's stormwater systems.

DEP has issued MS4 Permit Number FLS000005 (the "MS4 Permit") to the City of Gulfport. The MS4 Permit authorizes Gulfport to discharge stormwater to waters of the State in accordance with the approved Stormwater Management Program, effluent limitations, monitoring requirements, and other provisions as set forth in the permit. Gulfport is the owner and/or operator of the Gulfport MS4. *See* MS4 Permit § I.A. Specifically, Gulfport is required to effectively prohibit the discharge of non-stormwater into its storm sewer system. *Id.* § I.D. Additionally, Gulfport is required to implement procedures to prevent, contain, and respond to spills that may discharge into the MS4. *See* MS4 Permit, Illicit Discharges and Improper Disposal, §7(d).

Gulfport has repeatedly violated the CWA by discharging raw and partially treated sewage from its wastewater collection system component of the POTW and causing the discharge of raw and partially treated sewage from other components of the POTW without NPDES permit authorization. Additionally, Gulfport has repeatedly violated the MS4 Permit by allowing the discharge of non-stormwater into its storm sewer system.

¹ 33 U.S.C. § 1292(2).

A. Gulfport Sewage Spills

Gulfport has repeatedly spilled raw and partially treated sewage from its collection system that carries sewage to the POTW. Such raw and partially treated sewage has repeatedly overflowed or spilled from Gulfport sewer lines, manholes, pump stations, and various other POTW equipment/conveyances. These sewage spills include all spills: (1) noted in the exhibit (Exhibit B) accompanying Resolution No. 2016-55 adopted by the Gulfport City Council on August 2, 2016, (2) listed in section 2.2.1 in a report from Gulfport's contractor Cardino dated February 2016, "Sanitary Sewer Evaluation Survey Final Report" (including various large wet weather-related spills in 2013, 2014 and 2015), (3) publicly reported by St. Petersburg and/or Gulfport to the Florida Department of Environmental Protection and to the press (such as the large sewage spills in June, August, and September 2016 from both Gulfport and St. Petersburg's portions of the POTW). A partial list of Gulfport's sewage spills is attached as Exhibit 1 to this Notice Letter.

These spills have sent raw and partially treated sewage streaming into private residences and businesses, streets, storm drains, streams, Tampa Bay, Clam Bayou, the Boca Ciega Bay Aquatic Preserve, and the Gulf of Mexico. These spills have repeatedly posed serious public health threats and created a severe nuisance in exposing substantial numbers of people to raw and partially treated sewage. Raw and partially treated sewage contains a variety of human bacteriological, viral, and parasitic pathogens, and exposure to raw and partially treated sewage is well-known to cause various human illnesses. In addition to human waste, sanitary sewage contains various toxic chemicals from the solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals and other chemicals discarded by households and businesses. Thus, Gulfport's sewage spills pose a serious public health risk in exposing members of the public and SCWK, OCE and ERF's members to sewage-borne pathogens and various toxic pollutants. These persistent, repeated sewage spills also have threatened harm to the sensitive freshwater and marine environments of Gulfport's waters, as the pathogens and toxic pollutants in sewage can adversely affect freshwater and marine life.

These spills have resulted from a variety of poor or inadequate system maintenance, operation, repair, replacement and rehabilitation practices. These poor practices have led to sewer line blockages (generally caused by build-up of grease, accumulation of sediment and debris, and root intrusion), unaddressed defects in sewer lines such as extensive line cracking, sags in lines, and misaligned joints; broken sewer lines, pump station equipment failures, undersized sewer lines or pump station pumping and/or storage capacity, and the overwhelming of system capacity due to excessive infiltration and inflow of storm water and groundwater during wet weather.

According to Gulfport's own engineering analysis, a significant portion of Gulfport's collection system has reached or will soon reach the end of its useful life. Predictably for a system of this age, there are many defects and structural deficiencies that result in excessive infiltration and inflow of storm water and groundwater during wet weather. This excessive infiltration and inflow has caused and will continue to

cause repeated wet weather sewage spills both in Gulfport and downstream in St. Petersburg's wastewater collection system and WRFs. While many of these defects and the resulting spills are documented in Gulfport's own engineering analysis, a large portion of the Gulfport system has yet to be analyzed. The July 2016 Wastewater Facilities Planned Infiltration and Inflow Improvements report prepared by Cardino, the consulting firm hired by Gulfport to evaluate the system, and other documents show that Gulfport has not yet inspected more than half of Gulfport's sewer lines. Accordingly, the condition of these lines is not known. However, given the age of the system and what inspections of the Gulfport WCS have shown to date, it is more than likely that additional defects will be found.

Despite the system's advanced age and the urgency of preventing sewage spills that pose a serious threat to human health and the environment, Gulfport has not committed to a timetable for the completion of the planned inspection and evaluation of the remainder of the system. More importantly, Gulfport has not committed to a timetable to complete the necessary repairs. Gulfport's collection system consists of 224,000 feet (42.5 miles) of sewer pipe along with 200,000 feet of City-owned "laterals." The portion of Gulfport's collection system that has been inspected via CCTV shows many instances of imminent sewer line collapse and other system failures. However, only 84,050 feet of pipe have been inspected, and Gulfport has so far only repaired 30 of the most severe "Priority One" structural defects identified in the partial inspection. Undoubtedly, similar risks exist in the portion of Gulfport's collection system that has not yet been inspected. While it is unknown how many total defects exist, Gulfport spent \$380,000 to repair the first 30 Priority One defects and has allocated another \$2,480,000 to fix only those defects that have already been identified, and another \$2,000,000 to fix "additional" Priority One defects over the next 7 years.

Gulfport initially examined the possibility of replacing the entire collection system, but decided that to simply repair or replace Priority One defects was the most cost-effective option. However, because less than half of Gulfport's sewer pipe has actually been inspected, and the cost of repairing the identified defects is higher than the amount allocated for fixing unidentified defects in the next 7 years, Gulfport's estimation of the cost of repairing unidentified Priority One defects in the uninspected portions of the system is most likely too low to cover the actual cost of the repairs. An additional \$4,000,000 has been allocated to the "balance" of Priority One repairs, but under Gulfport's plan these urgent defects will not be addressed for at least 8 and up to 25 years in the future. Additionally, Gulfport has identified several "Priority 2" defects which require repair, but there are no plans to address these defects for many years, in which time the defects will almost certainly become more severe and lead to yet additional sewage spills and discharges to waters of the United States. In light of these risks, Gulfport's plan to repair only the most damaged portions of the system over the next 7 years is inadequate to prevent the harmful sewage spills that have repeatedly posed a public health hazard to Gulfport residents. Gulfport's current approach to its sewage spill problem lacks the urgency needed to respond to what is essentially an environmental crisis.

III. VIOLATIONS OF THE FEDERAL CLEAN WATER ACT

A. Sewage Spills

1. Violation of CWA Section 301(a)'s Prohibition On Unpermitted Discharges to Waters of the United States.

As noted above, Gulfport has repeatedly spilled raw and partially treated sewage from its sewage collection system. At least some of these sewage spills have flowed into waters of the United States. Gulfport does not and could not have NPDES permit authorization to discharge raw or partially treated sewage from its collection system to waters of the United States, which include the Gulf of Mexico, Tampa Bay, Boca Ciega Bay, all wetlands adjacent to the Gulf of Mexico and/or Tampa Bay, freshwater streams and other waters that are tributary to the Gulf of Mexico and/or Tampa Bay, and any wetlands adjacent to such tributaries. All such discharges of raw or partially treated sewage have thus constituted the unauthorized discharge of pollutants in violation of CWA section 301(a), which expressly provides:

Except as in compliance with this section and sections . . . 1342 [which provides for NPDES permit authorization for pollutant discharges] . . . the discharge of any pollutant by any person shall be unlawful. 33. U.S.C. §1311(a).

2. Sewage Discharges to Gulfport's MS4 in Violation of the MS4 Permit

Gulfport's sewage spills have flowed into Gulfport's MS4. The MS4 Permit regulates discharges into the MS4. The MS4 Permit prohibits the discharge of non-stormwater (material other than stormwater) into the MS4. MS4 Permit, § I.D. Raw or partially treated sewage that is discharged into the MS4 is not stormwater. Gulfport violates the MS4 Permit every time a sewage spill from the Gulfport collection system and/or POTW discharges into the MS4. All the sewage spills that are identified in Exhibit 1 as having reached storm drains are examples of sewage spills that Gulfport has discharged into the MS4.

3. Dates and Locations of Violations

Gulfport's sewage spills and/or discharges have been: (1) noted in the exhibits (Exhibit B) accompanying Resolution No. 2016-55 adopted by the Gulfport City Council August 2, 2016, (2) listed in section 2.2.1 in a report from Gulfport's contractor Cardino dated February 2016, "Sanitary Sewer Evaluation Survey Final Report" (including various large wet weather-related spills in 2013, 2014 and 2015), (3) publicly reported by St. Petersburg and/or Gulfport to the Florida Department of Environmental Protection and to the press (such as the large sewage spills in June, August, and September 2016

from both Gulfport and St. Petersburg's portions of the POTW). A partial list of Gulfport's sewage spills, provided by way of example, is set forth as Exhibit 1 to this letter. This partial list indicates the date and location of these sewage spills and identifies whether these spills entered waters of the United States and/or the MS4. As noted, these above-described spills are illustrative of the types of sewage spills from Gulfport's sewage collection system. On information and belief, SCWK, OCE and ERF have concluded and allege that Gulfport has had additional sewage spills in the past five years, many of which have caused unpermitted discharge of sewage to waters of the United States and/or the MS4.

The dates and locations of, and all other pertinent details concerning, Gulfport's sewage spills are well known to Gulfport. *Inter alia*, Gulfport's contractor Cardino has listed some of those spills in section 2.2.1 of its February 2016 Sanitary Sewer Evaluation Survey Final Report provided to Gulfport (including large wet weather-related spills in 2013, 2014 and 2015) and additional spills caused or contributed to by Gulfport have been publicly reported by St. Petersburg and/or to the Florida Department of Environmental Protection and to the press. Each of these spills that has caused pollutants to flow into waters of the United States constitutes a separate violation of CWA section 301(a).

SFWK, OCE and ERF will include in their CWA suit against Gulfport claims for all sewage spill/discharge violations that Gulfport has committed in the past, including those not specifically mentioned in this letter should additional information become available concerning such discharge violations. SFWK, OCE and ERF further note that Gulfport has taken inadequate affirmative steps to eliminate its sewage spills, thus Gulfport's sewage spill/discharge violations are ongoing and will continue in the future. SFWK, OCE and ERF hereby provide notice that its CWA citizen suit against Gulfport will include claims for such future sewage spills/discharge violations.

IV. NOTICE OF INTENT TO SUE GULFPORT FOR VIOLATIONS OF THE CLEAN WATER ACT

SCWK, OCE and ERF contend that Gulfport has failed in the respects set forth above to comply with the requirements imposed by CWA section 301(a). CWA section 505(b), 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his/her intention to sue. 40 C.F.R. section 135.2 provides that, if the alleged violator is a State or local agency, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the head of such agency. This section further provides that a copy of the notice shall be mailed to the chief administrative officer of the water pollution control agency for the State in which the violation is alleged to have occurred, the EPA Administrator and the EPA Regional Administrator for the EPA Region in which such violation is alleged to have occurred. Accordingly, this notice is being sent to you as the Mayor of Gulfport. In addition, a copy of this notice is being sent to Don Sopak, Public Works Director. We are also sending copies to the EPA Administrator, the Regional

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Administrator of EPA Region 4, the Executive Director of the State Office of Water Quality, and the Executive Director of the Southwest Florida Water Management District (and a courtesy copy to the U.S. Department of Justice).

By this letter, pursuant to CWA section 505(a) and (b), 33 U.S.C. §1365(a) and (b), SCWK, OCE and ERF hereby put you on notice that after the expiration of sixty (60) days from the date of this Notice of Intent To File Suit, SCWK, OCE and ERF intend to file an enforcement action in federal court against Gulfport for the latter's CWA violations.

SCWK, OCE and ERF intend to seek civil penalties and, in addition, injunctive relief preventing further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. section 19.4, each of the above-described CWA violations occurring in the past five years subjects Gulfport to a penalty of up to \$32,500 per day per violation. *See* 69 Fed. Reg. 7121 (Feb. 13, 2004).

In addition to the violations set forth above, as noted, this notice covers all ongoing CWA violations and violations evidenced by information that becomes available to SCWK, OCE and ERF after the date of this Notice of Intent to File Suit.

SCWK, OCE and ERF are interested in discussing effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of further litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. Although SCWK, OCE and ERF are always interested in avoiding unnecessary litigation, they do not intend to delay the filing of a complaint in federal court if discussions are continuing when the notice period ends.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin Bloom".

Justin Bloom
Counsel for the Environmental Groups

cc:

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|---|
| Gina McCarthy, Administrator U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460 mccarthy.gina@epa.gov |
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