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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

20 CITY OF IMPERIAL BEACH, a municipal
corporation, SAN DIEGO UNIFIED PORT
21 DISTRICT, a public corporation, and CITY OF
CHULA VISTA, a municipal corporation,

22 Plaintiffs,

23 vs.

24 THE INTERNATIONAL BOUNDARY &
25 WATER COMMISSION – UNITED STATES
SECTION, an agency of the United States, and
26 VEOLIA WATER NORTH AMERICA –
WEST, LLC,

27 Defendants.
28

Case No. **'18CV0457 JM JMA**

COMPLAINT FOR:

1. DISCHARGES WITHOUT A NPDES PERMIT, 33 U.S.C § 1311(a);
2. DISCHARGES IN VIOLATION OF A NPDES PERMIT, 33 U.S.C. § 1311(a); and
3. IMMINENT AND SUBSTANTIAL ENDANGERMENT UNDER RCRA, 42 U.S.C. § 6972(a)(1)(B).

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1 **I. INTRODUCTION**

2 1. Plaintiffs the City of Imperial Beach (“Imperial Beach”), the San Diego Unified
3 Port District (“Port District”), and the City of Chula Vista (“Chula Vista”) (together, “Plaintiffs”
4 or “Citizens”) have beseeched the federal government through political, diplomatic, regulatory,
5 and administrative avenues to address devastating pollution discharges that injure the Plaintiffs
6 and their constituents. The government has repeatedly failed to act. Plaintiffs now bring this action
7 to halt Defendants’ ongoing, severe, and dangerous violations of the Federal Water Pollution
8 Control Act, also known as the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and the
9 Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*

10 2. Defendants the International Boundary and Water Commission – United States
11 Section (“USIBWC”) and Veolia Water North America – West, LLC (“Veolia”) own and operate,
12 respectively, flood control and wastewater collection and treatment infrastructure in the Tijuana
13 River Valley,¹ a sprawling and largely untouched natural open space area adjacent to Plaintiffs’



25
26 ¹ As used herein, “Tijuana River Valley” and “Valley” refer to the land approximately bounded
27 by the Cities of Imperial Beach and San Diego to the North, Interstate 5 to the East, the
28 U.S./Mexico Border to the South, and the Pacific Ocean to the West. This area contains the
Tijuana River and Estuary and all of the USIBWC facilities described herein. All illegal

1 southern boundaries. In operating their infrastructure, Defendants assumed a critical responsibility:
2 to protect local communities from pollution flowing through the Tijuana River Valley, United
3 States coastal waters, and onto beaches in the United States.

4 3. Defendants have utterly failed to fulfill their legal and moral mandates. The above
5 photograph, taken in February 2017 after a massive pollutant discharge from Defendants'
6 facilities, depicts an enormous plume of sewage and other pollution migrating from the Tijuana
7 River ("River") mouth toward the City of Imperial Beach in the upper left corner. Unfortunately,
8 pollution discharge events such as the one depicted above have become routine. Human sewage,
9 enormous volumes of sediment, industrial wastes, pesticides, massive amounts of trash, and a host
10 of other nefarious pollutants from Defendants' facilities barrage the Tijuana River, its Estuary, the
11 Pacific Ocean, and the Imperial Beach beachfront, contaminating those natural resources,
12 stigmatizing the beachfront as unclean and unsafe, and sickening members of the public who use
13 the Tijuana River Valley, the beach, and the ocean for recreation.

14 4. These discharges create severe public health risks in the Tijuana River Valley and
15 along the Imperial Beach beachfront. Untreated and partially treated human and industrial
16 wastewater flowing through the Tijuana River Valley contains human pathogens and toxins that
17 create a hazard to public health through poisoning and/or the spread of disease. Toxins and human
18 bacterial and viral pathogens, including, but not limited to, hepatitis, enteroviruses, and vibrio,
19 have been and will continue to be present in and around coastal beaches in the absence of
20 abatement measures. Currents and other natural conditions carry these pollutants from the Tijuana
21 River Valley to multiple beaches in and around Imperial Beach.

22 5. Additionally, discharges of sewage, trash, tires, sediment, and other wastes to the
23 Tijuana River Valley impact surface waters and recreational and ecological resources in the
24 Valley. The image below depicts an ephemeral waterway in the Valley clogged with sediment,
25 tires, and other garbage. Pollution of this nature upends the ecological equilibrium in the Valley,
26

27 _____
28 discharges and/or disposal of pollutants and solid and/or hazardous wastes described herein
occur in the Tijuana River Valley.

1 requires significant manpower and expense to remediate, and presents a latent hazard of releasing
2 toxins and other hazardous materials contained within with subsequent wastewater flows.



17
18 6. Despite years of attempted collaborative processes involving Plaintiffs,
19 Defendants, other local stakeholders, pertinent state and federal agencies, and others, Defendants
20 have failed to take meaningful action to address the known and anticipated discharges of pollutants
21 from their facilities. Instead of addressing these issues, Defendants falsely herald their past
22 achievements, while the pollution flowing through the Tijuana River onto local beaches grows
23 ever more severe.

24 7. Accordingly, Plaintiffs notified Defendants of their intent to sue over Tijuana River
25 Valley pollution discharges on September 27, 2017. That notification compelled USIBWC to
26 initiate yet another discussion of solutions in the Valley. At the resulting meeting on December
27 12, 2017, the Water Board asked USIBWC to declare its commitment to constructing several
28 “Priority Projects” to finally resolve pollution flowing through the Tijuana River Valley. These

1 projects, memorialized in a January 26, 2018 Water Board memorandum, are not new; Defendants
2 have been aware of the need to implement these projects for years. These projects include: (1) a
3 main river channel pollution interception facility with a conveyance to Defendants' existing
4 wastewater treatment facility in the Valley; (2) enhanced wastewater capture and control facilities
5 in the hills west of the Tijuana River's intersection with the international border, including a new
6 collector/diversion in Yogurt Canyon; and (3) a functioning water quality monitoring and
7 assessment program. These projects would substantially prevent, if not eliminate, illegal
8 discharges of pollutants and solid and/or hazardous wastes from Defendants' facilities.

9 8. Since the December 12 meeting, more than seventeen new pollution events have
10 occurred in the Tijuana River Valley, and over three million gallons of wastewater containing
11 sewage, industrial wastes, pesticides, and other contaminants have passed through Defendants'
12 facilities and emptied into the Tijuana River Valley, forcing beach closures and public health
13 advisories for Imperial Beach beachfront users.

14 9. USIBWC provided a response to the Water Board's memorandum on March 1,
15 2018. Therein, Defendants refused to accept responsibility for and fund, let alone build, any of
16 these projects. Had Defendants implemented those projects when their need was first-identified,
17 virtually all of the pollution events in the Valley since the December 12 meeting would have been
18 prevented.

19 10. Solutions in the Tijuana River Valley are a matter of relatively straightforward
20 engineering: a few critical infrastructural upgrades to collect and treat wastewater flows and to
21 manage sediment and other solid waste in the Valley. Yet, Defendants have failed to even commit
22 to undertaking these projects, meaning that unchecked pollution and Defendants' legal violations
23 will continue indefinitely. The law does not authorize such an unconscionable result. Accordingly,
24 Plaintiffs bring this lawsuit to compel Defendants' compliance with the Clean Water Act and the
25 Resource Conservation and Control Act, to eliminate pollution in the Tijuana River Valley flowing
26 onto beaches, and to finally protect the local communities and the people of the State of California.

1 **II. PARTIES**

2 **A. Plaintiffs**

3 11. **The City of Imperial Beach** is a California General Law City and municipal
4 corporation, duly organized and existing by virtue of the laws of the State of California.

5 12. The City is located in San Diego County, California. It is bordered by the Tijuana
6 River Valley to the South, the City of San Diego to the East, San Diego Bay to the North, and the
7 Pacific Ocean to the West. The City is adjacent to approximately seven miles of beach.

8 13. Imperial Beach depends on beach and ocean access as a main driver of its economy,
9 and its constituents rely on those facilities for recreation. However, the City's beachfront is
10 regularly subjected to regulatory advisories and closures due to Tijuana River Valley pollution
11 pouring unabated through the River. For instance, portions of the City's beachfront were closed
12 for more than two hundred days in 2015, and over 160 days in both 2016 and 2017.

13 14. The presence of the pollutants and solid and/or hazards wastes, in Imperial Beach's
14 environs, including, but not limited to those identified herein, and the danger of that pollution, is
15 widely publicized via news reports, among other manners of communication, both generally and
16 during acute pollution events. That public knowledge diminishes the number of users of Imperial
17 Beach's beachfront coming to and conducting economic activity in Imperial Beach. Moreover,
18 that public knowledge has stigmatized the City of Imperial Beach as associated with pollution and
19 health hazards. All of these impacts result in decreased revenue to the City.

20 15. For instance, the near-constant presence of pollution in the Tijuana River Valley
21 causes health hazards in and near the City of Imperial Beach, among other physical impacts. Those
22 impacts negatively stigmatize the City's desirability as a residence or place of business, thereby
23 diminishing property values in the City and diminishing assessable property value in the City. The
24 City suffers a decrease in property tax revenue as a result of that pollution.

25 16. Additionally, such health hazards diminish the number of visitors willing to visit
26 and spend money in Imperial Beach. Known for its miles of sandy beach and popular surf breaks,
27 the City is injured when regulatory closures prevent the public from utilizing the City's beachfront.
28 Moreover, the number of visitors at Imperial Beach relative to other similarly situated beach

1 communities is diminished because of the pollution and public health stigma associated with the
2 Tijuana River Valley and City. Diminished economic activity caused by reduced tourism has
3 caused and will continue to cause diminished sales tax revenue to the City.

4 17. The City has committed significant staff time and other resources to public
5 processes intended to resolve water quality violations in the Tijuana River Valley, including, but
6 not limited to, the Treaty of February 3, 1944, for the Utilization of Waters of the Colorado and
7 Tijuana Rivers and of the Rio Grande's ("Treaty of 1944") Minute 320 Binational work groups,
8 and the Tijuana River Valley Recovery efforts. The City would not have committed that time or
9 expended those resources on its participation in those processes but for the water pollution
10 problems in the Tijuana River Valley arising out of Defendants' violations of the CWA and RCRA.

11 18. The quality of life in Imperial Beach and of people residing, working, and
12 recreating in and near the Tijuana River Valley is compromised by sewage-contaminated waters,
13 along with the associated odors and poor air quality.

14 19. **The San Diego Unified Port District** is a public entity created by the San Diego
15 Unified Port District Act, California Harbors & Navigation Code, Appendix 1, § 1 et seq.

16 20. The Port District is the successor to the powers vested in the cities that make up the
17 Unified Port District, and the powers of those cities related to these properties are vested in the
18 Port District, including the right to sue and be sued. The Port District is authorized to use its powers
19 and authority to protect and enhance physical access to, natural resources within, and the water
20 quality of the natural resources under its charge.

21 21. The Port District is a trustee for the people of the State of California, and holds and
22 manages tidelands and submerged lands in and around San Diego Bay and certain portions of the
23 Pacific Ocean for the benefit of the people of the State of California, and specifically, "for the
24 promotion of commerce, navigation, fisheries, and recreation." The Port District holds and
25 exercises land management authority over portions of the beach and submerged lands under the
26 Pacific Ocean that are negatively impacted when the pollution that is the subject of this Complaint
27 contaminates those resources. These lands and the ocean have been and will continue to be injured
28 by the discharges of pollutants from Defendants' facilities in the Tijuana River Valley, which

1 injure resident and migratory flora and fauna, diminish the aesthetic beauty of those lands, and
2 injure the invaluable public resources subject to the Port District’s trusteeship.

3 22. **The City of Chula Vista** is a California Charter City and municipal corporation,
4 duly organized and existing by virtue of the laws of the State of California and the Charter of the
5 City of Chula Vista. The City has the power to sue and be sued.

6 23. The City is located in San Diego County, California, adjacent to the San Diego Bay,
7 and in close proximity to the Tijuana River Valley and the Imperial Beach beachfront. Chula Vista
8 constituents regularly use and enjoy the beach and ocean in and around Imperial Beach.

9 24. Tijuana River Valley pollution and consequent beach closures injure Chula Vista’s
10 reputation for, and interest in protecting, its actual quality of life. Chula Vista depends on its
11 proximity to the Imperial Beach as an essential element of the quality of life it affords its citizens,
12 employees, and resident businesses. That proximity to the beach induces individuals and
13 businesses to come to and conduct economic activity in Chula Vista; however, due to
14 frequent closures of the Imperial Beach beachfront, Chula Vista loses the benefit of that
15 proximity, and the attendant boost to both its actual quality of life. This damages the City’s
16 reputation, by creating the appearance that the City does not offer its residents nearby ocean access
17 despite the fact that it does; and creating the appearance that Chula Vista provides access to a
18 beach that is unsafe and unclean. That diminished reputation depresses property values and
19 economic activity in, and attendant tax revenue to, the City of Chula Vista.

20 25. Defendants’ ongoing violations of the CWA and RCRA are the primary causes of
21 pollution in the Tijuana River Valley and along the Imperial Beach beachfront. Defendants’
22 ongoing violations of the CWA and RCRA have actually injured and will imminently injure
23 Plaintiffs unless those violations cease immediately.

24 **B. Defendants**

25 26. **The International Boundary and Water Commission** – U.S. Section
26 (“USIBWC”) is an agency and instrumentality of the United States government. USIBWC is the
27 agency charged with addressing transboundary issues arising out of agreements between the
28 United States and Mexico, including, but not limited to, the Treaty of 1944.

1 27. Among USIBWC’s responsibilities under the Treaty of 1944 is the responsibility
2 to address transboundary sanitation problems that arise due to the transboundary nature of the
3 Tijuana River watershed. Indeed, the Treaty of 1944 obligates USIBWC to “give preferential
4 attention to the solution of all border sanitation problems.” USIBWC defines a “border sanitation
5 problem” to include “each case in which waters that cross the boundary, including coastal
6 waters...have sanitary conditions that present a hazard to the health and well-being to inhabitants
7 on either side of the border or impair the beneficial uses of those waters.”

8 28. To carry out those treaty obligations, USIBWC has constructed, operated and/or
9 contracted to operate, and maintained flood control and wastewater collection, conveyance, and
10 treatment infrastructure in the Tijuana River Valley. These facilities are described in detail *infra*
11 at Section IV. B.

12 29. **Veolia Water North America – West, LLC** (“Veolia”), is a limited liability
13 company incorporated in Delaware. Veolia maintains its corporate headquarters in Boston,
14 Massachusetts, and maintains offices in Walnut Creek, Contra Costa County, California, and San
15 Diego, San Diego County, California. Veolia contracts with USIBWC to, and does, operate and
16 maintain the South Bay International Wastewater Treatment Plant and its associated facilities in
17 San Diego, San Diego County, California. Veolia is a wholly owned subsidiary of Veolia Water
18 North America Operating Services, LLC.

19 30. Veolia purposefully availed itself of the privilege of conducting activities within
20 the Southern District of California, including by contracting to operate and operating the South
21 Bay International Wastewater Treatment Plant in San Diego County, California.

22 **III. JURISDICTION AND VENUE**

23 31. This action involves conduct, injuries, and rights to relief that present federal
24 questions arising under the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, and the Resource
25 Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.* Accordingly, this court has
26 jurisdiction over the subject matter of this action pursuant to 33 U.S.C. § 1365(b), 42 U.S.C.
27 § 6972(a), and 28 U.S.C. § 1331.

1 32. Defendants the USIBWC and Veolia were served with a notice of the Plaintiffs’
2 intent to sue for violations of the CWA, and notice of an imminent and substantial endangerment
3 and the Plaintiffs’ intent to sue for violations of RCRA, via certified mail and registered mail,
4 return receipt requested, on September 27, 2017. More than ninety days have passed since
5 Defendants each received the Notice Letter. Defendants have not remedied the CWA and RCRA
6 violations that are the subject of the Notice Letter and this Complaint. No regulatory agency has
7 commenced and is diligently prosecuting any action to address the contamination that is the subject
8 of this action. A copy of Plaintiffs’ combined CWA and RCRA “Notice of Intent” letter is attached
9 as Exhibit A.

10 33. Venue is proper in the Southern District of California pursuant to 28 U.S.C.
11 § 1391(b), 33 U.S.C. § 1365(c)(1), and 42 U.S.C. § 6972(a) because the acts and omissions giving
12 rise to this claim, the water pollutant discharge sources of the effluent standard and limitation
13 violations described herein, and the imminent and substantial endangerment arising therefrom, all
14 occurred and/or are located in San Diego County, California, in the Southern District of California.

15 34. The United States District Court for the Southern District of California has
16 jurisdiction to, *inter alia*, order civil penalties and grant equitable relief including an order to
17 comply with the CWA and applicable permits thereunder. 33 U.S.C. §§ 1319(g); 1365(a).
18 Additionally, the Court has jurisdiction under RCRA to enjoin Defendants’ conduct contributing
19 to the imminent and substantial endangerment to human health and the environment present in the
20 Tijuana River Valley.

21 **IV. FACTUAL ALLEGATIONS**

22 **A. The Tijuana River Valley and Estuary.**

23 35. The Tijuana River watershed drains into the Tijuana River, which flows
24 northwesterly from Mexico and crosses the international border near the neighborhood of San
25 Ysidro in San Diego, San Diego County, California.

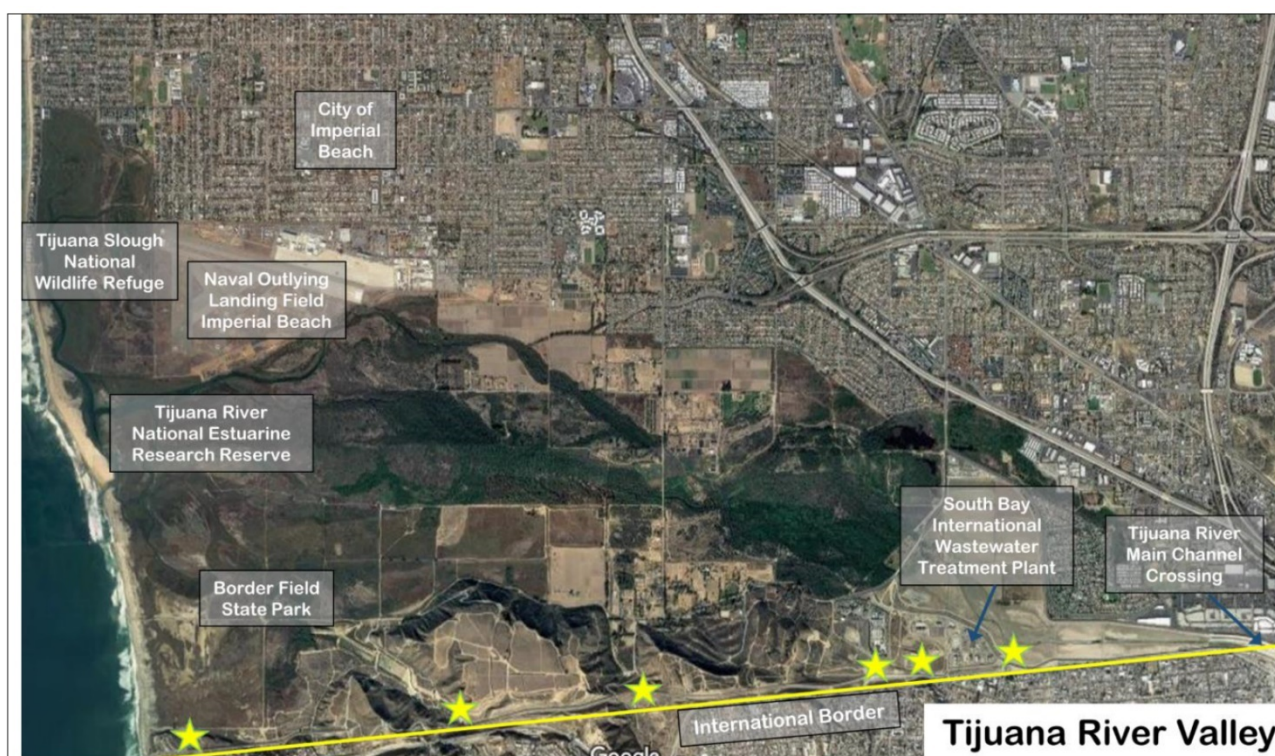
26 36. Upon crossing the border, the Tijuana River veers westward for approximately one
27 mile. Thereafter, the River meanders northwesterly through the largely undeveloped Tijuana River
28

1 Valley for several miles, develops into an estuary near the coast, and ultimately empties into the
 2 Pacific Ocean immediately south of the City of Imperial Beach.

3 37. The Tijuana River, the Tijuana River Estuary, and the Pacific Ocean are
 4 “navigable” in the traditional sense of the word.

5 38. The Tijuana River Valley is bordered to the South by an east-west range of hills
 6 that span from the Tijuana River’s intersection with the U.S. Mexico Border to the Pacific Ocean.
 7 The U.S. Mexico border is located in these hills, at a higher elevation than the Tijuana River. Thus,
 8 fugitive wastewater, precipitation, and other water in this portion of the City of Tijuana tends to
 9 flow downhill, into U.S. waters that transit the border at several canyons and ravines that are
 10 hydrologically connected to the Tijuana River and Estuary and the Pacific Ocean.

11 39. The image below depicts the Tijuana River Valley and major features therein. The
 12 primary canyons and ravines described in ¶38 that naturally drain into the Tijuana River and
 13 Estuary are demarcated with stars.



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 26 ★ Approximate locations of cross-border tributaries

27 40. The Valley is an important recreational resource, and contains trails for biking,
 28 hiking, and horseback riding. The beach at the western edge of the Valley provides additional

1 terrestrial and aquatic recreational opportunities. The Tijuana River Estuary, located in the Valley,
2 is an important ecological resource. It is a marine-dominated estuary designated as a Wetland of
3 International Importance by the Ramsar Convention in 2005. It has several sensitive habitats, such
4 as sand dunes and beaches, vernal pools, tidal channels, mudflats, and coastal sage scrub. The
5 Estuary contains one of the few salt marshes left in California. The Estuary provides critical habitat
6 for several endangered species; nursery grounds for commercially-important fish species; and an
7 essential breeding, feeding and nesting area and a stopover point on the Pacific Flyway for both
8 native and migratory birds. In recognition of the Tijuana River Valley's recreational and ecological
9 importance, areas of the Valley have been protected under the California State Park System, the
10 National Estuarine Research Reserve System, and the National Wildlife Refuge System.

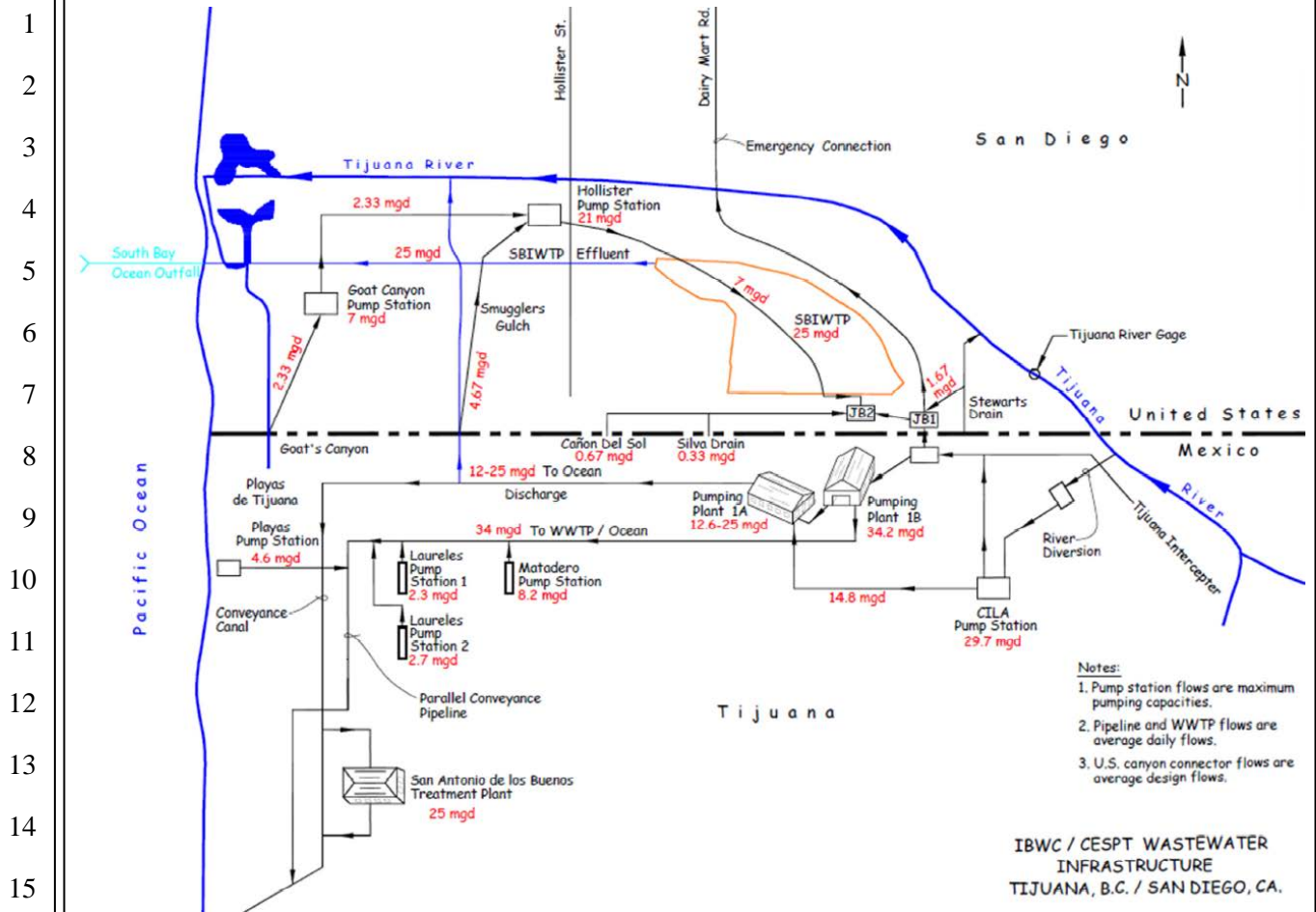
11 41. Polluted water enters the main channel Tijuana River in Mexico and the natural
12 drainages west of the river. Poorly constructed and maintained wastewater collection facilities, lax
13 regulation, and substandard pollution prevention practices, among other factors, all contribute to
14 pollution in the Mexican section of the Tijuana River and in the drainages. Fugitive wastewater
15 from street runoff, residences, industrial operations, agricultural fields, broken sewerage, and other
16 sources located in Mexico moves through the Tijuana River watershed, a substantial portion of
17 which enters the United States and ultimately flows to the Pacific Ocean and Imperial Beach
18 beachfront.

19 42. Defendants are aware that water crossing the border via the main channel Tijuana
20 River and the natural drainages west of the River is polluted.

21 43. Polluted water that crosses the border via the main channel Tijuana River or the
22 natural drainages west of the Tijuana River ultimately flows downstream and into the Pacific
23 Ocean, where currents, tides, winds, storms, and/or other influences cause it to drift along, and
24 deposit onto, the Imperial Beach beachfront and adjacent marine and tidal lands and waters.

25 **B. USIBWC Facilities in the Tijuana River Valley.**

26 44. The following illustration depicts a schematic of the transboundary wastewater
27 infrastructure that includes USIBWC's facilities here at issue. This image represents the facilities
28 and flow progression. It is not to scale.



45. At all relevant times, USIBWC has owned and controlled the South Bay International Wastewater Treatment Plant (“South Bay Plant” or the “Plant”). The Plant is located in the Tijuana River Valley in the City of San Diego, San Diego County, California. It is situated between the Tijuana River to the north and the international border to the south, and immediately west of the intersection of the border and the Tijuana River. The Plant is depicted in the schematic above by a yellow polygon marked “SBIWTP.”

46. The South Bay Plant and its associated facilities operate under and are subject to the terms of National Pollution Discharge Elimination System (“NPDES”) permit CA0108928 (California Waste Discharge Requirement Order R9-2014-0009 as amended by Order R9-2014-0094) (“South Bay Plant NPDES permit”).

47. The South Bay NPDES permit authorizes discharges of pollutants *only* at the South Bay Ocean Outfall, and only after such pollutants have gone through secondary treatment

1 at the South Bay Plant. All other discharges are prohibited.

2 48. At all relevant times, Defendant Veolia has contracted to operate and maintain the
3 South Bay Plant and its associated facilities. Veolia is also bound to comply with the terms of the
4 South Bay Plant NPDES permit.

5 49. The South Bay Plant is the main wastewater treatment plant in a transboundary
6 sewage system that USIBWC co-operates with CILA. The primary influent to the Plant is
7 sewage from Mexico. A pipe and pump system originating in Mexico conveys domestic sewage
8 from the sewage collection system in Tijuana across the border and directly into the Plant. The
9 Plant processes influent to secondary treatment levels and discharges treated wastewater through
10 the South Bay Ocean Outfall. The Outfall's discharge point is located in U.S. waters of the
11 Pacific Ocean, several miles off of San Diego, California.

12 50. Among the collection facilities in the transboundary sewage system is a diversion
13 structure in the Mexican section of the Tijuana River (the "CILA Diversion") designed to divert
14 flows in the main river channel into the transboundary sewage system. The CILA diversion
15 frequently malfunctions, allowing sewage to flow freely through the main river channel into the
16 United States.

17 51. Immediately after the River crosses the international border, it continues its path
18 through a concrete-lined aqueduct that directs flow due westward, away from the River's natural
19 and historical northerly course. This "flood control conveyance" is a discrete concrete-lined
20 channel with banked sides that begins at its attachment with the Mexican portion of the channelized
21 Tijuana River at the international Border and terminates 0.9 miles downstream in the Tijuana River
22 Valley. At its terminus, water flowing through the flood control conveyance discharges to the
23 unlined, unimproved portion of the Tijuana River. At all relevant times, USIBWC has owned and
24 maintained the flood control conveyance, which is designed to redirect the River's flow to prevent
25 flooding in the San Ysidro neighborhood in San Diego.

26 52. There is no facility on the U.S. side of the border within the flood control
27 conveyance or downstream thereof to capture and collect wastewater flows through the main
28 channel Tijuana River. Thus, any wastewater flow that enters the United States from Mexico via

1 the main river channel and flood control conveyance is not, and cannot be, collected for
2 treatment and appropriate discharge.

3 53. To address fugitive wastewater that escapes Tijuana's wastewater collection
4 system and flows into the United States via the natural drainages west of the Tijuana River's
5 intersection with the border, USIBWC owns and operates five "canyon collectors." These
6 facilities are named for the natural drainages in which each is located: Goat Canyon Diversion
7 Structure, Smugglers Gulch Diversion Structure, Silva Drain Canyon Collector, Canyon del Sol
8 Collector, and Stewarts Drain Canyon Collector (collectively, "canyon collectors").

9 54. The canyon collectors also operate under and are subject to the South Bay Plant
10 NPDES permit.

11 55. The canyon collectors are designed to capture and detain wastewater originating
12 in Mexico immediately after it crosses the U.S./Mexico Border into the United States. Each
13 facility shares the same basic design: either directly or via a concrete channel with its entrance
14 abutting the border fence, these facilities collect and direct wastewater into a shallow detention
15 basin. Wastewater in the basin is then directed to a drain regulated by a valve, and conveyed, via
16 pump or gravity, to the South Bay Plant.

17 56. The natural drainages in which the canyon collectors are located are either
18 "navigable" in the traditional sense of the word or are hydrologically connected to the Tijuana
19 River and Estuary and ultimately the Pacific Ocean. Pollutants and solid and/or hazardous wastes
20 discharged or released to these drainages substantially impact downstream water quality.

21 **C. Pollution and Waste Regularly Discharge or Otherwise Escape from**
22 **USIBWC Facilities.**

23 57. Pollutants and solid and/or hazardous waste discharges from the flood control
24 conveyance are so frequent as to be ongoing and continuous. These flow events cause severe and
25 extensive pollution in the Tijuana River Valley, and eventually flow adjacent to and past, and
26 cause injury to, Imperial Beach, its associated beachfront, and lands and property controlled by
27 the Port District.

28 58. Since 2015, hundreds of millions of gallons of wastewater have discharged from

1 the flood control conveyance to the Tijuana River and ultimately the Pacific Ocean in discrete
2 events, some lasting several days.

3 59. Exhibit B is a table listing known dry-weather discharge events from the flood
4 control conveyance since 2015. Defendants document these discharges in Spill Reports to the
5 San Diego Regional Water Quality Control Board (“Regional Board”) as required under the
6 South Bay Plant NPDES permit. Additional flood control conveyance discharges of pollutants
7 occur during virtually every wet weather event.

8 60. Such events typically occur due to failures of wastewater collection infrastructure
9 in Mexico, which USIBWC co-manages with CILA, pursuant to Treaty of 1944 Minute 283.
10 Minute 283 laid the groundwork for the transboundary sewage collection, conveyance and
11 treatment system that includes the South Bay Plant and the CILA Diversion. Under Minute 283,
12 USIBWC cooperatively operates and maintains with Mexico portions of the transboundary
13 collection, conveyance, and treatment system.

14 61. Wastewater that flows through and discharges from the flood control conveyance
15 contains sewage, industrial waste, and other pollutants and solid and/or hazardous wastes that
16 should have been conveyed to the South Bay Plant or treated in Mexico. Instead, these flows
17 continue through the river channel and discharge to the altered, present-day course of the Tijuana
18 River immediately east of the South Bay Plant. These flows do not undergo any water quality
19 treatment before they are discharged.

20 62. When flow in the collector exceeds the canyon collector’s capacity, or when the
21 drain is closed during storm events, wastewater flows escape into the natural drainages that are
22 tributaries to the Tijuana River and Estuary, or are deposited on the periphery of the canyon
23 collector or the banks of those tributaries.

24 63. Since 2015, Defendants have documented that several millions of gallons of
25 wastewater have discharged from the canyon collectors to the Tijuana River and the natural
26 drainages that are tributary to the Tijuana River and Estuary, in hundreds of discrete events.

27 64. Exhibit C is a table listing discharge events at each of the canyon collectors since
28 2015 for which Defendants prepared Spill Reports as required under the South Bay Plant NPDES

1 permit. Spill Reports describe the estimated volume of the specific discharge event, the receiving
2 water, and results of any water quality sampling identifying constituent pollutants and solid
3 and/or hazardous wastes.

4 65. Exhibit D is a table listing other discharge events at each of the canyon collectors
5 since August 30, 2015 that Defendants documented in daily canyon collector inspection reports
6 as required under the South Bay Plant NPDES permit. These discharges are reported as “signs of
7 sewage overflows in [the] past 24 hours,” or as flows that were observed to have broken
8 containment from a canyon collector. Beyond these daily reports, Defendants do not investigate
9 the cause of these discharges, do not estimate total volume of these discharges, and do not
10 undertake water quality sampling of the discharged wastewater to identify constituent pollutants
11 and solid and/or hazardous wastes. The receiving water for each discharge listed in Exhibit D is
12 the natural drainage channel for which the pertinent canyon collector is named. Each of the
13 natural drainage channels is a hydrologically-connected tributary to the Tijuana River and
14 Estuary, and ultimately the Pacific Ocean.

15 66. Each and every discharge event at the canyon collectors contains pollutants and
16 solid and/or hazardous wastes.

17 **D. Pollutants and Wastes Discharging from USIBWC Facilities and their**
18 **Impacts.**

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

25 68. *E. coli*, total coliforms, and enterococcus are indicator bacteria demonstrating the
26 presence of fecal contamination in water.

27 69. Flood control conveyance discharges also contain substantial quantities of solid
28 waste, including, but not limited to, sediment, trash, garbage, and other refuse. Used automobile

1 tires are particularly common component of the refuse carried by flood control conveyance
2 discharges into the Tijuana River Valley, where they are deposited on the banks of the estuary.

3 70. Water quality sampling of flood control conveyance discharges during discovery
4 will reveal that myriad other pollutants and solid and/or hazardous wastes are present in all flood
5 control conveyance discharges, including, but not limited to, industrial wastes, pesticides, and
6 heavy metals.

7 71. Defendants infrequently collect canyon collector discharge water quality samples.
8 Of the more than three hundred documented discharges since August 2015, sampling data is
9 available for only eleven discharges.

10 72. As described in Exhibit C and documented in Defendants' Spill Reports to the
11 Regional Water Board, canyon collector discharges contain several pollutants and solid and/or
12 hazardous wastes, including, but not limited to, garbage and refuse; discarded solid, liquid, or
13 semisolid materials from industrial, commercial, and agricultural operations, and from
14 community activities; metals, including, but not limited to, chromium, copper, nickel, zinc,
15 arsenic, cadmium, lead, and beryllium; pesticides, including aldrin, DDT, lindane, dieldrin, and
16 heptachlor; solvents, including, but not limited benzene, toluene, and trichloroethene; and many
17 others.

18 73. Exposure to the pollutants and solid and/or hazardous wastes contained in canyon
19 collector discharges presents a grave threat to human health. Exhibit E describes the human
20 health effects of exposure to a selection of the materials that Defendants have reported are
21 present in discharges from the canyon collectors.

22 74. Many of the contaminants Defendants are discharging to the Tijuana River Valley
23 are slow to break down and accumulate in the environment. Subsequent disruption of reservoirs
24 of pollutants and solid and/or hazardous wastes cause impacts as alleged herein long after the
25 wastewater discharge that initially deposited the materials has subsided.

26 75. The vectors for exposure to these and other hazardous wastes and pollutants in the
27 Tijuana River Valley and canyon collectors render the potential for human exposure to them an
28 imminent and substantial endangerment to human health. Pathways to human exposure to these

1 materials include, but are not limited to, dermal absorption, inhalation of dust with adsorbed
 2 pollutants, inhalation of volatilized pollutants, and unintended ingestion. U.S. Border Patrol
 3 agents working in the Tijuana River Valley are frequently exposed to these materials by walking
 4 through or wading in waters in the drainages, and have reported chemical burns, respiratory
 5 irritation, and other maladies. Once these pollutants and solid and/or hazardous wastes reach the
 6 Tijuana River and Estuary, they present an exposure risk to recreational users, such as
 7 equestrians and hikers, via inhalation and other direct exposure. Upon reaching the Pacific Ocean
 8 and subsequently the Imperial Beach beachfront, surfers, beachgoers, fishermen and women, and
 9 other beach and ocean users, are subjected to direct exposure via dermal contact, ingestion,
 10 inhalation, or otherwise; and indirect contact, such as by consuming fish that have been exposed
 11 to these materials.

12 76. Additionally, disposal of those wastes to land and water in the Valley exposes
 13 land, marine, and estuarine flora and fauna to the dangers inherent in those wastes. Wildlife
 14 exposure to sewage and other contaminants can result in suppression of immune system
 15 response, alterations in defense mechanisms, and depression of essential biological activity that
 16 can lead to susceptibility to disease and infections. Exposure pathways for wildlife in the Tijuana
 17 River Valley includes, but is not limited to, dermal absorption, inhalation of dust with adsorbed
 18 pollutants, inhalation of volatilized pollutants, soil ingestion, and prey ingestion.

19 **V. CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **33 U.S.C. §§ 1311(a)**

22 **Discharges of Pollutants Without a NPDES Permit in Violation of the CWA**

23 **Against the International Boundary and Water Commission – United States Section.**

24 77. Plaintiffs incorporate by reference each and every allegation contained above, as
 25 though set forth fully herein.

26 78. Plaintiffs are “persons” within the meaning of the Clean Water Act authorized to
 27 pursue a citizen enforcement action on their own behalf.

28 79. Defendant USIBWC is a “person” within the meaning of the Clean Water Act.

1 80. Defendant USIBWC owns, operates, maintains, and/or exerts control over the flood
2 control conveyance.

3 81. The flood control conveyance is a “point source” within the meaning of the Clean
4 Water Act.

5 82. Defendant USIBWC, by its acts and omissions, has been and will continue to add
6 pollutants, including, but not limited to, trash, sediment, and sewage containing *e. coli*, total
7 coliform, and enterococcus, from the flood control conveyance to navigable waters, including, but
8 not limited to, the Tijuana River and Estuary and the Pacific Ocean.

9 83. Defendant USIBWC has not obtained a NPDES permit for discharges from the
10 flood control conveyance into navigable waters of the United States.

11 84. Defendant USIBWC has violated and is violating the Clean Water Act, 33 U.S.C.
12 § 1311(a), which prohibits the discharge of pollutants without a NPDES permit, by allowing
13 continuous discharges of wastewater and other pollutants from the flood control conveyance to
14 waters of the United States.

15 85. Defendant USIBWC’s violations of the Clean Water Act have been ongoing and
16 continuous since the flood control conveyance was constructed in 1979. These violations will
17 continue until Defendant USIBWC obtains and complies with a NPDES permit for these
18 discharges. 33 U.S.C. §§ 1311(a) & 1342.

19 86. Each day that Defendant USIBWC has discharged pollutants from the flood control
20 conveyance without a NPDES permit is a separate and distinct violation of the CWA, 33 U.S.C. §
21 1311(a).

22 87. By committing the acts and omissions alleged above, Defendant USIBWC is
23 subject to an assessment of civil penalties pursuant to CWA, 33 U.S.C. §§1319 and 1365.

24 88. This action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §
25 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
26 Plaintiffs, for which harm they have no plain, speedy, or adequate remedy at law.

27 89. Wherefore, Plaintiffs pray for relief as set forth below.
28

SECOND CAUSE OF ACTION

33 U.S.C. §§ 1311(a) & 1342

Discharges of Pollutants in Violation of the CWA and NPDES Permit CA0108928

Against All Defendants.

1
2
3
4
5 90. Plaintiffs incorporate by reference each and every allegation contained above, as
6 though set forth fully herein.

7 91. Defendants own, operate, maintain, and/or exert control over the canyon collectors.

8 92. The canyon collectors are “point sources” within the meaning of the Clean Water
9 Act.

10 93. Defendants, by their acts and omissions, have been and will continue to add
11 pollutants, including, but not limited to, trash, sediment, sewage, enterococcus, fecal coliforms,
12 methylene blue active substances, chromium, copper, zinc, arsenic, cadmium, lead, aldrin, DDT,
13 heptachlor, toluene, and phenol, from the canyon collectors to navigable waters, including, but not
14 limited to, the Tijuana River and Estuary and the Pacific Ocean.

15 94. Defendants have not obtained a NPDES permit for discharges from the flood
16 control conveyance into navigable waters of the United States.

17 95. Defendants have violated and are violating the Clean Water Act, 33 U.S.C. §§
18 1311(a) and 1342, which prohibit the discharge of pollutants in violation of NPDES permit.
19 NPDES permit CA0108928 (California Waste Discharge Requirement Order R9-2014-0009 as
20 amended by Order R9-2014-0094) prohibits discharges from any facility subject to the permit
21 except at the South Bay Ocean Outfall. Defendants’ discharges of wastewater and other pollutants
22 from the canyon collectors to waters of the United States are ongoing and continuous violations of
23 that discharge prohibition.

24 96. Defendants’ violations of the Clean Water Act and NPDES permit CA0108928
25 began at least as far back as 2015 and continue up to the present. These violations will continue
26 until Defendants comply with NPDES permit CA0108928 by eliminating discharges from the
27 canyon collectors. 33 U.S.C. §§ 1311(a) & 1342.

28 97. Each day that Defendants have discharged pollutants from each canyon collector in

1 violation of a NPDES permit is a separate and distinct violation of the Clean Water Act, 33 U.S.C.
2 § 1311(a).

3 98. By committing the acts and omissions alleged above, Defendants are subject to an
4 assessment of civil penalties for each violation pursuant to the Clean Water Act, 33 U.S.C. §§1319
5 and 1365.

6 99. This action for injunctive relief is authorized by the Clean Water Act, 33 U.S.C. §
7 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
8 Plaintiffs, for which harm they have no plain, speedy, or adequate remedy at law.

9 100. Wherefore, Plaintiffs pray for relief as set forth below.

10 **THIRD CAUSE OF ACTION**

11 **42 U.S.C. § 6972(a)(1)(B)**

12 **Contribution to an Imminent and Substantial Endangerment under RCRA**

13 **Against All Defendants.**

14 101. Plaintiffs incorporate by reference each and every allegation contained above, as
15 though set forth fully herein.

16 102. Plaintiffs are “persons” within the meaning of RCRA authorized to pursue citizen
17 enforcement actions on their own behalf.

18 103. Defendant USIBWC is an agency of the United States, and Defendant Veolia is a
19 corporation, and therefore both defendants are “persons” subject to RCRA citizen enforcement for
20 their contribution to the past or present handling, storage, treatment, transport, and/or disposal of
21 solid and/or hazardous wastes through its facilities in the Tijuana River Valley.

22 104. Defendants have systematically and routinely contributed to the past and/or present
23 handling, storage, treatment, transport, and/or disposal of hazardous and/or solid wastes in the
24 Tijuana River Valley by collecting, detaining, conveying, and discharging those solid and/or
25 hazardous wastes by and through operating, maintaining, and/or controlling the USIBWC flood
26 control conveyance, canyon collectors, and other infrastructure.

27 105. Additionally, USIBWC has contributed and continues to contribute to the design,
28 construction, operation, maintenance, and monitoring of the transnational wastewater collection

1 and treatment system that originates in Mexico, and therefore to the handling, storage, treatment,
2 transport and/or disposal of solid and/or hazardous wastes moving through that system. USIBWC
3 provides to its counterpart in Mexico financing, technical assistance, operating protocols, and
4 coordination in the operation of that system, and specifically the CILA diversion on the Mexican
5 side of the Tijuana River that frequently malfunctions, causing sewage and other solid and/or
6 hazardous wastes to enter the United States and discharge from the flood control conveyance.

7 106. The solid and/or hazardous wastes to which Defendants have contributed to the past
8 and/or present handling, storage, treatment, transport, and/or disposal of in the Tijuana Valley
9 include, but are not limited to, garbage and other refuse, sediment, aldrin, nitrogen, lindane,
10 chloroform, DDT, dieldrin, heptachlor, benzene, chlorobenzene, toluene, 2,4-dinitrotoluene,
11 nitrophenol, phenol, and other materials that are inherently waste-like and that were abandoned as
12 a byproduct of industrial, commercial, agricultural, and community activities, among others.

13 107. Defendants' contribution to the past and/or present handling, storage, treatment,
14 transport, and/or disposal of the aforementioned solid wastes in the Tijuana River Valley may
15 present an imminent and substantial endangerment to human health and the environment. The
16 aforementioned solid and/or hazardous wastes, due to their inherent physical and chemical
17 properties, can cause or significantly contribute to an increase in mortality or increase in serious,
18 irreversible, or incapacitating illnesses, such as cancer, as well as pose a substantial present and/or
19 potential hazard to human health and the environment when improperly handled, stored, treated,
20 transported, and/or disposed of, or otherwise improperly managed.

21 108. Defendants routinely dispose of the aforementioned solid and/or hazardous wastes
22 to topsoil or water in the Tijuana River Valley, where they are dispersed to the environment.
23 Human beings are frequently exposed to these wastes via those vectors while working in,
24 recreating in, and visiting the Tijuana River Valley and its environs. Additionally, disposal of those
25 wastes to land and water in the Valley exposes land, marine, and estuarine flora and fauna to the
26 dangers inherent in those wastes. Wastes suspended in wastewater flowing through the Tijuana
27 River and Estuary ultimately expose surfers, beachgoers, and other beach and ocean users, as well
28 as terrestrial and marine flora and fauna along the Imperial Beach beachfront.

1 109. The imminent and substantial endangerment to health and the environment
2 presented by Defendants' discharges of waste in the Tijuana River Valley is now, and will continue
3 to be present, until Defendants' illegal handling, storage, treatment, transport, and disposal of those
4 wastes is abated, and wastes currently present in the Tijuana River Valley are removed.

5 110. Wherefore, Plaintiffs pray for relief as set forth below.

6 **VI. PRAYER FOR RELIEF**

7 WHEREFORE Plaintiffs seek judgment against these Defendants for:

8 1. Injunctive and equitable relief to compel Defendants to comply with CWA and
9 RCRA, including an order enjoining Defendants' illegal discharges of pollutants and solid and/or
10 hazardous wastes;

11 2. Civil penalties;

12 3. Costs, including reasonable attorneys' fees, court costs, and other expenses of
13 litigation;

14 4. Prejudgment interest; and

15 5. Any other and further relief as the Court deems just, proper, and appropriate.

16 Dated: March 2, 2018

SHER EDLING LLP

17
18 By: /s/ Matthew K. Edling
19 Matthew K. Edling
20 Victor M. Sher
21 Timothy R. Sloane

*Attorneys for Plaintiffs the City of Imperial
22 Beach, the San Diego Unified Port District, and
23 the City of Chula Vista*

24 By: /s/ Thomas A. Russell
25 SAN DIEGO UNIFIED PORT DISTRICT
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Port District*

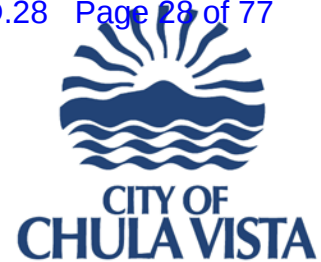
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By: /s/ Glen R. Googins

CITY OF CHULA VISTA
OFFICE OF THE CITY ATTORNEY
Glen R. Googins
Bart J. Miesfeld

Attorneys for Plaintiff the City of Chula Vista

EXHIBIT A



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

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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.

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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

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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 Mgpd.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).

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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).

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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.

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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.

Table 1 – Wastewater Flow Events via Flood Control Conveyance and Yogurt Canyon			
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.

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Table 1 – Wastewater Flow Events via Flood Control Conveyance and Yogurt Canyon			
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

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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.

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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.*

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Table 2 – Canyon Collectors Overflows with Spill Reports				
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.

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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

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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

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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

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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

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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

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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

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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

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#	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

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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.

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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).

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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).

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- 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).

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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>

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Table 5 – Certain Health Hazards of Subject Wastewater Discharges⁴⁵	
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,

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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.

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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).

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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

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

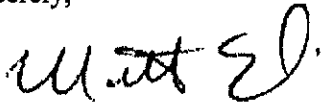
Glen R. Googins
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ggoogins@chulavistaca.gov
bmiesfeld@chulavistaca.gov
Tel: (619) 691-5037

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.

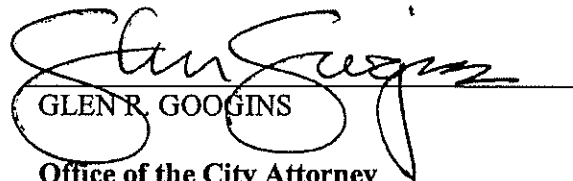
Sincerely,



MATTHEW K. EDLING

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

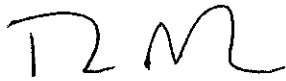
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cc via certified mail:

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Environmental Protection Agency, 1101A
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Alexis Strauss, Acting EPA Regional Administrator
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Eileen Sobeck, Executive Director
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PO Box 100
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Director Barbara A. Lee
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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

EXHIBIT B

Exhibit B

Wastewater Flow Events via Flood Control Conveyance			
Date¹	Volume (Gal.)	Vector	Description
2/26/2018	1.185 million	Flood Control Conveyance	Electrical and mechanical equipment failures at Pump Station CILA
2/20/2018	304,000	Flood Control Conveyance	Maintenance at Pump Station CILA requiring facility shutdown
2/15/2018	Unknown	Flood Control Conveyance	Unknown
2/10/2018	665,000	Flood Control Conveyance	Electrical issues affecting operation of motors and pumps at Pump Station CILA
2/9/2018	560,000	Flood Control Conveyance	Electrical power failure at Pump Station CILA
2/4/2018	100,000	Flood Control Conveyance	Water line rupture in Mexico
1/29/2018	208,000	Flood Control Conveyance	Electrical malfunction at Pump Station CILA
1/9/2018	Unknown	Flood Control Conveyance	Pump Station CILA capacity exceeded
10/22/2017	228,000	Flood Control Conveyance	Capacity of Pump Station CILA exceeded
10/11/2017	81,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
9/19/2017	38,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
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 exceeded capacity of Pump Station CILA
8/17/2017	411,000	Flood Control Conveyance	Clogged intake screens at CILA diversion
8/7/2017	311,000	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

¹ The date listed represents the date a flood control conveyance discharge initiated or was first reported. Many of these discharges occurred over the course of several consecutive days.

Exhibit B

Wastewater Flow Events via Flood Control Conveyance			
Date¹	Volume (Gal.)	Vector	Description
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
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

Exhibit B

Wastewater Flow Events via Flood Control Conveyance			
Date¹	Volume (Gal.)	Vector	Description
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.

EXHIBIT C

Exhibit C

Canyon Collectors Overflows with Spill Reports				
Date	Location	Gallons (est.)	Pollutants Present¹	Receiving Water
10/19/2017	Canyon del Sol	1,207,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; Methylene Blue Active Substances; pH; P; TDS; total N; TSS; turbidity; bromodichloromethane; bromoform; chloroform; dibromochloromethane; 2,3,7,8-TCDD; asbestos structures;	Tijuana River
10/7/2017	Canyon del Sol	4,152,000	Enterococcus; fecal coliforms; total coliforms; BOD; DO; pH; P; TDS; total N; TSS; turbidity; bromodichloromethane; bromoform; chloroform; dibromochloromethane; 2,3,7,8-TCDD; asbestos structures	Tijuana River
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 phthalate; Di-n-butyl phthalate; asbestos structures; 2,3,7,8-TCDD	Tijuana River
5/24/2017	Stewart's Drain	3,800	No samples recovered ²	Tijuana River
5/21/2017	Stewart's Drain	1,560	No samples recovered ³	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-	Goat Canyon Drainage

¹ From sampling data attached to IBWC Monthly available on CIWQS, unless otherwise noted.

² IBWC, Monthly Spill Report for May 2017 (June 30, 2017).

³ *Id.*

Exhibit C

Canyon Collectors Overflows with Spill Reports				
Date	Location	Gallons (est.)	Pollutants Present¹	Receiving Water
			dichloroethene; toluene; trichloroethene	
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-dinitrotoluene; 4-nitrophenol; N-nitrosodi-n-propylamine; pentrahydrochlorophenol; phenol; pyrene; 1,2,4-trichlorobenzene	Canyon del Sol drainage
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;	Tijuana River

Exhibit C

Canyon Collectors Overflows with Spill Reports				
Date	Location	Gallons (est.)	Pollutants Present¹	Receiving Water
			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	

EXHIBIT D

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
1.	2/27/2018	Goat Canyon
2.	12/21/2017	Canyon del Sol
3.	12/21/2017	Silva Drain
4.	12/21/2017	Stewart's Drain
5.	11/8/2017	Stewart's Drain
6.	11/8/2017	Silvia Drain
7.	11/8/2017	Canyon del Sol
8.	11/8/2017	Smuggler's Gulch
9.	11/8/2017	Goat Canyon
10.	11/7/2017	Stewart's Drain
11.	11/7/2017	Silva Drain
12.	11/7/2017	Canyon del Sol
13.	11/7/2017	Smuggler's Gulch
14.	11/7/2017	Goat Canyon
15.	10/19/2017	Canyon del Sol
16.	10/7/2017	Canyon del Sol
17.	5/19/2017	Smuggler's Gulch
18.	5/7/2017	Goat Canyon
19.	5/7/2017	Smuggler's Gulch
20.	5/7/2017	Canyon del Sol
21.	5/7/2017	Silva Drain
22.	5/7/2017	Stewart's Drain
23.	4/29/2017	Canyon del Sol
24.	3/1/2017	Smuggler's Gulch
25.	2/28/2017	Goat Canyon
26.	2/28/2017	Smuggler's Gulch
27.	2/27/2017	Goat Canyon
28.	2/27/2017	Canyon del Sol
29.	2/27/2017	Stewart's Drain
30.	2/27/2017	Smuggler's Gulch
31.	2/27/2017	Silva Drain
32.	2/26/2017	Smuggler's Gulch
33.	2/20/2017	Goat Canyon
34.	2/20/2017	Smuggler's Gulch
35.	2/19/2017	Goat Canyon
36.	2/19/2017	Canyon del Sol
37.	2/19/2017	Stewart's Drain
38.	2/19/2017	Smuggler's Gulch
39.	2/19/2017	Silva Drain
40.	2/18/2017	Goat Canyon
41.	2/18/2017	Canyon del Sol
42.	2/18/2017	Stewart's Drain
43.	2/18/2017	Smuggler's Gulch

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
44.	2/18/2017	Silva Drain
45.	2/12/2017	Goat Canyon
46.	2/7/2017	Goat Canyon
47.	2/7/2017	Canyon del Sol
48.	2/7/2017	Stewart's Drain
49.	2/7/2017	Smuggler's Gulch
50.	2/7/2017	Silva Drain
51.	1/24/2017	Goat Canyon
52.	1/24/2017	Smuggler's Gulch
53.	1/24/2017	Canyon del Sol
54.	1/24/2017	Silva Drain
55.	1/24/2017	Stewart's Drain
56.	1/23/2017	Goat Canyon
57.	1/23/2017	Smuggler's Gulch
58.	1/23/2017	Canyon del Sol
59.	1/23/2017	Silva Drain
60.	1/23/2017	Stewart's Drain
61.	1/22/2017	Goat Canyon
62.	1/22/2017	Smuggler's Gulch
63.	1/22/2017	Canyon del Sol
64.	1/22/2017	Silva Drain
65.	1/22/2017	Stewart's Drain
66.	1/21/2017	Goat Canyon
67.	1/21/2017	Smuggler's Gulch
68.	1/20/2017	Goat Canyon
69.	1/20/2017	Canyon del Sol
70.	1/20/2017	Stewart's Drain
71.	1/20/2017	Smuggler's Gulch
72.	1/20/2017	Silva Drain
73.	1/19/2017	Goat Canyon
74.	1/19/2017	Canyon del Sol
75.	1/19/2017	Stewart's Drain
76.	1/19/2017	Smuggler's Gulch
77.	1/19/2017	Silva Drain
78.	1/14/2017	Goat Canyon
79.	1/14/2017	Canyon del Sol
80.	1/14/2017	Stewart's Drain
81.	1/14/2017	Smuggler's Gulch
82.	1/14/2017	Silva Drain
83.	1/13/2017	Goat Canyon
84.	1/13/2017	Canyon del Sol
85.	1/13/2017	Stewart's Drain
86.	1/13/2017	Smuggler's Gulch

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
87.	1/13/2017	Silva Drain
88.	1/12/2015	Goat Canyon
89.	1/12/2017	Smuggler's Gulch
90.	1/12/2017	Canyon del Sol
91.	1/11/2017	Goat Canyon
92.	1/10/2017	Goat Canyon
93.	1/10/2017	Canyon del Sol
94.	1/9/2017	Canyon del Sol
95.	1/8/2017	Goat Canyon
96.	1/8/2017	Stewart's Drain
97.	1/6/2017	Goat Canyon
98.	1/6/2017	Canyon del Sol
99.	1/6/2017	Stewart's Drain
100.	1/6/2017	Smuggler's Gulch
101.	1/2/2017	Goat Canyon
102.	1/1/2017	Goat Canyon
103.	1/1/2017	Smuggler's Gulch
104.	1/1/2017	Canyon del Sol
105.	1/1/2017	Silva Drain
106.	1/1/2017	Stewart's Drain
107.	12/31/2016	Goat Canyon
108.	12/31/2016	Smuggler's Gulch
109.	12/31/2016	Canyon del Sol
110.	12/31/2016	Silva Drain
111.	12/30/2016	Goat Canyon
112.	12/30/2016	Smuggler's Gulch
113.	12/30/2016	Stewart's Drain
114.	12/27/2016	Goat Canyon
115.	12/25/2016	Goat Canyon
116.	12/25/2016	Smuggler's Gulch
117.	12/24/2016	Goat Canyon
118.	12/24/2016	Smuggler's Gulch
119.	12/24/2016	Stewart's Drain
120.	12/23/2016	Goat Canyon
121.	12/23/2016	Smuggler's Gulch
122.	12/23/2016	Canyon del Sol
123.	12/23/2016	Silva Drain
124.	12/23/2016	Stewart's Drain
125.	12/22/2016	Goat Canyon
126.	12/22/2016	Smuggler's Gulch
127.	12/22/2016	Canyon del Sol
128.	12/22/2016	Silva Drain
129.	12/22/2016	Stewart's Drain

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
130.	12/17/2016	Canyon del Sol
131.	12/17/2016	Silva Drain
132.	12/17/2016	Stewart's Drain
133.	12/17/2016	Goat Canyon
134.	12/17/2016	Smuggler's Gulch
135.	12/16/2016	Goat Canyon
136.	12/16/2016	Smuggler's Gulch
137.	12/16/2016	Canyon del Sol
138.	12/16/2016	Silva Drain
139.	12/16/2016	Stewart's Drain
140.	11/28/2016	Goat Canyon
141.	11/28/2016	Smuggler's Gulch
142.	11/28/2016	Canyon del Sol
143.	11/28/2016	Silva Drain
144.	11/28/2016	Stewart's Drain
145.	11/27/2016	Goat Canyon
146.	11/27/2016	Smuggler's Gulch
147.	11/27/2016	Canyon del Sol
148.	11/27/2016	Silva Drain
149.	11/27/2016	Stewart's Drain
150.	11/22/2017	Goat Canyon
151.	11/22/2017	Smuggler's Gulch
152.	11/22/2017	Canyon del Sol
153.	11/22/2017	Silva Drain
154.	11/22/2017	Stewart's Drain
155.	11/21/2016	Goat Canyon
156.	11/21/2016	Smuggler's Gulch
157.	11/21/2016	Canyon del Sol
158.	11/21/2016	Silva Drain
159.	11/21/2016	Stewart's Drain
160.	11/20/2016	Silva Drain
161.	9/22/2016	Goat Canyon
162.	9/22/2016	Smuggler's Gulch
163.	9/22/2016	Stewart's Drain
164.	9/21/2016	Goat Canyon
165.	9/21/2016	Smuggler's Gulch
166.	9/21/2016	Canyon del Sol
167.	9/21/2016	Silva Drain
168.	9/21/2016	Stewart's Drain
169.	9/20/2016	Goat Canyon
170.	9/20/2016	Smuggler's Gulch
171.	9/20/2016	Canyon del Sol
172.	9/20/2016	Silva Drain

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
173.	9/20/2016	Stewart's Drain
174.	7/7/2016	Silva Drain
175.	5/8/2016	Goat Canyon
176.	5/8/2016	Smuggler's Gulch
177.	5/8/2016	Canyon del Sol
178.	5/8/2016	Silva Drain
179.	5/8/2016	Stewart's Drain
180.	5/7/2016	Goat Canyon
181.	5/7/2016	Smuggler's Gulch
182.	5/7/2016	Canyon del Sol
183.	5/7/2016	Silva Drain
184.	5/7/2016	Stewart's Drain
185.	5/6/2016	Goat Canyon
186.	5/6/2016	Smuggler's Gulch
187.	5/6/2016	Canyon del Sol
188.	5/6/2016	Silva Drain
189.	5/6/2016	Stewart's Drain
190.	4/10/2016	Goat Canyon
191.	4/10/2016	Smuggler's Gulch
192.	4/10/2016	Canyon del Sol
193.	4/10/2016	Silva Drain
194.	4/10/2016	Stewart's Drain
195.	4/8/2016	Goat Canyon
196.	4/8/2016	Smuggler's Gulch
197.	4/7/2016	Goat Canyon
198.	4/7/2016	Smuggler's Gulch
199.	4/7/2016	Silva Drain
200.	4/7/2016	Stewart's Drain
201.	3/12/2016	Goat Canyon
202.	3/12/2016	Smuggler's Gulch
203.	3/12/2016	Canyon del Sol
204.	3/12/2016	Silva Drain
205.	3/12/2016	Stewart's Drain
206.	3/9/2016	Goat Canyon
207.	3/8/2016	Goat Canyon
208.	3/8/2016	Smuggler's Gulch
209.	3/8/2016	Canyon del Sol
210.	3/8/2016	Silva Drain
211.	3/8/2016	Stewart's Drain
212.	3/7/2016	Goat Canyon
213.	3/7/2016	Smuggler's Gulch
214.	3/7/2016	Canyon del Sol
215.	3/7/2016	Silva Drain

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
216.	3/7/2016	Stewart's Drain
217.	3/6/2016	Goat Canyon
218.	3/6/2016	Smuggler's Gulch
219.	3/6/2016	Canyon del Sol
220.	3/6/2016	Silva Drain
221.	3/6/2016	Stewart's Drain
222.	2/2/2016	Goat Canyon
223.	2/1/2016	Goat Canyon
224.	2/1/2016	Smuggler's Gulch
225.	2/1/2016	Canyon del Sol
226.	2/1/2016	Silva Drain
227.	2/1/2016	Stewart's Drain
228.	1/31/2016	Canyon del Sol
229.	1/31/2016	Silva Drain
230.	1/31/2016	Stewart's Drain
231.	1/29/2016	Stewart's Drain
232.	1/24/2016	Canyon del Sol
233.	1/24/2016	Stewart's Drain
234.	1/16/2016	Goat Canyon
235.	1/10/2016	Goat Canyon
236.	1/10/2016	Smuggler's Gulch
237.	1/9/2016	Goat Canyon
238.	1/9/2016	Smuggler's Gulch
239.	1/9/2016	Canyon del Sol
240.	1/9/2016	Silva Drain
241.	1/9/2016	Stewart's Drain
242.	1/8/2016	Goat Canyon
243.	1/8/2016	Smuggler's Gulch
244.	1/8/2016	Canyon del Sol
245.	1/8/2016	Silva Drain
246.	1/8/2016	Stewart's Drain
247.	1/7/2016	Goat Canyon
248.	1/7/2016	Smuggler's Gulch
249.	1/7/2016	Canyon del Sol
250.	1/7/2016	Silva Drain
251.	1/7/2016	Stewart's Drain
252.	1/6/2016	Goat Canyon
253.	1/6/2016	Smuggler's Gulch
254.	1/6/2016	Canyon del Sol
255.	1/6/2016	Silva Drain
256.	1/6/2016	Stewart's Drain
257.	1/5/2016	Goat Canyon
258.	1/5/2016	Smuggler's Gulch

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
259.	1/5/2016	Canyon del Sol
260.	1/5/2016	Silva Drain
261.	1/5/2016	Stewart's Drain
262.	1/4/2016	Goat Canyon
263.	1/4/2016	Smuggler's Gulch
264.	1/4/2016	Canyon del Sol
265.	1/4/2016	Silva Drain
266.	1/4/2016	Stewart's Drain
267.	12/29/2015	Goat Canyon
268.	12/29/2015	Smuggler's Gulch
269.	12/29/2015	Stewart's Drain
270.	12/28/2015	Goat Canyon
271.	12/23/2015	Goat Canyon
272.	12/23/2015	Smuggler's Gulch
273.	12/23/2015	Canyon del Sol
274.	12/23/2015	Silva Drain
275.	12/23/2015	Stewart's Drain
276.	12/22/2015	Goat Canyon
277.	12/22/2015	Smuggler's Gulch
278.	12/22/2015	Canyon del Sol
279.	12/22/2015	Silva Drain
280.	12/22/2015	Stewart's Drain
281.	12/20/2015	Goat Canyon
282.	12/20/2015	Smuggler's Gulch
283.	12/19/2015	Goat Canyon
284.	12/19/2015	Smuggler's Gulch
285.	12/14/2015	Goat Canyon
286.	12/14/2015	Smuggler's Gulch
287.	12/14/2015	Canyon del Sol
288.	12/14/2015	Silva Drain
289.	12/14/2015	Stewart's Drain
290.	11/28/2015	Goat Canyon
291.	11/28/2015	Smuggler's Gulch
292.	11/28/2015	Canyon del Sol
293.	11/28/2015	Silva Drain
294.	11/28/2015	Stewart's Drain
295.	11/27/2015	Goat Canyon
296.	11/27/2015	Smuggler's Gulch
297.	11/16/2015	Goat Canyon
298.	11/15/2015	Goat Canyon
299.	11/15/2015	Smuggler's Gulch
300.	11/15/2015	Canyon del Sol
301.	11/15/2015	Stewart's Drain

Exhibit D

Other Canyon Collector Overflows		
#	Date	Canyon Collector
302.	11/10/2015	Goat Canyon
303.	11/10/2015	Smuggler's Gulch
304.	11/4/2015	Canyon del Sol
305.	11/4/2015	Stewart's Drain
306.	11/1/2015	Goat Canyon
307.	10/6/2015	Goat Canyon
308.	10/6/2015	Smuggler's Gulch
309.	10/6/2015	Canyon del Sol
310.	10/6/2015	Silva Drain
311.	10/6/2015	Stewart's Drain
312.	10/5/2015	Goat Canyon
313.	10/5/2015	Smuggler's Gulch
314.	10/5/2015	Canyon del Sol
315.	10/5/2015	Silva Drain
316.	10/5/2015	Stewart's Drain
317.	9/17/2015	Goat Canyon
318.	9/17/2015	Smuggler's Gulch
319.	9/16/2015	Goat Canyon
320.	9/16/2015	Smuggler's Gulch
321.	9/16/2015	Canyon del Sol
322.	9/16/2015	Silva Drain
323.	9/16/2015	Stewart's Drain
324.	9/15/2015	Goat Canyon
325.	9/15/2015	Smuggler's Gulch
326.	9/15/2015	Canyon del Sol
327.	9/15/2015	Silva Drain
328.	9/15/2015	Stewart's Drain
329.	8/30/2015	Goat Canyon

EXHIBIT E

Exhibit E

Certain Health Hazards of Subject Wastewater Discharges¹	
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 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

¹ 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>

Exhibit E

Certain Health Hazards of Subject Wastewater Discharges¹	
Waste Material	Human Health Impacts
	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, 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.