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***Via Registered Mail - Return Receipt Requested***

July 9, 2010

Joseph DePinto, President & CEO  
7-Eleven, Inc.  
One Arts Plaza  
1722 Routh St. #1000  
Dallas, TX 75201-2506

Operator/Site Manager  
7-Eleven  
2500 MacDonald Ave.  
Richmond, CA 94805

Operator/Site Manager  
7-Eleven  
6701 Auburn Blvd.  
Citrus Heights, CA 95621

Operator/Site Manager and,  
Clovis-Ashlan Partners c/o  
7-Eleven  
5630 E. Ashlan Ave.  
Fresno, CA 93727

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

Dear Operators and Site Managers:

## NOTICE

On behalf of Northern California River Watch (hereafter referred to as “River Watch”), I am providing statutory notification to you of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et*

*seq.*, in conjunction with your former operations or continuing operations at the three underground storage tank sites identified in this Notice.

Notice of violations is also being provided via copy of this Notice to the owners of the real property on which the 7-Eleven sites at issue are situated, as those owners of property are known to River Watch. Pursuant to RCRA provisions, the current owners of the real properties underlying these sites may be responsible in part for ongoing contamination due to mere ownership of the real property under which the hazardous contamination has been found.

RCRA requires that sixty (60) days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the U.S. Environmental Protection Agency and the State in which the violation is alleged to have occurred (42 U.S.C. § 6972(b)(1)(A)). RCRA also requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred before initiating an action which alleges violations of the RCRA resulting in an imminent and substantial endangerment to human health or the environment. [42 U.S.C. § 6972(b)(2)(A)].

However, if Subtitle C, Subchapter III, violations are alleged, such as in this Notice, actions can be brought without observing the 60/90 day notice waiting periods applicable to 42 U.S.C. § 6972(a)(1)(A) and § 6972(a)(1)(B) claims. Also, when Subtitle C, Subchapter III, claims are brought in conjunction with 42 U.S.C. § 6972(a)(1)(A) and § 6972(a)(1)(B) claims for violations, none of the claims require a waiting period before a complaint under RCRA provisions may be filed.

River Watch hereby notifies 7-Eleven, Inc. and all Operators and Site managers to whom this Notice is addressed (hereafter referred to as “Responsible Parties”), that at the expiration of the appropriate notice periods under RCRA, River Watch intends to commence a civil action against Responsible Parties on the following grounds:

1. Responsible Parties’ use and storage of petroleum products at the sites identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding the storage of petroleum in underground storage tanks (“USTs”) [42 U.S.C. § 6972 (a)(1)(A)];
2. Responsible Parties’ operations at the sites identified in this Notice have caused petroleum contamination of soil and groundwater which presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972 (a)(1)(B)].

3. Responsible Parties' past and current operations at the sites identified in this Notice violate the provisions of RCRA subchapter III (Subtitle C) which governs the handling of hazardous wastes. River Watch contends that Responsible Parties have inadequately maintained records of the manner in which hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning wastes; inadequately provided storage facilities for wastes; and in the past have not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which has presented a substantial endangerment to human health and to the environment.

Under the RCRA, notice to a violator regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under RCRA shall include sufficient information to permit the recipient of the notice to identify the permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation (or reasonable range), and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

- 1. The standard, limitation, or order alleged to have been violated.**

Enacted in 1976, the RCRA is a federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. Its goals are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes.

The Environmental Protection Agency's ("EPA") waste management regulations are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to the RCRA, the State of California has enacted laws and promulgated regulations at least as stringent as the federal regulations.

River Watch alleges the use and storage of wastes at the sites identified in this Notice by Responsible Parties, and the disposal of those wastes as described in this Notice, has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding hazardous waste. [42 U.S.C. § 6972(a)(1)(A)].

River Watch further alleges that operations by Responsible Parties at the sites identified in this Notice have caused or threaten to cause contamination of soil, groundwater, surface waters and residential areas, which contamination presents an imminent and substantial endangerment to human health and the environment. Responsible Parties own or operate discreet conveyances, preferential pathways or wells which have contributed to

the transportation, treatment, storage, or disposal of the wastes at the identified sites. [42 U.S.C. § 6972(a)(1)(B)].

## **2. The Activity Alleged to Constitute a Violation**

Narratives are set forth below describing with particularity the activities leading to the violations alleged in this Notice. In summary, the RCRA requires that the environment and public be protected from hazardous wastes such as those generated by Responsible Parties. Pollutants as described herein and found at the sites identified in this Notice constitute solid and hazardous waste under the RCRA, and are required to be managed so as to not cause endangerment to the public or the environment. The RCRA specifically protects groundwater.

The liability of Responsible Parties stems from their ownership of the identified sites and/or their activities conducted on site which violate the RCRA and have contributed to the past or present handling, storage, treatment, transportation, or disposal of a hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also alleges Responsible Parties to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA.

River Watch alleges Responsible Parties are guilty of open dumping as that term is used in the RCRA, by discharging pollutants to the open ground, thereby allowing these pollutants to discharge to both groundwater and surface waters. The sites identified in this Notice do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as facilities for the disposal of hazardous waste. Also, Responsible Parties have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the sites identified in the Notice.

The liability of Responsible Parties also stems from their ownership or operation of discrete conveyances, preferential pathways or wells which have caused pollutants to be discharged to groundwater and surface waters via conduits such as pipes, sewer lines, storm drains, utilities and the like, thereby facilitating pollutant migration and discharge to waters of the State of California and waters of the United States, and contributing to the past or present handling, storage, treatment, transportation, or disposal of a hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Responsible Parties' past and current operations at the sites identified in this Notice violate the provisions of the RCRA, 42 U.S.C. § 6924, which governs the mishandling of hazardous wastes. River Watch contends Responsible Parties have inadequately maintained records of the manner in which their hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning their wastes; inadequately provided storage facilities for their wastes; and in the

past have not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which presents a substantial endangerment to human health and to the environment.

**3. The discharger responsible for the alleged violation.**

The dischargers responsible for the violations alleged in this Notice are 7-Eleven, Inc., and the Operators and Site Managers to whom this Notice is addressed, identified throughout this Notice as “Responsible Parties”. River Watch further alleges the current owners of the real properties underlying these sites may be considered dischargers and may be responsible in part for ongoing contamination due to mere ownership of the real property under which the hazardous contamination has been found.

**4. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.**

The RCRA is a strict liability statute with a 5 year statute of limitations; therefore, although violations of the RCRA by Responsible Parties have occurred for more than 5 years, the range of dates covered by this Notice is June 28, 2005 through the date of this Notice. River Watch will from time to time update and supplement this Notice to include all violations by Responsible Parties which occur after the date of this Notice. The majority of the violations identified in this Notice such as threatening to and discharging pollutants to groundwater and surface waters; failure to obtain RCRA-authorized permits; failure to implement the requirements of RCRA; failure to properly label, track or report the type, quantity or disposition of waste; failure to use a manifest system to ensure waste generated is properly handled, stored, disposed of or treated and, failure to meet water quality objectives, are continuous. Therefore each day is a violation.

River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of the other violations are evidenced in Responsible Parties’ own records (or lack thereof) or files and records of other regulatory agencies including the Regional Water Quality Control Board, GeoTracker, Sacramento County health, Contra Costa County health, Fresno County Health and local police and fire departments for each of the sites identified herein.

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

The entity giving notice is Northern California River Watch, identified throughout this Notice as “River Watch”. River Watch is a non-profit corporation organized under the laws of the State of California, located at 500 North Main Street, Suite 110, Sebastopol, CA, 95472 - telephone (707) 824-4372. River Watch is dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

The violations of Responsible Parties as set forth in this Notice affect the economic stability, physical health and aesthetic enjoyment of members of River Watch who reside and recreate in the affected watershed areas. Members of River Watch use the watersheds for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by the violations of the RCRA by Responsible Parties as alleged in this Notice.

### **IDENTIFICATION OF SITES / BACKGROUND HISTORY**

#### **1. 7-Eleven Facility #229302500 - MacDonald Avenue, Richmond, CA**

This 7-Eleven store and former UST site is located at the southeast corner of MacDonald Ave. and 25<sup>th</sup> Street, on property owned and operated by 7-Eleven, Inc. The facility is an active 7-Eleven retail store with drinking water lines and sewer lines serving the single story structure on the property. The building is situated within an area of residential properties in this section of Richmond.

The facility formerly contained three USTs with a total holding capacity of 36,000 gallons. 7-Eleven operated a gasoline station at the site for a total of 14 years before the USTs were removed in 2003 and not replaced.

Following an unauthorized petroleum hydrocarbon release from the former service station operations in 1989, soil and groundwater contamination at the site was discovered, and quarterly groundwater monitoring commenced by 1990. Thereafter, remediation of affected soil and groundwater was conducted until 1997, and intermittently between 2001 and 2003. In 2003 ozone sparging was tested as a remediation strategy for the site, but then determined not to be feasible for the particular soil and groundwater conditions there. Since that time there have been no active remediation efforts.

At the present time, over 20 years from the initial release of contaminants, the pollution of the soil and groundwater at the site remains unremediated. According to the latest documentation files reviewed at the Regional Water Quality Control Board for the site, the contaminant plume has not been adequately characterized, and there is no end in sight for the engineering work which needs to be accomplished. In addition to a complete delineation of the contaminant plume, River Watch believes Responsible Parties must take efforts to protect against aquifer and surface stream impact from this plume, as well as conduct current sensitive receptor and preferential pathway surveys.

As of the latest monitoring reports reviewed by River Watch, high concentrations of petroleum hydrocarbons are present beneath the southern and western portions of the property. The dissolved hydrocarbon plume extends westward following the predominant

flow of groundwater in this area. As noted above, the hydrocarbon plume has not been fully delineated in spite of the length of time since the initial release.

Well monitoring of the site for First Quarter 2010 [the most current] reflects contaminant levels as follows: TPHg as high as 23,000 ug/l; benzene as high as 170 ug/l; toluene as high as 6.8 ug/l. In Third Quarter 2009, soil vapor concentration levels were also very high: gasoline range organics were as high as 46,000,000 ug/m; benzene was as high as 270,000 ug/m; cyclohexane was as high as 1,100,000 ug/m; hexane was as high as 970,000 ug/m; heptane was as high as 190,000 ug/m; ethylbenzene was as high as 42,000 ug/m.

On the basis of the current conditions at this site, River Watch believes the following remediation work must be implemented immediately:

- a. Complete delineation for the purpose of enabling further remediation work to proceed;
- b. Initiation of immediate vapor intrusion testing in each of the areas above the plume to determine whether nearby residents are exposed to injurious levels of hydrocarbon and/or benzene vapors;
- c. Initiation of active remediation work as soon as possible to include elimination of any threats to the adjacent residential population who may currently be exposed to dangerous hydrocarbon and/or benzene vapors;
- d. Consideration of further over-excavation to eliminate lingering sources of MTBE and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface water;
- e. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells;
- f. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues through which hydrocarbons and constituents may be migrating offsite;
- g. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site; and,
- h. Current residual mass calculations which will allow the measurement of remediation progress once removal processes are initiated.

## **2. 7-Eleven Facility #13916 - 5630 E. Ashlan Avenue, Fresno, CA**

This site is located east of Clovis Avenue in an area of Fresno with mixed commercial and residential uses. It is currently operating as an active 7-Eleven convenience store and has been such since approximately May of 1967. In conjunction with its operations, three USTs (two 10,000 gallon tanks and one 6,300 gallon tank) were installed during that year. In 2004 the USTs were removed, and at that time petroleum hydrocarbon contamination was discovered in soil samples.

Monitoring wells were subsequently installed, and remediation plans were developed to deal with contamination found to exist at over 100 feet beneath the surface. Actual remediation was not commenced until an SVE/AS (soil vapor extraction/ air sparging) system was installed and activated in August of 2009.

On the basis of current reports from engineering consultants for Responsible Parties, it appears there has been no completion of site characterization to date. In addition, the City of Clovis has a municipal supply well for its residents approximately 260 feet southwest and downgradient of the site. While there has been no discovery of hydrocarbon contamination in the City's water system as of yet, the risk of contamination remains until the remediation of the site is finished. Plume delineation in the direction of the municipal well has not yet been achieved.

In addition to a complete delineation of the contaminant plume, River Watch believes Responsible Parties must take efforts to protect against aquifer and surface stream impact from the plume, as well as conduct current sensitive receptor and preferential pathway surveys. River Watch is concerned that the installed SVE system only addresses contamination in the non-saturated contamination zones. It does nothing to rid the underlying groundwater of its hydrocarbon content. The AS component is intended to affect groundwater by volatilizing hydrocarbons in the saturated zone, which can then be recovered by the SVE system. The effectiveness of AS, however, is limited by the amount and reach of the air pumped into saturated zones under the site. Such systems are not expected to achieve complete site remediation because of inherent physical limitations.

River Watch believes groundwater extraction would be preferable to a SVE/AS system. However, 7-Eleven's consultant indicates groundwater extraction is not a viable remediation technology at this site due to the necessary high pumping rates required, the difficulties of obtaining a discharge permit for the quantities of water involved, and the high cost of such an operation. River Watch does not believe cost should be a factor in choosing a remediation strategy that is slower and less effective, when a City's municipal well is at risk.

As of the latest monitoring reports reviewed by River Watch, very significant concentrations of petroleum hydrocarbons are present beneath portions of the property. The dissolved hydrocarbon plume extends westward following the predominant flow of



groundwater in the area. Well monitoring in First Quarter 2010 [the most currently available] reflects contaminant levels as follows: TPHg as high as 1,300,000 ppb (by volume); MTBE as high as 56,000 ppb (by volume); toluene as high as 30,000 ppb (by volume); xylenes as high as 43,000 ppb (by volume); and benzene as high as 3,700 ppb (by volume).

On the basis of the current conditions at the site, River Watch believes the following remediation work must be implemented immediately:

- a. Complete delineation for the purpose of enabling further remediation work to proceed effectively;
- b. Initiation of immediate vapor intrusion testing in each of the areas above the plume to determine whether nearby residents are exposed to injurious levels of hydrocarbon and/or benzene vapors;
- c. Consideration of further over-excavation to eliminate lingering sources of MTBE and petroleum hydrocarbon constituents from further migrating into offsite groundwater and any surface water in the vicinity;
- d. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells;
- e. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues through which hydrocarbons and constituents may be migrating offsite;
- f. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site; and,
- g. Current residual mass calculations to allow the measurement of remediation progress once removal processes are initiated.

### **3. 7-Eleven Facility #24815 - 6180 Auburn Blvd., Citrus Heights, CA**

This store is situated at the southwest corner of Auburn Boulevard and Greenback Lane in an area of Citrus Heights which includes mixed commercial and residential uses. The site is currently an operating 7-Eleven convenience store with three 10,000 gallon USTs.

In August of 2003, a release of petroleum hydrocarbons into underlying soils and groundwater was first discovered during fuel line upgrade operations. In March of 2004 and later in 2005, an engineering consultant installed several monitoring wells in an attempt to define the limits of the underground plume and the range of contamination. By December

of 2006, the consultant determined that the groundwater plume had been adequately defined in scope, at which time remedial alternatives were evaluated.

In January of 2007, the engineering consultant considered remedial alternatives of SVE, AS and monitored natural attenuation (“MNA”); and, apparently on the basis of relative cost considerations, recommended MNA. For that reason there has been no remedial activity at the site since the original discovery of hydrocarbon contamination in 2003.<sup>1</sup> MNA relies upon gradual aerobic and anaerobic biodegradation of the hydrocarbon contaminants, provided that sufficient oxygen and micro-organic bacteria are present in soil and groundwater to eventually eliminate the contamination – over a period of “10 years” in this particular case, according to the consultant.

As of the latest monitoring reports reviewed by River Watch, significant concentrations of petroleum hydrocarbons are present beneath portions of the property. The dissolved hydrocarbon plume extends to the south, following the predominant flow of groundwater in this area. Well monitoring taken in First Quarter 2009 [February, 2009] reflected contaminant levels as follows: TPHg at 2,800 ug/l; toluene at 250 ug/l; benzene at 100 ug/l and xylenes at 470 ug/l. However, three months later in May of 2009, TPHg was at 8,100 ug/l; toluene was at 890 ug/l; benzene was at 220 ug/l; and xylenes were at 1,800 ug/l. In July of 2009, TPHg was at 9,000 ug/l; toluene was at 370 ug/l; benzene was at 220 ug/l; and xylenes were again at 1,800 ug/l. Finally in the last monitoring reviewed by River Watch, November of 2009, TPHg was at 6,900 ug/l; toluene was at 270 ug/l; benzene was at 150 ug/l; and xylenes were again at 1,400 ug/l.

River Watch believes the fluctuating concentrations of contaminants reflect a failure of MNA to achieve the results anticipated. Given the ongoing high levels of hydrocarbon contamination in soils and groundwater, it would appear the underlying aquifer could be impacted by this contamination long before this MNA process could achieve California’s Maximum Contaminant Levels (MCLs).

On the basis of current conditions at the sit, River Watch believes the following remediation work must be implemented immediately:

- a. Complete delineation for the purpose of enabling further remediation work to proceed effectively;
- b. Consideration of over-excavation to eliminate lingering sources of petroleum hydrocarbon constituents from further migrating into offsite groundwater and any surface water in the vicinity;

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<sup>1</sup>

MNA was determined to cost approximately \$250,000 to achieve site closure, while the use of SVE and air sparging were estimated to cost as much as \$500,000 and \$400,000 respectively to achieve closure.

- c. Consideration of a remediation technology much more proactive than MNA;
- d. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells;
- e. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues through which hydrocarbons and constituents may be migrating offsite;
- f. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site; and,
- g. Current residual mass calculations to allow the measurement of remediation progress once removal processes are initiated.

In all cases above, River Watch must rely upon federal statutory provisions which authorize citizen suits where regulatory agency processes have not resulted in viable and timely solutions to the contaminant problems in Northern California communities.

### **REGULATORY STANDARDS**

Enacted in 1976, the RCRA is a federal environmental law of the United States the goals of which are the protection of the public and the environment from harm caused by waste storage and disposal, and to mandate the proper remediation of soil and groundwater which has been contaminated by hazardous waste and hazardous products, including petroleum hydrocarbons and gasoline formula constituents. RCRA is a strict liability statute with a statute of limitations of five years. Pursuant to RCRA provisions, California has enacted laws and regulations which must be observed in conjunction with RCRA regulations.

The Regional Water Quality Control Board has adopted a Water Quality Control Plan or Basin Plan which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The Board has MCLs and/or Water Quality Objectives (WQOs). California's WQOs exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent WQOs for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply. WQOs for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene, 150 ppb for toluene and 5 ppb for MTBE.

## VIOLATIONS OF RESPONSIBLE PARTIES

### **1. Permits, Standards and Regulations - 42 U.S.C. § 6972(a)(1)(A)**

Responsible Parties' use and storage of petroleum products at the sites and facilities identified in this Notice have violated and continue to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding storage of petroleum in USTs. [42 U.S.C. § 6972(a)(1)(A)]

Between June 28, 2005 and the date of this Notice, Responsible Parties have caused or permitted, cause or permit, or threaten to cause or permit, petroleum contaminants, petroleum constituents and other hazardous waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and now create, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of such petroleum waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

### **2. Mishandling of Hazardous Waste - 42 U.S.C. § 6924 *et seq.***

Between June 28, 2005 and the date of this Notice, Responsible Parties used and stored petroleum products in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath each of the sites identified above and beneath adjacent properties. The contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at the sites are significantly greater than the allowable MCLs and/or WQOs for said constituents.

River Watch alleges Responsible Parties have, at all times material, engaged in the following activities or omissions in violation of RCRA's waste handling provisions:

- a. Failure to adequately maintain records of the hazardous wastes identified in this Notice which were treated, stored or otherwise disposed of on or offsite [42 U.S.C. §6924(a)(1)];
- b. Failure to satisfactorily monitor, inspect, and report in accordance with RCRA provisions [42 U.S.C. §6924(a)(2)];
- c. Failure to adequately treat, store or properly dispose of hazardous waste found at the sites identified above; [42 U.S.C. §6924(a)(3)];
- d. Failure to adequately locate, design and construct hazardous waste treatment, storage or disposal facilities [42 U.S.C. §6924(a)(4)]; and,

- e. Failure to properly implement contingency plans for effective action to minimize unanticipated damage from treatment, storage or disposal of hazardous waste found at the sites identified above [42 U.S.C. §6924(a)(5)].

Information currently available to River Watch indicates Responsible Parties' handling, treatment, storage, transportation, and/or disposal of their hazardous waste in violation of RCRA § 3004 has occurred every day over the past five (5) years, or on numerous separate occasions, and that those violations are continuing.

**3. Unpermitted Handling, Treatment, Storage, Transportation and/or Disposal of Hazardous Waste -42 U.S.C. § 6925 *et seq.***

River Watch alleges between June 28, 2005 and the date of this Notice, Responsible Parties have engaged in the following activities or omissions in violation of RCRA's waste handling provisions:

- a. Responsible Parties' deposition and maintenance of hazardous waste as described in this Notice has caused and continues to cause the generation and discharge of hazardous waste to the environment;
- b. Responsible Parties have installed and maintained a system of conveyances to dispose of the hazardous generated and released from the sites identified in this Notice;
- c. Responsible Parties do not possess permits for the handling, storage, treatment, transportation, and/or disposal of hazardous or solid waste at any of the sites identified in this Notice; and,
- d. Responsible Parties' unpermitted handling, storage, treatment, transportation and/or disposal of their hazardous waste is in violation of RCRA § 3005, 42 U.S.C. § 6925.

Information currently available to River Watch indicates Responsible Parties' handling, treatment, storage, transportation, and/or disposal of their hazardous waste in violation of RCRA § 3005 has occurred every day in the past five (5) years, or on numerous separate occasions, and that those violations are continuing.

**4. Prohibition Against Open Dumping -42 U.S.C. § 6945 *et seq.***

River Watch alleges between June 28, 2005 and the date of this Notice, Responsible Parties have engaged in the following activities or omissions in violation of RCRA's waste handling provisions:

- a. Responsible Parties have engaged in open dumping by their discharge of hazardous waste to open ground where it will contaminate and has contaminated the soils, groundwater and surface waters as described in this Notice;
- b. Responsible Parties' sites as identified in this Notice do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as facilities for the disposal of hazardous waste; and,
- c. Responsible Parties have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the sites identified in this Notice.

Information currently available to River Watch indicates Responsible Parties' open dumping in violation of RCRA § 4005 has occurred every day over the past five (5) years, or on numerous separate occasions, and that those violations are continuing.

**5. Violation of UST Regulations - 42 U.S.C. § 6991 and 42 U.S.C. § 6972 (a)(1)(A)**

Provisions of RCRA govern the use and operation of USTs used for storage of petroleum products and above-ground tanks used for the same purposes (subchapter IX, 42 U.S.C. § 6991 et seq.). The RCRA UST regulatory program is adopted and implemented in California under the State Underground Storage of Hazardous Substance Account Act (California Health & Safety Code § 25280 et seq.).

Between June 28, 2005 and the date of this Notice, Responsible Parties' use and storage of petroleum at the sites identified in this Notice has allowed significant quantities of hazardous petroleum constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California UST regulatory programs including, but not limited to, provisions governing general operating requirements for USTs, release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements.

Specifically, River Watch alleges Responsible Parties are responsible for the following statutory violations:

- a. Failure to prevent a release in violation of 40 CFR §§ 280.30, 280.31 and California Health & Safety Code §§ 25292.1(a) - (c), 25292.3(a) and (b);
- b. Failure to properly detect and monitor releases in violation of 40 CFR §§ 280.40 - 280.44 and California Health & Safety Code § 25292;

- c. Failure to properly report and keep records of releases in violation of 40 CFR §§ 280.34, 280.50, 280.52, 280.53, 280.63(b) and California Health & Safety Code §§ 25289, 25293 and 25295(a)(1); and,
- d. Failure to take proper corrective action in violation of 40 CFR §§ 280.53, 280.60 - 280.66 and California Health & Safety Code § 25295(a)(1).

Information currently available to River Watch indicates Responsible Parties' violations of RCRA's UST regulations, RCRA § 9001, have occurred every day over the past five (5) years, or on numerous separate occasions, and that those violations are continuing.

**6. Imminent and Substantial Endangerment -42 U.S.C. § 6972 (a)(1)(B)**

Between June 28, 2005 and the date of this Notice, Responsible Parties used and stored petroleum products in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the sites and beneath adjacent properties. Contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at the sites and facilities identified above are significantly greater than the allowable MCL and/or WQO for said constituents. Benzene, MTBE, TAME, and TBA are known or suspected carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. In their concentrations at the sites identified above, these pollutants are now creating an imminent and substantial endangerment to public health and the environment.

Information currently available to River Watch indicates Responsible Parties' handling, treatment, storage, transportation, and/or disposal of its hazardous waste in violation of RCRA § 7002(a)(1)(B) has occurred every day over the past five (5) years, or on numerous separate occasions, and that those violations are continuing.

The violations alleged in this Notice are knowing and intentional in that Responsible Parties have used, stored and sold petroleum products which are known to contain hazardous substances, and have intended that such products will be sold to and used by the public. Responsible Parties have known of the contamination at the sites identified in this Notice at least since the late-1980's, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to those properties, and to continually contaminate and re-contaminate actual and potential sources of drinking water.

In addition to the violations set forth above, this Notice is intended to cover all violations of RCRA by Responsible Parties evidenced by information which becomes available to River Watch after the date of this Notice.

Violations of RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

### **CONTACT INFORMATION FOR RIVER WATCH**

River Watch has retained legal counsel to represent them with respect to the issues raised in this Notice. All communications should be addressed as follows:

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### **CONCLUSION**

As stated in the NOTICE section above, the RCRA requires a private party to give notice of violations 60 days prior to the initiation of an action alleging violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA (42 U.S.C. § 6972(b)(1)(A)), and 90 days prior to the initiation of an action alleging violations which create an imminent and substantial endangerment to human health or the environment. (42 U.S.C. § 6972(b)(2)(A)).

However, actions that allege violations of Subtitle C, including the mishandling of hazardous waste, can be brought without observing the 60/90 day notice waiting periods which are applicable to 42 U.S.C. § 6972(a)(1)(A) and 42 U.S.C. § 6972(a)(1)(B) claims; and, when Subtitle C claims are brought in conjunction with 42 U.S.C. § 6972 § (a)(1)(A) or 42 U.S.C. § 6972 § (a)(1)(B) claims, none of the claims require a waiting period before a lawsuit under the provisions of the RCRA may be filed.

River Watch believes this Notice sufficiently states grounds for filing a lawsuit under the statutory and regulatory provisions of the RCRA as to the sites identified above. At the close of the notice periods *or substantially earlier*, River Watch intends to file a suit against Responsible Parties, and/or the individual real property owners, under RCRA provisions, for each of the violations as alleged herein.

River Watch and its counsel are willing to discuss effective remedies for the violations referenced in this Notice. If Responsible Parties wishes to pursue such discussions in the absence of litigation, they are encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues raised herein, before suit is filed. River



Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time period following the mailing of this Notice.

Very truly yours,



Jack Silver

JS:lh

cc:

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