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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

5 Attorneys for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 NORTHERN CALIFORNIA RIVER
WATCH, a non-profit corporation,

CASE NO.:

12 Plaintiff,

**COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**

13 v.

14 GOLDEN TECHNOLOGY COMPANY,
ARNOLD CARSTON, LARRY
15 CARRILLO, FRANCINE CLAYTON,
and DOES 1-30, Inclusive,

**(Environmental - Resource Conservation
and Recovery Act - 42 U.S.C. § 6901 et seq.)**

16 Defendants.
17 _____

18
19 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
20 "NCRW") by and through its attorneys, and for its Complaint against Defendants, GOLDEN
21 TECHNOLOGY COMPANY, ARNOLD CARSTON, LARRY CARRILLO, FRANCINE
22 CLAYTON, and DOES 1-30, Inclusive (hereafter, "DEFENDANTS"), states as follows:

23 **I. NATURE OF THE CASE**

24 1. This is a citizens' suit brought against DEFENDANTS under the citizen suit enforcement
25 provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (hereafter,
26 "RCRA"), specifically Section 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A), Section 7002(a)(1)(B),
27 42 U.S.C. § 6972(a)(1)(B), Section § 3004, 42 U.S.C. § 6924, Section § 3005, 42 U.S.C. §
28 6924, and Section 4005; 42 U.S.C. § 6945, to stop DEFENDANTS from repeated and ongoing

1 violations of RCRA. These violations are detailed in the Notice of Violations and Intent to File
2 Suit dated November 12, 2009 (hereafter, "RCRA NOTICE") attached hereto as EXHIBIT A
3 and made part of these pleadings.

4 2. As described in EXHIBIT A and below, NCRW alleges DEFENDANTS are in violation
5 of a permit, standard, regulation, condition, requirement, prohibition, or order which has become
6 effective pursuant to the RCRA [42 U.S.C. § 6972(a)(1)(A); 42 U.S.C. § 6924, 42 U.S.C. §
7 6925; 42 U.S.C. § 6945.]

8 3. As described in EXHIBIT A and below, NCRW alleges DEFENDANTS to be past or
9 present generators, past or present transporters, or past or present owners or operators of a
10 treatment, storage, or disposal facility, which has contributed or which is contributing to the past
11 or present handling, storage, treatment, transportation, or disposal of a solid or hazardous waste
12 which may present an imminent and substantial endangerment to health or the environment. [42
13 U.S.C. § 6972(a)(1)(B); 42 U.S.C. § 6924, 42 U.S.C. § 6925; 42 U.S.C. § 6945.]

14 4. NCRW seeks declaratory relief, injunctive relief to prohibit future violations, the
15 imposition of civil penalties, and other relief for DEFENDANTS' violations of the RCRA's
16 standards and regulations applicable to the handling, disposal, transportation, treatment, use or
17 storage of halogenated volatile organic compounds ("HVOCs") and other solid or hazardous
18 wastes as described in the RCRA NOTICE because its quantity, concentration, or physical,
19 chemical characteristics may cause or pose a substantial present or potential hazard to human
20 health or the environment when improperly treated, stored, transported, or disposed of, or
21 otherwise managed thus violating RCRA's prohibition against creating an imminent and
22 substantial endangerment to human health or the environment.

23 5. RCRA § 3005, 42 U.S.C.A. § 6925, requires facilities to obtain permits for the handling,
24 storage, treatment, transportation and/or disposal of solid or hazardous waste.

25 6. RCRA § 3004, 42 U.S.C.A. § 6924, requires owners and operators of solid or hazardous
26 waste treatment, storage, and disposal facilities to follow enumerated standards. These
27 requirements are enumerated in 40 C.F.R. Part 264 and include requirements for General Facility
28 Standards (Subpart B), Preparedness and Prevention (Subpart C), Contingency Plans and

1 Emergency Procedures (Subpart D), Releases from Solid Waste Management Units (Subpart F),
2 Closure and Post-Closure (Subpart G), Financial Requirements (Subpart H), Surface
3 Impoundments (Subpart K), Waste Piles (Subpart L), Land Treatment (Subpart M), Landfills
4 (Subpart N), and Miscellaneous Units (Subpart X).

5 7. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A), permits citizen suits against any
6 person alleged to be in violation of any permit, standard, regulation, condition, requirement,
7 prohibition, or order effective pursuant to RCRA. RCRA § 7002(a)(1)(B), 42 U.S.C. §
8 6972(a)(1)(B), permits citizen suits to enjoin the handling, storage, treatment, transportation
9 and/or disposal of hazardous or solid waste which creates or may create an imminent and
10 substantial endangerment to human health or the environment. Pursuant to RCRA §§ 3008(a)
11 and (g) and 7002(a), 42 U.S.C. §§ 6928(a) and (g) and 6972(a), each violation of the RCRA
12 subjects the violator to a penalty of up to \$37,500 per day/per violation for violations occurring
13 within five (5) years prior to the initiation of a citizen enforcement action. In addition, the RCRA
14 provides for injunctive relief pursuant to RCRA §§ 3008(a) and 7002(a), 42 U.S.C. §§ 6928(a)
15 and 6972(a).

16 8. The HVOCs at the Site identified in the RCRA NOTICE represent “solid waste” as that
17 term is defined under RCRA, 42 U.S.C. § 6903(27), as they are discarded materials resulting
18 from industrial and commercial activities. Furthermore, the HVOCs at the Site identified in the
19 RCRA NOTICE are hazardous waste under RCRA, 42 U.S.C. § 6903(5), as they are solid wastes
20 because the quantity, concentration, or physical, chemical characteristics may cause or pose a
21 substantial present or potential hazard to human health or the environment when improperly
22 treated, stored, transported, disposed of or otherwise managed, thus violating RCRA’s
23 prohibition against creating an imminent and substantial endangerment to human health or the
24 environment.

25 **II. PARTIES**

26 9. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (“NCRW”), is a 501(c)(3) non-
27 profit public benefit corporation duly organized under the laws of the State of California. Its
28 headquarters are located in Sebastopol, California. NCRW is dedicated to protecting, enhancing

1 and helping to restore the waters of Northern California including its drinking water sources,
2 groundwater, rivers, creeks and tributaries. Many of NCRW's members live in areas affected
3 by DEFENDANTS' pollution. Said members have an interest in said areas and effected
4 watersheds which is or may be adversely affected by DEFENDANTS' violations as set forth in
5 this Complaint. Said members use the effected watershed for domestic water supply, agricultural
6 water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the
7 like. Furthermore, the relief sought will redress the injury in fact and the likelihood of future
8 injury and interference with the interests of NCRW's members.

9 10. NCRW is informed and believes and on such belief alleges Defendant GOLDEN
10 TECHNOLOGY COMPANY appears to be and was at all times relevant to this Complaint, a
11 corporation which is registered with the State of California.

12 11. NCRW is informed and believes and on such belief alleges Defendant ARNOLD
13 CARSTON is a private individual residing in the City of Santa Rosa, Sonoma County,
14 California.

15 12. NCRW is informed and believes and on such belief alleges Defendant LARRY
16 CARRILLO is a private individual residing in the City of Santa Rosa, Sonoma County,
17 California.

18 13. NCRW is informed and believes and on such belief alleges Defendant FRANCINE
19 CLAYTON is a private individual residing in the City of Sonoma, Sonoma County, California.

20 14. NCRW is informed and believes and on such belief alleges Defendants sued herein as
21 DOES 1 - 30, Inclusive, respectively, are persons, partnerships, corporations or entities, who are,
22 or were, responsible for, or in some way contributed to, the violations which are the subject of
23 this Complaint or are, or were, responsible for the maintenance, supervision, management,
24 operations, or insurance coverage of DEFENDANTS' facilities or operations on the Site as
25 identified herein and in the RCRA NOTICE. The names, identities, capacities, or functions of
26 Defendants DOES 1 - 30, Inclusive are presently unknown to NCRW. NCRW shall seek leave
27 of court to amend this Complaint to insert the true names of said DOES Defendants when the
28 same have been ascertained.

1 **III. JURISDICTIONAL ALLEGATIONS**

2 15. Subject matter jurisdiction is conferred upon this Court by RCRA § 7002(a)(1), 42 U.S.C.
3 § 6972(a)(1), which states in part,

4 “. . . any person may commence a civil action on his own behalf (A) against any
5 person . . . who is alleged to be in violation of any permit, standard, regulation,
6 condition requirement , prohibition or order which has become effective pursuant
7 to this chapter, or (B) against any person . . . who has contributed or who is
8 contributing to the past or present handling, storage, treatment, transportation or
9 disposal of any solid or hazardous waste which may present an imminent and
10 substantial endangerment to health or the environment.”

11 16. NCRW’s members reside in the vicinity of, derive livelihoods from, own property near,
12 or recreate on, in or near or otherwise use, enjoy and benefit from the watersheds, land, rivers,
13 and associated natural resources into which DEFENDANTS pollute, or by which
14 DEFENDANTS’ operations adversely affect those members’ interests, in violation of RCRA
15 § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and RCRA § 7002(a)(1)(B), 42 U.S.C. §
16 6972(a)(1)(B). The health, economic, recreational, aesthetic or environmental interests of
17 NCRW’s members have been, are being, and will continue to be adversely affected by
18 DEFENDANTS’ unlawful violations as alleged herein. NCRW contends there exists an injury
19 in fact, causation of that injury by the DEFENDANTS’ complained of conduct, and a likelihood
20 that the requested relief will redress that injury.

21 17. Pursuant to RCRA § 7002(2)(A), 42 U.S.C. § 6972(2)(A), NCRW gave statutory notice
22 of the RCRA violations alleged in this Complaint prior to the commencement of this lawsuit to:
23 DEFENDANTS, the United States Environmental Protection Agency, both Federal and
24 Regional, the State of California through service upon the California Attorney General and the
25 State of California Integrated Waste Management Board which is the solid waste management
26 agency for the State in which the violation is alleged to have occurred. Notice was also mailed
27 to California EPA, the State Water Resources Control Board and California Department of Toxic
28 Substances Control.

1 18. Pursuant to RCRA §§ 7002(a) and (b), 42 U.S.C. §§ 6972(a) and (b), venue lies in this
2 District as the Site as described the RCRA NOTICE and operations under DEFENDANTS'
3 ownership or control and where illegal activities occurred which are the source of the violations
4 complained of in this action are located within this District.

5 **IV. STATEMENT OF FACTS**

6 19. NCRW is informed and believes, and on said information and belief alleges that
7 DEFENDANTS are past or present generators, past or present transporters, or past or present
8 owners or operators of the Site or facility identified in the RCRA NOTICE and have contributed
9 or are contributing to the past or present handling, storage, treatment, transportation, or disposal
10 of solid or hazardous waste which may present an imminent or substantial endangerment to
11 health or the environment. Furthermore, DEFENDANTS' handling, use, transport, treatment,
12 storage or disposal of waste at the Site or facility identified in the RCRA NOTICE has violated
13 and continues to violate permits, standards, regulations, conditions, requirements or prohibitions
14 effective pursuant to the RCRA regarding hazardous or solid waste. [42 U.S.C. §§
15 6972(a)(1)(A) and (B)]. DEFENDANTS have no RCRA-authorized permits authorizing the
16 activities related to hazardous wastes described in the RCRA NOTICE..

17 20. Regulatory agencies have designated surface water and groundwaters in the area of the
18 Site identified in the RCRA NOTICE as capable of supporting multiple beneficial uses including
19 domestic water supply. Said agencies and have established Maximum Contaminant Levels
20 ("MCLs") and Water Quality Objectives ("WQOs") for these pollutants in surface water and
21 groundwaters.

22 21. Dichloroethylene ("DCE"), trichloroethene ("TCE"), tetrachloroethene ("PCE") and vinyl
23 chloride ("VC") collectively "halogenated volatile organic compounds" or "HVOCs" are known
24 carcinogens or reproductive toxins, and have been listed chemicals under Proposition 65. These
25 HVOCs are also solid waste and hazardous waste under RCRA and the laws of California
26 authorized under RCRA. Surface and groundwater at and around the Site and facility identified
27 in the RCRA NOTICE are potential sources of drinking water under applicable Regional Water
28 Quality Control Board Plans (aka Basin Plans). NCRW is informed and believes, and on said

1 information and belief alleges that DEFENDANTS have allowed HVOCs and other
2 contaminants to pollute surface and groundwater at and around the Site and facility as discussed
3 in the RCRA NOTICE.

4 22. DEFENDANTS' handling, use, transport, treatment, storage or disposal of pollutants at
5 the Site or facility identified in the RCRA NOTICE has occurred in a manner which has allowed
6 significant quantities of solid waste and hazardous constituents to remain in the soils,
7 groundwater and surface waters beneath and around the Site and beneath and around adjacent
8 properties as well as off site as far as adjacent surface waters.

9 23. To date, the levels of HVOCs remain high above the allowable MCLs or WQOs for said
10 constituents, creating an imminent and substantial endangerment to public health or the
11 environment.

12 24. The activities of DEFENDANTS as alleged in the RCRA NOTICE have been both
13 knowing or intentional. DEFENDANTS have known of the contamination at the Site or facility
14 identified in EXHIBIT A for several years and are aware that continuing failure to remediate the
15 pollution allows the HVOCs to migrate through the ground or groundwater at or adjacent to said
16 Site, or to continually contaminate or re-contaminate actual or potential sources of drinking
17 water as well as groundwater or surface waters.

18 25. Violations of this or other statutes as alleged in this Complaint are a major cause of the
19 continuing decline in water quality, or a continuing threat to existing or future drinking water
20 supplies in Sonoma County. With every discharge, ground and surface water supplies are
21 contaminated. These discharges can or must be controlled in order for the ground and surface
22 water supply to be returned as a safe source of drinking water.

23 26. Fifty-five gallon drums of HVOC hazardous waste are improperly stored on the Site
24 identified in the RCRA NOTICE. NCRW is informed and believes and on said belief alleges
25 that DEFENDANTS appear to have failed to properly label, track and/or report the type, quantity
26 or disposition of waste from said Site, and have failed to use a manifest system to ensure the
27 waste generated is properly handled, stored, treated or disposed of. DEFENDANTS appear to
28 be disposing of wastes off-site without compliance with either the various requirements under

1 the RCRA, or with the State of California's hazardous waste requirements authorized under the
2 RCRA. DEFENDANTS' mishandling of wastes in violation of Subchapter C of the RCRA has
3 created and is creating an imminent and substantial endangerment to human health or the
4 environment.

5 27. The liability of DEFENDANTS stems from their ownership or operation of said Site or
6 due to the activities conducted on said Site by their insurance company, subsidiaries, contractors,
7 employees or agents.

8 **V. FIRST CLAIM FOR RELIEF**

9 **Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition, or** 10 **Order - 42 U.S.C. § 6972(a)(1)(A)**

11 NCRW incorporates the allegations set forth above in paragraphs 1 through 27 and
12 EXHIBIT A, as though fully set forth herein. NCRW is informed or believes, or based on such
13 information or belief alleges as follows:

14 28. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A), provides that any person may
15 commence a civil action against any person or governmental entity alleged to be in violation of
16 any permit, standard, regulation, condition, requirement, prohibition, or order which has become
17 effective pursuant to the RCRA. Civil penalties may be assessed against any person or entity
18 in violation of such permits, etc., under the provisions of 42 U.S.C. §§ 6928 (a) or (g).

19 29. NCRW is informed or believes, and thereon alleges that DEFENDANTS have failed to
20 comply with the statutory or regulatory prevention, detection, monitoring, or remediation
21 requirements imposed under the RCRA or described in the RCRA NOTICE.

22 30. NCRW is informed or believes, and thereon alleges that DEFENDANTS have no permit
23 issued under the RCRA or by the state of California for the use, handling, storage, transportation,
24 disposal or treatment of hazardous or solid waste at the Site or facility identified in the RCRA
25 NOTICE; or, if such a permit exists, DEFENDANTS are violating that permit.

26 31. NCRW is informed or believes, and thereon alleges that DEFENDANTS' operations at
27 the Site or facility identified in the RCRA NOTICE include unlawful open dumping as that term
28 is used in the RCRA, by discharging pollutants including HVOCs to the open ground allowing

1 these pollutants to discharge to both groundwater and/or surface waters. The Site identified in
2 the RCRA NOTICE does not qualify as a landfill under 42 U.S.C. § 6944, nor does it qualify as
3 a facility for the disposal of hazardous waste.

4 32. NCRW is informed or believes, and thereon alleges that DEFENDANTS are in violation
5 of RCRA Subtitle C, subchapter III, (42 U.S.C. § 6921 *et seq.*), by failing to properly: identify,
6 label or list hazardous materials; keep records of their hazardous waste activities including their
7 use, handling, storage, transportation or treatment of hazardous or solid waste; take proper
8 measures to protect human health or the environment; monitor their activities; or, acquire
9 RCRA-authorized permits. Currently numerous fifty-gallon drums of solid or hazardous waste
10 are illegally stored at the Site identified in the RCRA NOTICE.

11 33. DEFENDANTS have in the past or are knowingly now transporting, treating, storing,
12 disposing of or exporting hazardous wastes identified or listed under RCRA Subtitle C,
13 subchapter III, (42 U.S.C. § 6921 *et seq.*).

14 34. DEFENDANTS' knowing transport, treatment, storage, disposal or exporting of
15 hazardous wastes identified or listed under RCRA Subtitle C, subchapter III, (42 U.S.C. § 6921
16 *et seq.*) places persons in imminent danger of death or serious bodily injury.

17 35. Information currently available to NCRW indicates that DEFENDANTS' violation of a
18 permit, standard, regulation, condition, requirement, prohibition, or order which has become
19 effective pursuant to RCRA § 7002(a)(1)(A) has occurred every day since at least November 16,
20 2004, or on numerous separate occasions, and that those violations are continuing.

21 36. The continuing activities by DEFENDANTS as alleged herein cause irreparably harm to
22 the members of NCRW, for which harm said members have no plain, speedy or adequate remedy
23 at law.

24 WHEREFORE, NCRW prays judgment against DEFENDANTS as set forth hereafter.

25 **VI. SECOND CLAIM FOR RELIEF -**

26 **Imminent and Substantial Endangerment to Health or to the Environment -42 U.S.C. §**
27 **6972(a)(1)(B)**

1 NCRW incorporates the allegations set forth above in paragraphs 1 through 36 and
2 EXHIBIT A as though fully set forth herein. NCRW is informed or believes, and based on such
3 information or belief alleges as follows:

4 37. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), provides that any person may
5 commence a civil action against any person or governmental entity including a past or present
6 generator, transporter, owner or operator of a treatment, storage or disposal facility who has
7 contributed to the past or present storage, treatment, transportation, or disposal of any solid or
8 hazardous waste which may present an imminent and substantial endangerment to health or to
9 the environment. Civil penalties may be assessed against any person or entity in violation of this
10 section, under the provisions of 42 U.S.C. § § 6928 (a) or (g).

11 38. The aforementioned HVOC pollutants on the Site identified in the RCRA NOTICE are
12 known carcinogens or reproductive toxins, or when released into the environment in sufficient
13 quantity, pose an imminent or substantial risk to public health or to the environment in general.
14 NCRW is informed or believes, and thereon alleges that amounts of HVOCs used, handled,
15 stored, transported, discarded, disposed of or treated by DEFENDANTS is in sufficient quantity
16 to meet the statutory and regulatory definitions of solid or hazardous waste under RCRA and
17 pose an imminent or substantial risk to both the environment or to human health.

18 39. NCRW is informed or believes, and thereon allege that DEFENDANTS are of the class
19 of entities covered by 42 U.S.C. § 6972(a)(1)(B). DEFENDANTS are past or present generators,
20 past or present transporters, or past or present owners or operators of a treatment, storage, or
21 disposal facility, which has contributed or is contributing to the past or present storage,
22 treatment, transportation, or disposal of any solid or hazardous waste which may present an
23 imminent and substantial endangerment to health or the environment.

24 40. NCRW is informed or believes, and thereon alleges that DEFENDANTS are in violation
25 of RCRA Subtitle C, subchapter III, (42 U.S.C. § 6921 *et seq.*), by failing to properly: identify,
26 label or list hazardous materials; keep records of their hazardous waste activities including their
27 use, handling, storage, transportation or treatment of hazardous or solid waste; take proper
28 measures to protect human health or the environment; monitor their activities; or, acquire

1 RCRA-authorized permits. DEFENDANTS' violations of RCRA Subtitle C, subchapter III,
2 (42 U.S.C. § 6921 *et seq.*), may and do create imminent and substantial risk to both the
3 environment or to human health.

4 41. DEFENDANTS' knowing transport, treatment, storage, disposal or exporting of
5 hazardous waste identified or listed under RCRA Subtitle C, subchapter III, (42 U.S.C. § 6921
6 *et seq.*), places persons in imminent danger of death or serious bodily injury.

7 42. NCRW is informed or believes, and thereon alleges that continuing acts or failure to act
8 by DEFENDANTS to address these violations will irreparably harm NCRW and its members
9 for which harm they have no plain, speedy or adequate remedy at law.

10 Wherefore, NCRW prays for judgment against DEFENDANTS as set forth hereafter.

11 **VII. THIRD CLAIM FOR RELIEF -**

12 **Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition, or**
13 **Order [42 U.S.C. § 6972(a)(1)(A)] and creating Imminent and Substantial Endangerment**
14 **to Health or to the Environment [42 U.S.C. § 6972(a)(1)(B)] specifically: Violation of**
15 **Procedural and Substantive Requirements of RCRA (42 U.S.C. § 6924)**

16 NCRW incorporates the allegations set forth above in paragraphs 1 through 42 and
17 EXHIBIT A as though fully set forth herein. NCRW is informed or believes, and based on such
18 information or belief alleges as follows:

19 43. DEFENDANTS have not complied with any of the procedural and substantive
20 requirements set forth in RCRA § 3004, 42 U.S.C. § 6924.

21 44. These requirements are enumerated in 40 C.F.R. Part 264 and include requirements for
22 General Facility Standards (Subpart B), Preparedness and Prevention (Subpart C), Contingency
23 Plans and Emergency Procedures (Subpart D), Releases from Solid Waste Management Units
24 (Subpart F), Closure and Post-Closure (Subpart G), Financial Requirements (Subpart H), Surface
25 Impoundments (Subpart K), Waste Piles (Subpart L), Land Treatment (Subpart M), Landfills
26 (Subpart N), and Miscellaneous Units (Subpart X).

27 45. DEFENDANTS' failure to comply with these requirements is in violation of RCRA §
28 3004, 42 U.S.C. § 6924.

1 46. Information currently available to NCRW indicates that DEFENDANTS' handling,
2 treatment, storage, transportation, and/or disposal of their hazardous waste at the Site identified
3 in the RCRA NOTICE in violation of RCRA § 3004 has occurred every day since at least
4 November 16, 2004, or on numerous separate occasions, and that those violations are continuing.

5 47. The continuing activities by DEFENDANTS as alleged herein irreparably harm NCRW
6 and its members, for which harm they have no plain, speedy or adequate remedy at law.

7 Wherefore, NCRW prays judgment against DEFENDANTS as set forth hereafter.

8 **VIII. FOURTH CLAIM FOR RELIEF**

9 **Violation of Any Permit, Standard, Regulation, Condition, Requirement,**
10 **Prohibition, or Order [42 U.S.C. § 6972(a)(1)(A)] and creating Imminent and Substantial**
11 **Endangerment to Health or to the Environment [42 U.S.C. § 6972(a)(1)(B)] specifically -**
12 **Unpermitted Handling, Treatment, Storage, Transportation and/or Disposal of Hazardous**
13 **Waste (42 U.S.C. § 6925)**

14 NCRW incorporate the allegations set forth above in paragraphs 1 through 47 and
15 EXHIBIT A as though fully set forth herein. NCRW is informed or believes, and based on such
16 information or belief alleges as follows:

17 48. DEFENDANTS' deposition and maintenance of solid or hazardous waste as described
18 herein causes and has caused the generation and discharge to the environment of solid or
19 hazardous waste.

20 49. DEFENDANTS have installed and maintained a system of conveyances to dispose of the
21 solid or hazardous generated and released from it facilities identified in the RCRA NOTICE.

22 50. DEFENDANTS do not possess permits for the handling, storage, treatment,
23 transportation, and/or disposal of their hazardous or solid waste at the Site identified in the
24 RCRA NOTICE.

25 51. DEFENDANTS' unpermitted handling, storage, treatment, transportation and/or disposal
26 of their solid or hazardous waste is in violation of RCRA § 3005, 42 U.S.C. § 6925.

27 52. Information currently available to NCRW indicates that DEFENDANTS' handling,
28 treatment, storage, transportation, and/or disposal of their solid or hazardous waste in violation

1 of RCRA § 3004 has occurred every day since at least November 16, 2004, or on numerous
2 separate occasions, and that those violations are continuing.

3 53. The continuing activities by DEFENDANTS as alleged herein irreparably harm to NCRW
4 and its members, for which harm they have no plain, speedy or adequate remedy at law.

5 Wherefore, NCRW pray judgment against DEFENDANTS as set forth hereafter.

6 **IX. FIFTH CLAIM FOR RELIEF**

7 **Violation of Any Permit, Standard, Regulation, Condition, Requirement, Prohibition, or**
8 **Order [42 U.S.C. § 6972(a)(1)(A)] and creating Imminent and Substantial Endangerment**
9 **to Health or to the Environment [42 U.S.C. § 6972(a)(1)(B)] specifically - Prohibition**
10 **Against Open Dumping (42 U.S.C. § 6945)**

11 NCRW incorporates the allegations set forth above in paragraphs 1 through 53 and
12 EXHIBIT A as though fully set forth herein. NCRW is are informed or believes, and based on
13 such information or belief alleges as follows:

14 54. DEFENDANTS have engaged in open dumping by their discharge of solid or hazardous
15 waste to open ground where it will and has contaminated the soils, groundwater and surface
16 waters as described herein and in the RCRA NOTICE.

17 55. DEFENDANTS' Site as identified in the RCRA NOTICE does not qualify as a landfill
18 under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of solid or hazardous
19 waste.

20 56. DEFENDANTS have no RCRA-authorized permit for disposal, storage or treatment of
21 solid or hazardous waste of the type currently and historically discharged at the facilities and Site
22 identified in the RCRA NOTICE.

23 57. Information currently available to NCRW indicates that DEFENDANTS' open dumping
24 in violation of RCRA § 4005 has occurred every day since at least November 16, 2004, or on
25 numerous separate occasions, and that those violations are continuing.

26 58. Continuing activities by DEFENDANTS as alleged herein irreparably harm NCRW and
27 its members, for which harm they have no plain, speedy or adequate remedy at law.

28 Wherefore, NCRW prays judgment against DEFENDANTS as set forth hereafter.

1 **X. PRAYER FOR RELIEF**

2 NCRW prays this Court grant the following relief:

3 59. Declare DEFENDANTS to have violated or to be in violation of the RCRA;

4 60. Enjoin DEFENDANTS from continued violations of the RCRA;

5 61. Order DEFENDANTS to fully investigate the Site identified in the RCRA NOTICE
6 including:

7 a. Comprehensive Sensitive Receptor Survey - A comprehensive sensitive receptor
8 survey to include an aquifer profile, surface water study, water supply survey, and building
9 survey.

10 b. Aquifer Profile Study - Aquifer profiles identifying all water-bearing strata and
11 communication with the other aquifers. Testing of all aquifers determined to be in
12 communication with the surface unconfined aquifer and contaminated zones for all known
13 pollutants at the Site.

14 c. Conduit/preferential Pathway Study - Conducting a conduit/preferential pathway
15 study identifying all conduits or preferential pathways such as sand and gravel lenses, utilities,
16 roads, services and other potential pathways for pollution migration. Testing of all conduits and
17 preferential pathways found to have intersected the plume for all pollutants at the Site.

18 d. Identification and Testing of Water Supply Wells - Conducting a door-to-door
19 survey of potentially affected properties to determine the presence and location of any water
20 supply wells (permitted or not). Testing for any water supply wells found to contain pollutants.

21 e. Surface Water Survey - Conducting a study determining if any surface waters have
22 been or have the potential of being contaminated by the pollutants at the Site. Testing of all
23 surface waters and drainage within 1,500 feet of the outer extent of the plume.

24 f. Vapor Intrusion Study - Conducting a vapor intrusion study of the buildings at the
25 Site and buildings located on or off-site within the contaminated zone.

26 g. Determination of Mass of Plume Constituents - Determining the mass of the plume
27 and masses of the various pollutants at the Site whether or not part of the "plume" such as lead.
28

1 h. Toxic Metal Reasonable Potential Analysis - Performance of a toxic metals study
2 which will include all metals with a reasonable potential of being contaminants at the Site, such
3 as lead.

4 62. Order DEFENDANTS to fully remediate the Site reducing all contaminants of concern
5 in the groundwater to below WQOs within five (5) years;

6 63. Order DEFENDANTS to pay civil penalties on a per violation/per day basis for their
7 violations of RCRA;

8 64. Order DEFENDANTS to pay NCRW's reasonable attorneys' fees or costs (including
9 expert witness fees), as provided by law; or,

10 Grant such other or further relief as may be just or proper.

11
12 DATED: November 17, 2009

13 
14 JACK SILVER
15 Attorney for Plaintiff
16 NORTHERN CALIFORNIA RIVER WATCH
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Exhibit A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



Via Registered Mail - Return Receipt Requested

November 12, 2009

Arnold Carston
3023 Santa Rosa Avenue
Santa Rosa, CA 95407

Larry Carrillo
301 1-C Santa Rosa Avenue
Santa Rosa, CA 95407

Francine Clayton
22380 Broadway Street
Sonoma, CA 95476

***RE: Supplemental Notice of Violations and Intent to Amend Complaint
Under the Resource Conservation and Recovery Act ("RCRA")***

Dear Polluters, Owner, Site Manager, Managing Agent, Head of Agency:

The Federal Resource Conservation Act ("RCRA") 42 U.S.C. § 6901 *et seq*, requires that 60 days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred. If the alleged violator is a State or local agency, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the head of that agency. However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (subchapter III, 42 U.S.C. § 6921 *et seq*.)

The RCRA also requires that a private party provide 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 resulting in imminent and substantial endangerment to human health or the environment. However, such an action may be brought immediately after such notification when a violation of Subtitle C of RCRA is alleged (subchapter III, 42 U.S.C. § 6921 *et seq.*).

On behalf of Northern California River Watch (“River Watch”), I am providing statutory notification (“Notice”) to Arnold Carston, Larry Carrillo and Francine Clayton (collectively, “Polluters”), of their continuing and ongoing violations of the RCRA in conjunction with the continuing pollution at the Site described in the BACKGROUND section of this Notice below.

Subchapter C of the RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment. As discussed herein, Polluters operate a non-permitted, hazardous waste treatment, storage and disposal site. Fifty-five gallon drums of hazardous waste are stored on the Site. Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Site, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing of wastes off-site absent compliance with either the various requirements under the RCRA, or with the State of California’s hazardous waste requirements authorized under the RCRA. Polluters’ mishandling of wastes in violation of Subchapter C of the RCRA has created and is creating an imminent and substantial endangerment to human health or the environment.

River Watch alleges violations of Subchapter C with regard to both a violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, as well as for violations creating an imminent and substantial endangerment to human health or the environment.

River Watch hereby notifies Polluters that at the expiration of the appropriate notice periods under RCRA, River Watch intends to commence and/or amend its current civil action against Polluters on the following grounds:

1. Polluters’ use and storage of halogenated volatile organic compounds (“HVOCs”) and other pollutants at the Site as identified in this Notice, has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to RCRA regarding storage of pollutants. [42 U.S.C. § 6972(a)(1)(A)];

2. Polluters operations at the Site as identified in this Notice have caused 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)].

Under RCRA, 42 U.S.C. § 6972(a)(1)(A), notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under RCRA, shall include sufficient information in the notice to permit the recipient to identify the specific 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, and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

1. **Specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated**

RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. The goals of RCRA 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 RCRA, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations.

Polluters have no hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste at the Site identified in this Notice. Polluters' use, handling, disposal and storage of waste at said Site has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to RCRA regarding hazardous waste. [42 U.S.C. § 6972(a)(1)(A)].

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

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary RCRA requires that the environment and the public be protected from the hazardous wastes generated by Polluters. The pollutants found at the Site identified in this Notice constitute hazardous waste under RCRA, and are required to be managed such that potential and actual harm to the environment and the public is eliminated. RCRA specifically protects groundwater.

The liability of Polluters stems from either their ownership of the Site or activities conducted on the Site by the entities which violated RCRA and have contributed to the past or

present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also allege Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA. Polluters are guilty of open dumping as that term is used in RCRA, by discharging pollutants including HVOCs on the Site identified in this Notice, and allowing these pollutants to discharge to soils and ground as well as threatening waters. The Site does not qualify as a landfill under 42 U.S.C. § 6944 and does not qualify as a facility for the disposal of hazardous waste. Polluters have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically found at said Site.

Polluters also have liability due to their ownership or operation of preferential pathways which have caused pollutants to be discharged to aquifers, surface and groundwaters via Polluters' conduits, facilitating pollutant migration, threatening a discharge to waters of the United States and contributing to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have caused contamination of soil, surface and groundwaters and residential areas. The groundwater in the area of the Site identified in this Notice is hydrologically connected to adjacent wetlands and tributaries of Colgan Creek. These waters of the United States are already affected by or are at imminent risk of contamination from the HVOC plume at said Site. The contamination at said Site presents an imminent and substantial endangerment to human health and the environment[42 U.S.C. § 6972(a)(1)(B)].

3. The person or persons responsible for the alleged violation

The person or persons responsible for the alleged violations are the entities identified herein and collectively referred to as "Polluters" throughout this Notice.

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

Polluters have been in operation prior to the passage of RCRA and have been violating RCRA ever since it was passed. Disposition, discharge and release of pollutants can be traced as far back as 1966. RCRA is a strict liability statute. The range of dates covered by this Notice is February 25, 2004 through November 9, 2009. River Watch will from time to time update and supplement this Notice to include all violations which occur after the date of this Notice. The majority of the violations identified in this Notice such as discharging pollutants to groundwater and surface waters, failure to obtain RCRA permits, failure to implement the requirements of RCRA, failure to meet water quality objectives, etc., 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 violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Quality Control Board ("RWQCB"), GeoTracker, Sonoma County Health and local police and fire departments.

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

The person giving Notice is Northern California River Watch - referred to throughout this Notice as "River Watch". River Watch is a non-profit corporation organized under the laws of the State of California. 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. Its address is 500 Main Street, Suite 110, Sebastopol, CA, 95472; telephone number is 707-824-4372.

The violations of Polluters as set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected area. The members of River Watch use the affected area for recreation, hiking, photography, nature walks, sports, water, fishing, swimming, boating and the like. The health, use and enjoyment of this natural resource by members of River Watch are conditions specifically impaired by these violations of RCRA.

BACKGROUND

The Site consists of three parcels of land located in the southern portion of the City of Santa Rosa, identified as 3017, 3019 and 3033 Santa Rosa Avenue. It is bound by U.S. Highway 101 to the west, the Sunset Mobile Home Park on the north, the World of Carpets building on the south, and by a commercial building on the east. The 3017 Santa Rosa Avenue parcel contains a large, one-story, flat roofed cinder-block building and is surrounded by asphalt paving or gravel-covered surface. The 3019 Santa Rosa Avenue property contains a large metal building surrounded by a permeable, gravel-covered surface with vegetation growing in parts. The 3033 Santa Rosa Avenue parcel is an open, permeable lot without buildings.

Golden Technology Company operated a printed circuit board manufacturing facility at the Site from approximately 1966 through 1975, with waste management units located at the 3017, 3019, and 3033 Santa Rosa Avenue parcels. The former waste management units consisted of wastewater discharge areas, aboveground waste storage pools, a photo-resist pond and a drum storage area. Additionally, two underground sumps were located adjacent and to the south of the former manufacturing facility. In 1972 the California North Coast RWQCB ordered Golden Technology Company to cease discharging waste into a surface drainage ditch at the Site. In 1975 a fire of suspicious origin occurred in the building located at 3017 Santa Rosa Avenue involving Golden Technology's manufacturing operations. The majority of the waste

management units were abandoned or removed from the Site after the fire. Manufacturing operations were subsequently terminated and moved to Santa Clara in 1995. However, it is unclear from the record if Golden Technology continued to operate at the Site after 1975.

Sampling results determined that the pollutants in groundwater are dichloroethylene (“DCE”), trichloroethene (“TCE”), tetrachloroethene (“PCE”) and vinyl chloride (“VC”) collectively, “HVOCs”. Spills and leaks during past operations resulted in HVOCs migrating through the soil into groundwater. Water wells which previously operated at the Site produced water from both the shallow and deeper groundwater zones. Investigations determined that these wells provided a connection between the shallow and deeper groundwater zones and caused the contamination to migrate into the deeper groundwater zones and to flow off site.

A Maximum Contaminant Level (“MCL”) is the legal threshold limit on the amount of a hazardous substance which is allowed in drinking water. If a contaminant exceeds a MCL it is considered a health risk. The MCL for TCE is 5 micrograms per liter (μl); for DCE it is 6 μl . The level of TCE (up to 4,420 μl parts per billion) and DCE (up to 2,410 parts per billion) in the shallow groundwater zone at the Site is greater than MCLs allow. Thus, the groundwater at the Site is considered unsafe.

For the purpose of characterizing the distribution of HVOCs beneath the Site and Site vicinity, two predominant aquifer zones have been identified: the Upper aquifer zone and Lower aquifer zone. The Upper aquifer zone is predominantly comprised of sand and gravel deposits interbedded with clay and silty clay. It extends from the water table (which has historically ranged from approximately 6 to 15 feet below ground surface (bgs) to a depth of approximately 30 feet bgs. The Lower aquifer zone is comprised of occurrences of sand, silty sand and/or gravel deposits interspersed within a predominant sequence of clay, and generally occurs between approximately 40 to 95 feet bgs.

Releases of HVOCs from the former waste management units are suspected to have migrated through the soil above the groundwater table (called the vadose zone) into the Upper aquifer zone. From there, they were transported into the Lower aquifer zone, within the immediate vicinity of the Site, through a former water supply well DW-5 (which drew water from both the Upper and Lower aquifer zones). The predominant HVOCs detected in groundwater samples collected from groundwater monitoring wells at the Site are TCE, which has been identified at concentrations up to 4,420 micrograms per liter (μl), and DCE, which has been identified at concentrations up to 2,410 μl .

The health risks of HVOCs have been studied extensively. The EPA sponsored a “state of the science” review of the health effects associated with exposure to certain HVOCs including TCE. Based on this review, the EPA published a risk assessment which concluded TCE posed a more significant human health risk than previous studies had indicated. the EPA’s report

provoked considerable debate about the quality of evidence describing the previous health risks of TCE, and the methods used to assess that evidence. In 2004, an inter-agency group composed of the EPA, Department of Defense, Department of Energy, and the National Aeronautics and Space Administration requested the National Academy of Sciences (NAS) to provide independent guidance on the scientific issues regarding TCE risks. [Assessing the Human Health Risks of Trichloroethylene: Key Scientific Issues. Committee on Human Health Risks of Trichloroethylene, National Research Council (2006)]. The NAS report concluded that evidence on the carcinogenic risk and other potential health hazards from exposure to TCE has strengthened since the EPA released its toxicological assessment of TCE, and encourages federal agencies to finalize the risk assessment for TCE using currently available information, so that risk management decisions for this chemical can be expedited.

Half a dozen state, federal, and international agencies now classify the HVOCs found at this Site as a probable carcinogen. The International Agency for Research on Cancer considers these HVOCs Group 2A carcinogens. CalEPA consider these HVOCs to be known carcinogens and issued a risk assessment in 1999 concluding that HVOCs are far more toxic than previous scientific studies had shown.

Human exposure to HVOCs is accomplished through contaminated drinking water, inhalation of vapor from contaminated soil or groundwater entering nearby buildings. Another significant source of vapor exposure in Superfund sites that had contaminated groundwater was by showering. HVOCs readily volatilize out of hot water and into the air. In a home closed tightly to conserve the cost of heating and cooling, these vapors would then re-circulate.

HVOCs are one of the most frequently detected contaminants in groundwater in the United States. Based on available federal and state surveys, between 9% to 34% of the drinking water supply sources tested in the United States may have HVOC contamination. A growing concern in recent years at sites with HVOC contamination in soil or groundwater has been vapor intrusion in buildings, which has resulted in indoor air toxic exposures.

In response to the heightened awareness of environmental toxins such as TCE and the role they may be playing in childhood disease, in 2006 then Senator Obama proposed S1068, co-sponsored by then Senator Hillary Clinton and others. This legislation aims to inform and protect communities threatened with environmental contamination. Senator Clinton's own bill, S1911, is known as the TCE Reduction Act. This bill was co-sponsored by Senator Elizabeth Dole (R-North Carolina).

In recent times, there has been a substantial reduction in the production output of HVOCs in a large majority of industries due to the potential for irreversible health effects and the legal liability that ensues as a result.

The RWQCB identifies water quality objectives (“WQOs”) for HVOCs which are more stringent than those identified by Polluters in their current Remedial Action Plan (RAP). The WQOs identified by the RWQCB are based on the California Public Health Goal (PHG), established by Cal/EPA and the Office of Environmental Health Hazard Assessment (OEHHA). PHGs represent levels of contaminants in drinking water that would pose no significant health risk to individuals consuming the water on a daily basis over a lifetime. For carcinogens, PHGs are based on 10⁻⁶ incremental cancer risk estimates. OEHHA and the California Department of Health Services consider the 10⁻⁶ risk level to represent a de minimis level of cancer risk for involuntary exposure to contaminants in drinking water. For other contaminants, PHGs are based on threshold toxicity limits, with a margin of safety.

The MCLs listed in the Basin Plan and cited in the draft RAP as appropriate remedial goals were established based on considerations other than human health risk, including economic considerations for water purveyors. Alternatively, health risk-based WQOs for groundwater, such as PHGs, were established for the protection of sources of domestic water supply, and are set at levels that would be protective of human health for users of untreated domestic water-supply wells.

State Water Resources Control Board Resolution No. 92-49 requires that a RAP must provide a rationale for the finding that cleanup to background levels at a site is not feasible. The RAP must address restoration of the impacted water supplies to background levels, if feasible. If remedial goals for groundwater are to be established at levels greater than background, the alternative cleanup levels must not unreasonably affect present and anticipated beneficial uses of such water. In consideration of the State Anti-degradation Policy (State Water Resources Control Board Resolution No. 68-16) and Resolution No. 92-49, the alternative cleanup levels must also be consistent with the maximum benefit to the people of the State, and not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards. Therefore, the remedial goals established in the RAP, and the post-remedial monitoring program, must ensure that the health of current and future domestic water-supply well users is protected.

Polluters propose Enhanced Reductive Dechlorination (“ERD”) but fail to disclose that ERD has the potential to generate additional toxic volatile compounds and to mobilize these compounds through soil gas. Polluters need to address HVOCs in soil gas, and install of soil gas monitoring points suitable to assess HVOC vapor concentrations beneath the on-site buildings before, during, and after ERD may be implemented beneath the Site. Prior to issuance of a Waste Discharge Requirements Permit for the project to implement the RAP, the RWQCB would require a baseline survey of HVOCs in soil gas at the Site to be included in the Report of Waste Discharge application for the Permit. Today the Site remains polluted and there seems to be little work being done to remediate the Site.

Conduits such as sewer, utilities, waters, roads, storm water system, and other services act as preferential pathways and contribute to the transport, storage or treatment of hazardous waste. These conduits are either owned or operated by Polluters. River Watch believes these preferential pathways have allowed pollutants to be carried off Site to nearby residences and property as well as waters of the United States.

CONTINUING VIOLATIONS

Despite all of the monitoring done at the Site, records found at the RWQCB do not indicate whether a current sensitive receptor survey (within last two years) has been completed. The adjacent trailer park is not identified as a sensitive receptor nor has it been tested. Some of the preferential pathways such as roads have been identified, but sewer lines, utility trenches, waterways, ditches and the like have not been examined. The geomorphology of the area indicates numerous gravel lenses which are known to be conduits, and can cause significant off Site migration of pollutants. Polluters have made no attempt to determine the mass of the HVOCs, making mass balance clean-up impossible to determine.

For more than 20 years HVOCs at the Site have been migrating, contaminating new sources of drinking water, new aquifers, private property, waters of the United States, groundwaters and the like. Studies of aquifers have been inadequate. River Watch is concerned that due to its proximity to the Site, Colgan Creek has already been compromised by Polluters' contaminants. River Watch takes the position that adequate monitoring should be conducted along surface waters. Remediation must be conducted much more proactively to remove existing threats both to the environment and to individuals who live in the area.

For decades pollutants have been discharged from the Site. Though required by RCRA and California's implementation of RCRA, Polluters have: failed to prevent a release; failed to properly detect and monitor releases; failed to properly report and keep records of the releases; and, failed to take proper corrective action. These violations are all ongoing.

Fifty-gallon drums containing hazardous waste are illegally stored at the Site. Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Site, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing wastes off-site absent compliance with either the various requirements under the RCRA, or with the State of California's hazardous waste requirements authorized under the RCRA. Polluters' mishandling of wastes in violation of Subchapter C of the RCRA has created and is creating an imminent and substantial endangerment to human health or the environment. These violations are all continuing.

REGULATORY STANDARDS

MCLs and WQOs exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives 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.

The RWQCB has adopted a Water Quality Control Plan or "Basin Plan", which designates all surface and groundwater at or near the Site as capable of supporting domestic water supply. The pollutants at the Site have been characterized as "hazardous waste" and "solid waste" within the meaning of the provisions of RCRA. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of these constituents and products.

River Watch alleges Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA.

River Watch alleges Polluters to be past or present generators, past or present transporters, or past or present owners or operators of a treatment, storage, or disposal facility. River Watch alleges Polluters have contributed or are contributing to the past or present handling, storage, treatment, transportation, or disposal of a solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have: failed to prevent a release; failed to properly detect and monitor releases; failed to properly report and keep records of the release; and, failed to take proper corrective action.

Polluters are guilty of open dumping as that term is used in RCRA, by discharging pollutants to the open ground allowing these pollutants to discharge to both groundwater and surface waters. The Site does not qualify as a landfill under 42 U.S.C.. § 6944, and does not qualify as a facility for the disposal of hazardous waste. Polluters have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically found at the Site.

Between February 25, 2004 and November 9, 2009, ongoing violations of RCRA as described herein have occurred. Polluters have caused or permitted, cause or permit, or threaten to cause or permit hazardous waste to be discharged or deposited at the Site where it is, or probably will be, discharged into waters of the State and now creates, or threatens to create, a

condition of pollution or nuisance. The discharge and threatened discharge of such 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.

Past or current violations of RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for penalties when conditions of hazardous waste disposal have been alleged - as River Watch has alleged in this Notice with respect to the Site. Accordingly, under these provisions, persons or entities violating RCRA are subject to substantial liability to the United States on a per-day basis.

Polluters' use and storage of wastes at the Site between February 25, 2004 and November 9, 2009 have allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California's hazardous waste regulatory programs..

Contaminant levels of HVOCs in the soil and groundwater at the Site are significantly greater than the allowable MCL and/or WQO for said constituents. The HVOCs at the Site are known carcinogens and toxins. All are known to harm both plants and animals. In their concentrations at the Site and proximity to sensitive receptors such as groundwater, surface water, plants, insects, animals and humans, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

Polluters have known of the contamination at the Site since at least 1966, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Site, and to continually contaminate and re-contaminate soil, ground and surface waters.

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 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.

In addition to the violations set forth above, this Notice is intended to cover all violations of RCRA evidenced by information which becomes available to River Watch after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violations.

The violations of Polluters as set forth in this Notice affect the health and enjoyment of members of River Watch who reside, work and recreate in the affected area. Said members use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing,

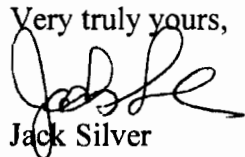
swimming, hiking, photography, nature walks and the like. Their health, property rights, use and enjoyment of this area is specifically impaired by Polluters' violations of RCRA.

River Watch has retained legal counsel to represent it in this matter. All communications should be addressed to:

Jack Silver
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402
Office 707-528-8175 / Fax 707-528-8675
Email lhm28843@sbcglobal.net

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of RCRA. At the close of the notice periods or shortly thereafter, River Watch intends to file suit or amend its current civil action against Polluters under the provisions of RCRA for each of the violations alleged in this Notice and with respect to the existing conditions at the Site.

During the notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Polluters wish 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 of River Watch detailed in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the notice period ends.

Very truly yours,

Jack Silver

JS:lhm

cc: Lisa Jackson, Administrator
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