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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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NORTHERN CALIFORNIA RIVER WATCH  
6

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9

LB

10 NORTHERN CALIFORNIA RIVER  
WATCH, a non-profit Corporation,  
11  
12 Plaintiff,  
13 v.  
14 CITY OF WILLITS and DOES 1-10,  
Inclusive,  
15 Defendants.

CASE NO.: 113  
**COMPLAINT FOR INJUNCTIVE RELIEF,  
CIVIL PENALTIES, RESTITUTION AND  
REMEDICATION**  
(Environmental - RCRA 42 U.S.C. § 6901 *et seq.*)

16  
17 NOW COMES Plaintiff NORTHERN CALIFORNIA RIVER WATCH ("RIVER  
WATCH"), by and through its attorneys, and for its Complaint against CITY OF WILLITS and  
18 DOES 1-10, Inclusive, ("WILLITS"), states as follows:  
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20 **I. NATURE OF THE CASE**

21 1. This is a citizens' suit brought against WILLITS under the citizen suit enforcement  
22 provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, ("RCRA"),  
23 specifically Sections 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and 7002(a)(1)(B), 42 U.S.C. §  
24 6972(a)(1)(B), to stop WILLITS from repeated and ongoing violations of the RCRA. These  
25 violations are detailed in the Notice of Violations and Intent to File Suit dated June 28, 2010  
26 ("RCRA NOTICE") made part of these pleadings and attached hereto as EXHIBIT A.  
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1 2. As described in the RCRA NOTICE and in this Complaint, RIVER WATCH alleges  
2 WILLITS to be in violation of a permit, standard, regulation, condition, requirement, prohibition,  
3 or order which has become effective pursuant to the RCRA (42 U.S.C. § 6901 *et seq.*; 42 U.S.C.  
4 § 6972(a)(1)(A); RCRA § 7002 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B).

5 3. As described in the RCRA NOTICE and in this Complaint, RIVER WATCH alleges  
6 WILLITS to be a past or present generator, past or present transporter, or past or present owner  
7 or operator of a treatment, storage, or disposal facility which has contributed or which is currently  
8 contributing to the past or present handling, storage, treatment, transportation, or disposal of any  
9 solid or hazardous waste which may present an imminent and substantial endangerment to health  
10 or the environment.

11 4. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,  
12 the imposition of civil penalties, and other relief for WILLITS' alleged violation of the RCRA's  
13 standards and regulations applicable to the use and storage of petroleum hydrocarbons and other  
14 pollutants, and WILLITS' alleged violation of the RCRA's prohibition against creating an  
15 imminent and substantial endangerment to human health and the environment.

16 5. RIVER WATCH alleges WILLITS' use and storage of petroleum and other pollutants at  
17 the site identified in this Complaint and the RCRA NOTICE regularly violates standards,  
18 regulations, conditions, requirements or prohibitions effective pursuant to the RCRA regarding  
19 storage of petroleum and like pollutants (42 U.S.C. § 6972(a)(1)(A)).

20 6. RIVER WATCH alleges WILLITS is routinely violating the RCRA's prohibition against  
21 creating an imminent and substantial endangerment to human health and the environment by its  
22 operations, which operations have caused contamination of soil, groundwater and surface water  
23 (42 U.S.C. § 6972(a)(1)(B)). Further, pollutants found at the site identified in this Complaint and  
24 the RCRA NOTICE leach into groundwater from current and former underground storage tanks  
25 ("USTs") which have either been removed from the site or abandoned without adequate measures  
26 taken to remove pollutants from soil and groundwater.  
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1 **II. PARTIES**

2 7. Plaintiff NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public  
3 benefit corporation duly organized under the laws of the State of California, with headquarters  
4 and main office located at 500 North Main Street, Suite 110, Sebastopol, California. RIVER  
5 WATCH is dedicated to protect, enhance and help restore the surface and subsurface waters of  
6 Northern California. RIVER WATCH's members live in Northern California and in Mendocino  
7 County where Site under WILLITS' operation and/or control is located. RIVER WATCH's  
8 members live nearby to waters affected by WILLITS' illegal discharges as alleged herein, and  
9 have interests in the watersheds which interests are or may be adversely affected by WILLITS'  
10 violations as alleged herein. Said members use the effected waters and watershed areas for  
11 domestic water, recreation, sports, fishing, swimming, hiking, photography, nature walks,  
12 religious, spiritual and shamanic practices, and the like. Furthermore, the relief sought herein  
13 will redress the injury in fact to RIVER WATCH and its members, the likelihood of future injury  
14 and interference with the interests of said members.

15 8. Defendant CITY OF WILLITS is a public entity with administrative offices located in the  
16 City of Willits, County of Mendocino, State of California. RIVER WATCH is informed and  
17 believes and on such information and belief alleges that WILLITS is and was at all times relevant  
18 to this Complaint, the owner and operator of the site identified in this Complaint and the RCRA  
19 NOTICE from which site pollution has been deposited and discharged.

20 9. Defendants designated as DOES 1 - 10, Inclusive, respectively, are persons, partnerships,  
21 corporations and entities, who are, or were, responsible for, or in some way contributed to, the  
22 violations which are the subject of this Complaint or are, or were, responsible for the  
23 maintenance, supervision, management, operations, or insurance coverage of the site identified  
24 in this Complaint and the RCRA NOTICE. The names, identities, capacities, and functions of  
25 DOES 1 - 10, Inclusive are presently unknown to RIVER WATCH. RIVER WATCH shall seek  
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1 leave of court to amend this Complaint to insert the true names of said DOES Defendants when  
2 the same have been ascertained.

3 **III. JURISDICTIONAL ALLEGATIONS**

4 10. Subject matter jurisdiction is conferred upon this Court by RCRA § 7002(a)(1), 42 U.S.C.  
5 § 6972(a)(1), which states in part,

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

13 11. Members of RIVER WATCH reside in the vicinity of, derive livelihoods from, own  
14 property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the  
15 watersheds and associated natural resources into which WILLITS, through its operations,  
16 discharges pollutants as alleged in this Complaint and the RCRA NOTICE in violation of RCRA  
17 § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and RCRA § 7002 (a)(1)(B), 42 U.S.C. §  
18 6972(a)(1)(B). The health, economic, recreational, aesthetic and environmental interests of  
19 RIVER WATCH and its members have been, are being, and will continue to be adversely  
20 affected by WILLITS’ violations as alleged herein. RIVER WATCH contend there exists an  
21 injury in fact to its members, causation of that injury by the conduct of WILLITS complained  
22 of herein, and a likelihood that the requested relief will redress that injury.

23 12. Pursuant to RCRA §7002(2)(A), 42 U.S.C. § 6972(2)(A), RIVER WATCH gave  
24 statutory notice of the RCRA violations alleged in this Complaint prior to the commencement  
25 of this lawsuit to: (a) WILLITS, (b) the United States EPA, Federal and Regional,(c) the State  
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1 of California Water Resources Control Board, and (d) the State of California Integrated Waste  
2 Management Board by way of the RCRA NOTICE.

3 13. Pursuant to RCRA §7002(a) and § 7002(b), 42 U.S.C. § 6972(a) and § 6972(b), venue  
4 lies in this District as the site under WILLITS' ownership or control and where illegal activities  
5 occurred which are the source of the violations complained of herein, is located within this  
6 District.

#### 7 **IV. GENERAL ALLEGATIONS**

8 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs  
9 1 through 13 as though fully set forth herein including all allegations in the RCRA NOTICE.

10 14. WILLITS owns and operates the City of Willits Corporation Yard located at 380 East  
11 Commercial Street in Willits, California, referred to hereafter throughout this Complaint as the  
12 "Site".

13 15. The Site is located within Willits Valley. The basin is drained by the Eel River which  
14 flows from southeast to the northwest. Willits Valley is bisected by several small creeks  
15 including Baechtel, Broaddus, Davis, Haehl, and Willits Creeks, which eventually empty into  
16 the Eel River.

17 16. The majority of the Site is paved with asphalt and gently slopes towards storm drains and  
18 towards Broaddus Creek less than 50 feet to the west.

19 17. Subsurface investigations at the Site demonstrate groundwater flows northwest in the  
20 direction of Broaddus and Baechtel Creeks. Groundwater at the Site is quite shallow with an  
21 unconfined aquifer only 3-7 seven feet below ground-surface used as a source of the water  
22 supply for the local community. Sustained groundwater is encountered from approximately 10  
23 to 14 feet below ground-surface. Depth to groundwater varies depending upon the season.  
24 Groundwater in the vicinity of the Site has been designated as having a beneficial use for  
25 municipal, industrial, and agricultural applications, according to the Regional Water Quality  
26 Control Board's ("RWQCB") Water Quality Control Plan for the North Coast Region.  
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1 18. In August 1999, a 500-gallon UST reportedly containing waste oil was removed from the  
2 eastern side of the southeast portion of the Site. A soil sample collected from the tank pit after  
3 removal of the UST contained concentrations of oil and grease at 480 mg/kg. The Site also  
4 contained a former gasoline UST located 175 feet northwest of the former waste oil UST.

5 19. In July 2007, EBA Engineering on behalf of WILLITS supervised Clear Heart Drilling  
6 of Santa Rosa, California in the drilling of three soil borings in the vicinity of the waste oil UST.  
7 These borings were also used to collect groundwater. Soil samples collected during the boring  
8 indicated detections of bis(2-ethylhexyl)phthalate (DEHP), a semi-volatile organic compound,  
9 found in levels above the State's Maximum Contaminant Levels ("MCLs"). The groundwater  
10 samples collected indicated TPH-mo and DEHP above MCLs.

11 20. Third quarter 2009 test results at the Site continued to demonstrate contamination of soil  
12 and groundwater from the gasoline UST to be high and an immediate and substantial threat to  
13 health and the environment: MTBE 110 µg/l; TPH-g 6,340 µg/l; TPH-d 1,710 µg/l; BTEX  
14 692.8 µg/l; and, TBA 229 µg/l – all exceeding the MCLs and Water Quality Objectives  
15 ("WQOs") for these constituents by magnitudes. (The MCL for MTBE is only 5 µg/l.)

16 21. RIVER WATCH alleges aquifers underlying the Site are at risk; and, that residual  
17 contamination at the Site is migrating to outlying groundwater and potentially to surface waters  
18 in the area, especially Broaddus Creek which is clearly at risk due to its close proximity to the  
19 plume. Further, WILLITS has not taken any proactive remediation of the Site utilizing "best  
20 available technology".

21 22. RIVER WATCH alleges the Site remains a threat to the human population and the local  
22 area environment. No estimates of the residual contaminant plume mass of the waste oil have  
23 been found, and no estimate of the length of time to remediate the site to below MCLs or WQOs  
24 has been done.

25 23. All illegal discharges and activities complained of in this Complaint occur in the  
26 waterways (including groundwater) identified in the RCRA NOTICE, all of which are waters  
27 of the State or the United States.  
28

1 24. The RWQCB has determined the watershed areas and affected waterways identified in  
2 the RCRA NOTICE and this Complaint are beneficially used for drinking water, water contact  
3 recreation, non-contact water recreation, fresh water habitat, wildlife habitat, preservation of rare  
4 and endangered species, fish migration, fish spawning, industrial service supply, navigation, and  
5 sport fishing.

## 6 **V. STATUTORY AND REGULATORY BACKGROUND**

7 25. RCRA §7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person  
8 who violates a Permit, Standard or Regulation pursuant to the RCRA. Civil penalties may be  
9 assessed against any person or entity in violation of this section, under the provisions of 42  
10 U.S.C. §§ 6928 (a) and (g). RIVER WATCH alleges WILLITS has stored, handled and  
11 disposed of materials at the Site containing petroleum, organic compounds, petroleum  
12 constituents, and other toxic pollutants, defined as solid or hazardous wastes under the RCRA,  
13 in a manner which has allowed these pollutants to be discharged to soil and groundwater beneath  
14 and adjacent to the Site, in violation of regulations regarding the use and disposal of hazardous  
15 wastes (RCRA § 3004 (d), 42 U.S.C. § 6924(d)).

16 26. RIVER WATCH alleges WILLITS has violated provisions of the RCRA governing the  
17 use and operation of USTs used for the storage of petroleum products (subchapter IX, 42 U.S.C.  
18 § 6991 et seq.). Further, that WILLITS has had unauthorized petroleum hydrocarbon releases  
19 at the Site, and has removed and/or abandoned USTs on the Site used for the storage of  
20 petroleum and waste oil without implementing required and effective cleanup and abatement  
21 measures.

22 27. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) permits a civil action against any  
23 person or governmental entity including a past or present generator, transporter, owner or  
24 operator of a treatment, storage or disposal facility, who has contributed or who is contributing  
25 to the past or present handling of any solid or hazardous waste which may present an imminent  
26 and substantial endangerment to health or the environment. Civil penalties may be assessed  
27 against any person or entity in violation of this section, under the provisions of 42 U.S.C. §  
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1 6928 (a) and 42 U.S.C. § 6928 (g). The RCRA UST regulatory program is adopted and  
2 implemented in California under the provisions governing the Underground Storage of  
3 Hazardous Substances (California Health & Safety Code § 25280 *et seq.*).

4 28. For purposes of the RCRA, petroleum products and their constituents: TPHg, benzene,  
5 toluene, ethylbenzene, xylenes, and MTBE, are both “solid wastes” and “hazardous wastes”  
6 within the meaning of the statute. Benzene and toluene are known carcinogens and/or  
7 reproductive toxins. If released into the environment in sufficient quantity, these petroleum  
8 products and the constituent chemicals within, pose an imminent and substantial risk to public  
9 health and to the environment.

10 29. RIVER WATCH alleges the petroleum constituents, and other pollutants, identified in  
11 this Complaint and the RCRA NOTICE, historically discharged at the Site in concentrations  
12 significantly greater than allowable MCLs and/or WQOs, are hazardous wastes pursuant to  
13 RCRA § 6903(5), 42 U.S.C. § 6972(5). Further, that pollutants from these substances have  
14 leached into soil and groundwater beneath and adjacent to the Site, creating an imminent and  
15 substantial endangerment to health and the environment.

16 30. RIVER WATCH alleges WILLITS’ discharges to soil and groundwater violated the  
17 RCRA’s regulations regarding the storage and disposal of hazardous wastes. Said violations are  
18 established in the RWQCB’s files for the Site as well as in studies conducted by WILLITS in  
19 compliance with orders from the RWQCB or other regulatory agencies.

20 31. RIVER WATCH alleges WILLITS’ discharges to soil and groundwater at the Site have  
21 violated the RCRA’s prohibition against creating an imminent and substantial endangerment to  
22 health and the environment. Said violations are established in the RWQCB’s files for the Site  
23 as well as in studies conducted by WILLITS in compliance with orders from the RWQCB or  
24 other regulatory agencies.

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1 **VI. FIRST CLAIM FOR RELIEF**

2 **Violations of 42 U.S.C. § 6972(a)(1)(A)**

3 RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs  
4 1 through 31 above, including the RCRA NOTICE, as though fully set forth herein. RIVER  
5 WATCH is informed and believes, and on such information and belief alleges as follows:

6 32. WILLITS' storage and disposal of toxic levels of petroleum and petroleum constituents  
7 at the Site, defined as solid or hazardous wastes under the RCRA, has caused the discharge of  
8 solid or hazardous wastes to soil and groundwater in violation of regulations regarding the use  
9 and disposal of solid or hazardous wastes (RCRA § 3004 (d), 42 U.S.C. § 6924(d)), and the use  
10 and operation of USTs (RCRA § 9002(a), 42 U.S.C. § 6991(a)).

11 33. RIVER WATCH alleges that without the imposition of appropriate civil penalties and  
12 the issuance of appropriate equitable relief, WILLITS will continue to violate RCRA § 3004(d),  
13 42 U.S.C. § 6924(d) and RCRA § 9002(a), 42 U.S.C. § 6991(a).

14 34. Continuing acts or failure to act by WILLITS to address these violations will irreparably  
15 harm RIVER WATCH and its members. RIVER WATCH alleges the relief requested in this  
16 Complaint will redress the injury to RIVER WATCH and its members, prevent future injury,  
17 and protect the interests of RIVER WATCH and its members which interests are or may be  
18 adversely affected by WILLITS' violations of RCRA as alleged in this Complaint.

19 **VII. SECOND CLAIM FOR RELIEF**

20 **Violations of 42 U.S.C. § 6972(a)(1)(B)**

21 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 34  
22 and the RCRA NOTICE though fully set forth herein. RIVER WATCH is informed and  
23 believes, and on such information and belief alleges as follows;

24 35. WILLITS has owned and/or operated the Site at which it stores or has stored, and  
25 transfers or has transferred, gasoline, diesel, fuel oil, mixed oils, and waste oil, and is now  
26 responsible for the remediation of these pollutants.  
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1 36. The Site contains USTs which are leaking, or in the past have leaked (before being  
2 removed or replaced), petroleum chemicals including benzene, toluene, TPHg, ethylbenzene,  
3 xylenes, and MTBE into groundwater; and, said petroleum products have migrated from the Site  
4 into nearby surface waters and groundwaters.

5 37. RIVER WATCH is informed and believes, and thereon alleges, that the amounts of  
6 petroleum products and their constituents, TPHg, benzene, toluene, ethylbenzene, xylenes,  
7 and/or MTBE, released by WILLITS at the Site are in sufficient quantity to pose an imminent  
8 and substantial risk to both the environment and to human health.

9 38. Continuing acts or failure to act by WILLITS to address these violations will irreparably  
10 harm RIVER WATCH and its members. RIVER WATCH alleges the relief requested in this  
11 Complaint will redress the injury to RIVER WATCH and its members, prevent future injury,  
12 and protect the interests of RIVER WATCH and its members which interests are or may be  
13 adversely affected by WILLITS' violations of RCRA as alleged in this Complaint.

#### 14 **VIII. RELIEF REQUESTED**

15 RIVER WATCH, respectfully requests this Court grant the following relief:

16 39. Declare WILLITS to have violated and to be in violation of the RCRA;

17 40. Issue an injunction ordering WILLITS to immediately clean up and abate the Site in  
18 compliance with the RCRA and in compliance with applicable State and Federal standards;

19 41. Order WILLITS to pay to the U.S. Treasury civil penalties of \$37,500.00 per violation/  
20 per day for its violations of the RCRA as alleged herein;

21 42. Declare WILLITS to have violated and to be in violation of the RCRA for discharging  
22 petroleum products and constituents which are known carcinogens and/or reproductive toxins  
23 in sufficient quantities to pose an imminent and substantial risk to health and to the  
24 environment;

25 43. Enjoin WILLITS from discharging petroleum products and petroleum constituents from  
26 the Site which petroleum products and constituents pose an imminent and substantial risk to  
27 health and the environment;  
28

- 1 44. Order WILLITS to test the underlying aquifers at the Site for contamination;
- 2 45. Order WILLITS to adequately test Broaddus Creek to determine if it has been
- 3 contaminated by any pollutants from the Site;
- 4 46. Order WILLITS to pay civil penalties of \$37,500.00 per violation per day, pursuant to
- 5 applicable RCRA provisions, including 42 U.S.C. § 6928 (a) and 42 U.S.C. § 6928 (g), and/or
- 6 to pay for remediation projects to redress harm caused by WILLITS' violations of the RCRA
- 7 as alleged herein. Each of the above-described violations of the RCRA subjects the violator to
- 8 a civil penalties on a per day/per violation basis. Civil penalties may be assessed for violations
- 9 occurring within five (5) years prior to the initiation of a citizen enforcement action;
- 10 47. Enter judgment that WILLITS is required to pay civil penalties according to proof;
- 11 48. Enter such preliminary injunctions, permanent injunctions or other orders pursuant to the
- 12 RCRA requiring WILLITS to enjoin and abate the nuisance resulting from the discharge and
- 13 release of petroleum products and constituents, and to enjoin the migration of petroleum
- 14 products and constituents into soil and groundwater at and adjacent to the Site;
- 15 49. Impose injunctive relief requiring WILLITS to immediately investigate, access and
- 16 categorize the extent of pollution and implement the "best available technology" to remediate
- 17 pollution at the Site;
- 18 50. Impose injunctive relief requiring WILLITS to immediately commence complete
- 19 remediation of the contamination at and adjacent to the Site once the contaminant plume(s) has
- 20 been adequately characterized;
- 21 51. Award costs (including reasonable attorney, expert, witness, and consultant fees) to
- 22 RIVER WATCH as authorized by the RCRA; and,
- 23 52. Award such other and further relief as this Court may deem appropriate.

24 DATED: January 20, 2011

LAW OFFICE OF JACK SILVER

25   
26 JACK SILVER  
27 Attorney for Plaintiff  
28 NORTHERN CALIFORNIA RIVER WATCH

# **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



June 28, 2010

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

Deputy Director of Public Works  
Director Planning and Community Development Dept.  
Paul Cayler, City Manager  
City of Willits  
111 East Commercial Street  
Willits, CA 95490

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

Dear Agency Heads:

## **NOTICE**

On behalf of Northern California River Watch (“River Watch”), I am providing statutory notification to the City of Willits of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. § 6901 *et seq.*, in conjunction with continuing operations at the City of Willits’ corporate yard located at 380 East Commercial Street, Willits, California (“Site”).

The RCRA 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.*)

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 below, the City of Willits operates a non-permitted, hazardous waste treatment, storage and disposal site. The City of Willits has either failed to properly label, track and/or report the type, quantity or disposition of waste from the Site, or has failed to use a manifest system to ensure the waste generated at the Site is properly handled, stored, treated or disposed of.

River Watch alleges the City of Willits is disposing wastes off-site without compliance with either the various requirements under the RCRA, or with the State of California's hazardous waste requirements authorized under the RCRA; and that the City of Willits' 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 an imminent and substantial endangerment to human health or the environment.

On behalf of its members, River Watch hereby provides statutory notification to the City of Willits of continuing and ongoing violations of the RCRA. River Watch hereby notifies the City of Willits that at the expiration of the appropriate notice periods under the RCRA, River Watch intends to commence a civil action against the City of Willits on the following grounds:

1. The City of Willits' use and storage of petroleum products at the Site identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding storage of petroleum in underground storage tanks ("USTs") [42 U.S.C. § 6972(a)(1)(A)];
2. The City of Willits' operations at the Site 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. The City of Willits' past and current operations at the Site identified in this Notice violate the provisions of subchapter III of the RCRA, specifically 42 U.S.C. § 6924, which governs the mishandling of hazardous wastes. River Watch contends the City of Willits has inadequately maintained records with respect to the manner in which its hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning its wastes; inadequately provided storage facilities for its wastes; and in the past has 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 Site identified in this Notice by the City of Willits, 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 at the Site identified in this Notice by the City of Willits have caused or threatens 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. The City of Willits owns or operates

discreet conveyances, preferential pathways or wells which have contributed to the transportation, treatment, storage, or disposal of the wastes at the identified Site. [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 the City of Willits. Pollutants as described herein and found at the Site 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 the City of Willits stems from its ownership of the identified Site and its activities conducted on the 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 the City of Willits 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 the City of Willits is 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 Site identified in this Notice 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. Also, the City of Willits has no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Site.

The liability of the City of Willits also stems from its ownership or operation of discrete conveyances, preferential pathways or wells which have caused pollutants to be discharged to groundwater and surface waters via the City of Willits' 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.

The City of Willits' past and current operations at the Site 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 the City of Willits has inadequately maintained records of the manner in which its hazardous wastes have been treated, stored and/or

disposed of; inadequately monitored, reported and/or complied with existing regulations concerning its wastes; inadequately provided storage facilities for its wastes; and in the past has 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 discharger responsible for the violations alleged in this Notice is the City of Willits.

**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 the City of Willits have occurred for more than 5 years, the range of dates covered by this Notice is July 1, 2005 through the date of this Notice. River Watch will from time to time update and supplement this Notice to include all violations by the City of Willits 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 the City of Willits own records (or lack thereof) or files and records of other regulatory agencies including the Regional Water Quality Control Board, GeoTracker, Mendocino County Health and local police and fire departments.

**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 the City of Willits 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. The members of River Watch use the watershed 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 the City of Willits as alleged in this Notice.

### **BACKGROUND HISTORY**

The Site - the City of Willits Corporation Yard - is located at 380 East Commercial Street in Willits, California, north of East Commercial Street at the east side of the City. The Site continues to be used actively by the City of Willits. The Site is at an approximate elevation of 1,364 feet above mean sea level. The majority of the Site is paved with asphalt and gently slopes westward towards Broaddus Creek approximately 100 feet to the west, and towards storm drains.

The Site is located within Willits Valley. The basin is drained by the Eel River which flows from southeast to the northwest. Willits Valley is bisected by several small creeks including Baechtel, Broaddus, Davis, Haehl, and Willits Creeks, which eventually empty into the Eel River. Subsurface investigations demonstrate groundwater has been found to flow north to northwest in the direction of Broaddus and Baechtel Creeks. First encountered groundwater levels at the project site have been observed to range from ten to twelve feet below ground-surface with static groundwater levels ranging from approximately three to seven feet below ground-surface.

In August 1999, a 500-gallon UST was removed from the eastern side of the southeast portion of the Site, and was reported to have contained waste oil. A soil sample collected from the tank pit after removal of the UST contained concentrations of oil and grease at 480 mg/kg. This Site also contained a former gasoline UST located 175 feet northwest of the former waste oil UST.

In July 2007, EBA supervised Clear Heart Drilling of Santa Rosa, California in the drilling of three soil borings in the vicinity of the waste oil UST. These borings were also used to collect groundwater. Soil samples collected during the boring indicated detections of bis(2-ethylhexyl)phthalate (DEHP), a semi-volatile organic compound, found in levels above the State's Maximum Contaminant Levels (MCLs). The groundwater samples collected indicate TPH-mo and DEHP above MCLs.

Third quarter 2009 test results still showed contamination of soil and groundwater to be high and an immediate and substantial threat to health and the environment: MTBE 110 µg/l; TPH-g 6,340 µg/l; TPH-d 1,710 µg/l; BTEX 692.8 µg/l; and, TBA 229 µg/l – all exceeding the MCL and Water Quality Objectives (WQOs) for these constituents by magnitudes. (The MCL for MTBE is only 5 µg/l.)

River Watch seeks engineering assurances from the City of Willits that the underlying aquifers are not at risk; and, that residual contamination at the Site is not migrating to outlying groundwater and potentially to surface waters. Proactive remediation using “best available technology” must be implemented. Some efforts to estimate the residual plume mass and the amount of time necessary to remediate the Site must be accomplished in keeping with standard cleanup protocols in the industry.

Groundwater in the vicinity of the Site has been designated as having a beneficial use for municipal, industrial, and agricultural applications, according to the Regional Water Quality Control Board’s Water Quality Control Plan for the North Coast Region.

The Site remains a threat to the human population and the local area environment. No estimates of the residual contaminant plume mass have been found, and no estimate of the length of time to remediate the Site to below MCLs or WQOs has been made. River Watch believes the City of Willits must work much more proactively to remediate the soil and groundwater beneath and around the Site by employing best available technology as required by the Water Quality Control Plan.

### **REGULATORY STANDARDS**

Enacted in 1976, the RCRA is a federal law of the United States, the goals of which are 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. The RCRA is a strict liability statute with a statute of limitations of 5 years. Pursuant to the RCRA, California has enacted laws and regulations which must be observed in conjunction with provisions of the RCRA.

California’s WQOs exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist. 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.

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 Region as capable of supporting domestic water supply. The Regional Board has adopted MCLs and/or WQOs for petroleum constituents in surface and groundwater within the region of 50 µg/l for TPHg, 1 µg/l for benzene, 150 µg/l for toluene and 5 µg/l for MTBE.

## VIOLATIONS

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

Provisions of the RCRA govern the use and operation of USTs used for storage of petroleum products (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 July 1, 2005 and the date of this Notice, use and storage of petroleum at the Site by the City of Willits 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, with respect to the Site, the City of Willits is responsible for the following statutory violations:

1. 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);
2. Failure to properly detect and monitor releases in violation of 40 CFR §§ 280.40 - 280.44 and California Health & Safety Code § 25292;
3. Failure to properly report and keep records of the release 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,
4. 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).

### **2. Imminent and Substantial Endangerment - [42 U.S.C. § 6972(a)(1)(B)]**

Between July 1, 2005 and the date of this Notice, the City of Willits has used and stored, and continues to use and store, petroleum products at the Site in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the Site and beneath adjacent properties. The contaminant levels of TPHg, THPd, BTEX, TBA and MTBE in groundwater at the Site are significantly greater than the allowable MCLs and/or WQOs for said constituents. Benzene, MTBE, 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 Site, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

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

The City of Willits has used and stored petroleum products at the Site in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the Site and beneath adjacent properties. The contaminant levels of TPHg, TBA, BTEX, and MTBE in groundwater at the Site are significantly greater than the allowable MCLs and/or WQOs for said constituents.

River Watch alleges that between July 1, 2005 and the date of this Notice the City of Willits has engaged in the following activities or omissions in violation of the RCRA's waste handling provisions:

1. Failure to adequately maintain records of hazardous wastes as described in this Notice which were treated, stored or otherwise disposed of on or offsite [42 U.S.C. § 6924(a)(1)];
2. Failure to satisfactorily monitor, inspect, or report in accordance with the provisions of the RCRA [42 U.S.C. § 6924(a)(2)];
3. Failure to adequately treat, store, or properly dispose of hazardous wastes found at the Site; [42 U.S.C. § 6924(a)(3)];
4. Failure to adequately locate, design and construct hazardous waste treatment, storage or disposal facilities [42 U.S.C. § 6924(a)(4)]; and,
5. Failure to properly implement contingency plans for effective action to minimize unanticipated damage from treatment, storage or disposal of hazardous waste found at the Site. [42 U.S.C. § 6924(a)(5)].

These pollutants in their concentrations at the Site have continued to cause an imminent and substantial endangerment to public health and the environment.

The violations alleged in this Notice are knowing and intentional in that the City of Willits has used, stored and sold petroleum products the Site which are known to contain hazardous substances. The City of Willits has known of the contamination at the Site for numerous years and has 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 actual and potential sources of drinking water as well as 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 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.

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

**CONTACT INFORMATION - COUNSEL FOR RIVER WATCH.**

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

Jack Silver, Esquire  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel. (707) 528-8175  
Fax (707) 528-8675

**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 Site. River Watch and its counsel are willing to discuss effective remedies for the violations referenced in this Notice. If the City of Willits wishes to pursue such discussions in the absence of litigation, we would encourage the City to initiate such discussions within 60 days of receipt of this Notice. River

Watch will not delay the filing of a lawsuit if discussions have not commenced within that period of time.

Very truly yours,

*Jack Silver*

Jack Silver

JS:lh

cc: Lisa Jackson, Administrator  
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