

1 Jack Silver, Esq. SBN #160575
2 Law Office of Jack Silver
3 Post Office Box 5469
4 Santa Rosa, CA 95402-5469
5 Tel.(707) 528-8175
6 Fax.(707) 528-8675
7 lhm28843@sbcglobal.net

8 Attorneys for Plaintiff
9 NORTHERN CALIFORNIA RIVER WATCH

99
E-filing
FILED
FEB 23
SBA
353
RICHARD W. HECKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 **CV11 0849**

13 NORTHERN CALIFORNIA RIVER
14 WATCH, a non-profit corporation,

CASE NO.:

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

15 Plaintiff,

16 v.

[Resource Conservation & Recovery Act -
42 U.S.C. § 6901 *et seq.*]

17 OLYMPIAN OIL COMPANY, LLC,
18 OLYMPIAN GULF PROPERTIES, INC.,
19 DOES 1 - 20, Inclusive,

20 Defendants.

21 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH ("RIVER
22 WATCH") by and through its attorneys, and for its complaint against Defendants, OLYMPIAN
23 OIL COMPANY, LLC, OLYMPIAN GULF PROPERTIES, INC. and DOES 1- 20, Inclusive
24 ("OLYMPIAN OIL") states as follows:

25 **INTRODUCTION**

26 1. This is a civil suit brought against OLYMPIAN OIL under the citizen suit enforcement
27 provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA")
28 and California law governing the Underground Storage of Hazardous Substances, California
Heath & Safety Code § 25280 *et seq.* This complaint seeks relief for OLYMPIAN OIL's
discharge of pollution from its five current or former fuel dispensing facilities and properties

1 (“Facilities”) identified in the Notice of Violations dated August 23, 2010 attached to this
2 Complaint as EXHIBIT A, into the waters of the State of California and the United States in
3 violation of the above-enumerated statutes and laws.

4 2. As described in the RCRA NOTICE and in this Complaint, RIVER WATCH alleges
5 OLYMPIAN OIL to be in violation of a permit, standard, regulation, condition, requirement,
6 prohibition, or order which has become effective pursuant to the RCRA (42 U.S.C. § 6901 *et*
7 *seq.*; 42 U.S.C. § 6972(a)(1)(A); RCRA § 7002 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B).

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

14 4. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
15 the imposition of civil penalties, and other relief for OLYMPIAN OIL’s alleged violation of the
16 RCRA’s standards and regulations applicable to the use and storage of petroleum hydrocarbons
17 and other pollutants, and OLYMPIAN OIL’s alleged violation of the RCRA’s prohibition
18 against creating an imminent and substantial endangerment to human health and the
19 environment.

20 5. RIVER WATCH alleges OLYMPIAN OIL’s use and storage of petroleum and other
21 pollutants at the Facilities identified in this Complaint and the RCRA NOTICE regularly violates
22 standards, regulations, conditions, requirements or prohibitions effective pursuant to the RCRA
23 regarding storage of petroleum and like pollutants (42 U.S.C. § 6972(a)(1)(A)).

24 6. RIVER WATCH alleges OLYMPIAN OIL is routinely violating the RCRA's prohibition
25 against creating an imminent and substantial endangerment to human health and the environment
26 by its operations, which operations have caused contamination of soil, groundwater and surface
27 water (42 U.S.C. § 6972(a)(1)(B)). Further, pollutants found at the Facilities identified in this
28

1 Complaint and the RCRA NOTICE leach into groundwater from current and former
2 underground storage tanks ("USTs").
3

4 JURISDICTION

5 7. This Court has subject matter jurisdiction over all Federal causes of action in this
6 Complaint pursuant to RCRA §§7002(a)&(b), 42 U.S.C. §§ 6972 (a)&(b) and 28 U.S.C. §1221
7 (an action for declaratory and injunctive relief arising under the Constitution and laws of the
8 United States). This Court has supplemental jurisdiction over all State-based causes of action
9 in this Complaint pursuant to 28 U.S.C. §1367, as those claims form part of the same transaction
10 or occurrence as the Federal causes of action.

11 8. On or about August 23, 2010, RIVER WATCH provided notice of OLYMPIAN OIL's
12 violations of RCRA, and of its intent to file suit against OLYMPIAN OIL. A true and correct
13 copy of the Notice of Violations ("RCRA NOTICE") is attached hereto as EXHIBIT A. Copies
14 of the RCRA NOTICE were sent to OLYMPIAN OIL, the Administrator of the United States
15 Environmental Protection Agency, the Administrator of the Environmental Protection Agency -
16 Region IX, the Executive Director of the State Water Resources Control Board, and the
17 Executive Director of the California Integrated Waste Management Board as required by the
18 RCRA.

19 9. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods
20 from, own property near, and/or recreate on, in or near, and/or otherwise use, enjoy and benefit
21 from the affected watershed areas and associated natural resources into which toxic contaminants
22 have been discharged from the Facilities. Said illegal discharges by OLYMPIAN OIL have
23 adversely affected RIVER WATCH members' interests, in violation of the above-enumerated
24 laws or statutes. The health, economic, recreational, aesthetic and environmental interests of
25 RIVER WATCH members have been, are being, and will continue to be adversely affected by
26 OLYMPIAN OIL's unlawful violations of the above-enumerated laws or statutes. RIVER
27 WATCH contends there exists an injury in fact to its members, that the conduct of OLYMPIAN
28 OIL complained of herein has directly caused these injuries, and that there is a probability that

1 the requested relief will specifically redress these injuries. RIVER WATCH, through its
2 members, has standing to bring this action.

3
4 **INTRADISTRICT ASSIGNMENT**

5 10. The basis for assignment of this case to the Northern District of California, pursuant to
6 RCRA §§7002(a)&(b), 42 U.S.C. §§6972 (a)&(b), is that the Facilities and operations on the
7 Facilities by OLYMPIAN OIL are located in this District.

8
9 **PARTIES**

10 11. RIVER WATCH is a 501(c)(3) non-profit public benefit corporation duly organized
11 under the laws of the State of California. Its headquarters are located in Sebastopol, California.
12 RIVER WATCH is dedicated to protecting, enhancing and helping to restore the waters of
13 Northern California, including its drinking water resources, groundwater, rivers, creeks and
14 tributaries. Many of RIVER WATCH's members live in areas affected by OLYMPIAN OIL's
15 pollution as alleged in this Complaint. Said members have an interest which has been, is now,
16 or may be adversely affected by OLYMPIAN OIL's violations as set forth herein. Said members
17 use the affected watersheds for domestic water supply, agricultural water supply, recreation,
18 sports, fishing, swimming, hiking, photography, nature walks and the like.

19 12. RIVER WATCH is informed and believes and on said information and belief alleges that
20 OLYMPIAN OIL COMPANY, LLC is a business entity registered in the State of California,
21 with a principle place of business located at 1300 Industrial Road, Suite 2, San Carlos,
22 California.

23 13. RIVER WATCH is informed and believes and on said information and belief alleges that
24 OLYMPIAN GULF PROPERTIES, INC. is a corporation registered in the State of California,
25 with a principle place of business located at 1300 Industrial Road, Suite 2, San Carlos,
26 California.

1 14. RIVER WATCH is informed and believes and on said information and belief alleges that
2 Defendants DOES 1-20, Inclusive, respectively, are persons, partnerships, corporations and
3 entities, who are, or were, responsible for, or in some way contributed to, the violations which
4 are the subject of this Complaint, or are, or were, responsible for the maintenance, supervision,
5 management, operations, or insurance coverage of the Facilities. The names, identities,
6 capacities, and functions of DOES 2-10, inclusive, are presently unknown to RIVER WATCH,
7 which shall seek leave of court to amend this Complaint to insert the true names of said DOES
8 when the same have been ascertained.

10 STATEMENT OF FACTS

11 15. According to information currently available to RIVER WATCH, OLYMPIAN OIL has
12 owned, operated and/or leased each of the Facilities during the 1980's and 1990's, when
13 unauthorized releases of petroleum hydrocarbons were discovered.

14 16. RIVER WATCH alleges OLYMPIAN OIL in the past has stored large quantities of
15 petroleum products USTs on the Facilities. Between 1989 and 1999 petroleum contamination
16 was detected in soil and in groundwater beneath each of the Facilities as more fully described
17 and identified in the RCRA NOTICE. Subsequent investigation indicated the contamination was
18 and is attributable to leakage from USTs and piping systems, surface spills and/or poor
19 maintenance or operational practices.

20 17. RIVER WATCH is informed and believes, and thereon alleges, that OLYMPIAN OIL
21 is the Primary Responsible Party for the remediation at the Facilities. On that basis, regulatory
22 agencies have ordered OLYMPIAN OIL to investigate and remediate petroleum contamination
23 at the Facilities following the discovery of petroleum releases. OLYMPIAN OIL has conducted
24 some investigative and remedial work at the Facilities in response to agency directives. Based
25 upon current levels of contamination, however, OLYMPIAN OIL has been unsuccessful in
26 abating the contamination. To date, the levels of TPHg, benzene, toluene, ethylbenzene, and
27 xylenes remain high above the allowable Maximum Contaminant Levels and/or Water Quality
28 Objectives for said constituents, creating an imminent and substantial endangerment to public

1 health and the environment. Significant quantities of MTBE are also being detected in soil and
2 groundwater beneath the Facilities and adjacent properties, creating an imminent and substantial
3 endangerment to public health and the environment.

4 18. Regulatory agencies have designated surface water and groundwaters in these areas of
5 California as capable of supporting domestic water supply, and have established maximum
6 contaminant levels for petroleum constituents in both surface water and groundwaters.

7 19. Benzene and toluene are known carcinogens and/or reproductive toxins, and have been
8 listed chemicals under Proposition 65, since at least 1991. Surface water and groundwater at the
9 Facilities are potential sources of drinking water under applicable Regional Water Quality
10 Control Board Water Quality Control Plans, also known as Basin Plans. In the course of doing
11 business, OLYMPIAN OIL has discharged benzene and toluene to surface and groundwater at
12 the Facilities at least between the years of 1985 and 1999, and for purpose of this lawsuit for the
13 five year period as set forth in the RCRA NOTICE, and has become the Responsible Party for
14 the remediation of the Facilities, whether the contamination has arisen from OLYMPIAN OIL's
15 own releases, or those of its predecessors in interest.

16 20. RIVER WATCH alleges OLYMPIAN OIL has used and/or stored petroleum at the
17 Facilities in a manner which has allowed significant quantities of hazardous petroleum
18 constituents, including MTBE, to be discharged to soil and groundwater beneath the Facilities
19 and beneath adjacent properties.

20 21. RIVER WATCH alleges the discharges by OLYMPIAN OIL as alleged in the RCRA
21 NOTICE are both knowing and intentional; that OLYMPIAN OIL has used, stored and sold
22 petroleum products at the Facilities, which are known to contain benzene, toluene, TPHg, TPHd,
23 ethylbenzene, xylenes, and/or MTBE, and has intended that such products be sold to and used
24 by the public. Further, that OLYMPIAN OIL has known of the contamination at the Facilities
25 since the date of each unauthorized release, and is also aware that failing to remediate the
26 pollution allows the contamination to migrate through soil and groundwater at and adjacent to
27 the Facilities, and to continually contaminate and re-contaminate actual and potential sources of
28 drinking water.

STATUTORY AND REGULATORY BACKGROUND

1
2 22. RCRA §7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person
3 who violates a Permit, Standard or Regulation pursuant to the RCRA. Civil penalties may be
4 assessed against any person or entity in violation of this section, under the provisions of 42
5 U.S.C. § 6928 (a) and 42 U.S.C. § 6928 (g).

6 23. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) permits a civil action against any
7 person or governmental entity including a past or present generator, transporter, owner or
8 operator of a treatment, storage or disposal facility, who has contributed or who is contributing
9 to the past or present handling of any solid or hazardous waste which may present an imminent
10 and substantial endangerment to health or the environment. Civil penalties may be assessed
11 against any person or entity in violation of this section, under the provisions of 42 U.S.C. §
12 6928 (a) and 42 U.S.C. § 6928 (g). The RCRA UST regulatory program is adopted and
13 implemented in California under the provisions governing the Underground Storage of
14 Hazardous Substances (California Health & Safety Code § 25280 *et seq.*).

15 24. For purposes of RCRA, petroleum products and their constituents: TPHg, TPHd,
16 benzene, toluene, ethylbenzene, xylenes, and MTBE, are “solid wastes” as well as “hazardous
17 wastes” within the meaning of the statute. Petroleum products and the constituent chemicals
18 within petroleum products, such as benzene and toluene are known carcinogens and/or
19 reproductive toxins, are known to be hazardous to the environment, and if released into the
20 environment in sufficient quantity, pose an imminent and substantial risk to public health and
21 to the environment in general.

22 25. RIVER WATCH alleges the petroleum constituents, and other pollutants, identified in
23 this Complaint and the RCRA NOTICE, historically discharged by OLYMPIAN OIL at the
24 Facilities in concentrations significantly greater than State of California’s allowable Maximum
25 Contaminant Levels and/or Water Quality Objectives, are hazardous wastes pursuant to RCRA
26 § 6903(5), 42 U.S.C. § 6972(5). Further, that pollutants from these substances have leached into
27 soil and groundwater beneath and adjacent to the Facilities, creating an imminent and substantial
28 endangerment to health and the environment.

FIRST CLAIM FOR RELIEF

Violation of Permits, Standards, or Regulations - 42 U.S.C. §6972(a)(1)(A)

RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 25 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed and believes, and based on such information and belief alleges:

26. OLYMPIAN OIL has owned and has operated the Facilities at which it has stored, and/or has transferred, gasoline, diesel, fuel oil and mixed oils to or from USTs. OLYMPIAN OIL's USTs have been and are regulated by appropriate Regional Water Quality Control Board and/or the Lead Agency (e.g., the County Department of Health for each County in which the Facilities are situated), both of which have imposed remediation and monitoring requirements upon OLYMPIAN OIL to ensure compliance with the RCRA's UST program.

27. RIVER WATCH is informed and believes, and thereon alleges, that OLYMPIAN OIL, or its predecessors in interest, has failed to comply with the statutory and regulatory leak prevention, leak detection, monitoring, and remediation requirements imposed under RCRA and described in the RCRA NOTICE.

28. RIVER WATCH alleges that the continuing failure by OLYMPIAN OIL to effectively remediate the on-going contamination at the Facilities will irreparably harm RIVER WATCH and its members, for which harm RIVER WATCH and its members have no plain, speedy or adequate remedy at law.

SECOND CLAIM FOR RELIEF

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

RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 28 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed and believes, and based on such information and belief alleges:

29. OLYMPIAN OIL has owned and operated the Facilities at which it has stored and transferred, gasoline, diesel, fuel oil and mixed oils. USTs located on the Facilities are leaking or have leaked petroleum chemicals including benzene, toluene, TPHg, ethylbenzene, xylenes,

1 and MTBE into groundwater; or, said petroleum products have washed off the Facilities into
2 nearby surface waters.

3 30. OLYMPIAN OIL, or its predecessors in interest for which OLYMPIAN OIL remains
4 responsible, has caused such hydrocarbon chemicals to be released into soils and groundwater
5 in and around each of the Facilities in sufficient quantity to pose an imminent and substantial
6 risk to both the environment and to human health.

7 31. RIVER WATCH alleges continuing acts or the failure to act by OLYMPIAN OIL to
8 address these violations will irreparably harm RIVER WATCH and its members, for which harm
9 they have no plain, speedy or adequate remedy at law.

10 11 **THIRD CLAIM FOR RELIEF**

12 **Mishandling of Hazardous Waste - 42 U.S.C. § 6924(a)(1) through § 6924(a)(5)**

13 RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 31
14 and the RCRA NOTICE as though fully set forth herein. RIVER WATCH is informed and
15 believes, and based on such information and belief alleges:

16 32. OLYMPIAN OIL, or its predecessors in interest for which it is now responsible for
17 contamination remediation at the Facilities, has failed to adequately maintain records of
18 hazardous wastes identified in the RCRA NOTICE which were treated, stored or otherwise
19 disposed of, either on the Facilities or offsite, in violation of 42 U.S.C. §6924(a)(1).

20 33. OLYMPIAN OIL, or its predecessors in interest for which it is now responsible for
21 contamination remediation at the Facilities, has failed to adequately monitor, inspect or report
22 unlawful discharges as identified in the RCRA NOTICE in accordance with the manifest system
23 of 42 U.S.C. §6922(5), and in violation of 42 U.S.C. §6924(a)(2).

24 34. OLYMPIAN OIL, or its predecessors in interest for which it is now responsible for
25 contamination remediation at the Facilities, has failed to adequately treat, store or properly
26 dispose of hazardous waste found at the Facilities in violation of 42 U.S.C. § 6924(a)(3).

1 35. OLYMPIAN OIL, or its predecessors in interest for which it is now responsible for
2 contamination remediation at the Facilities, has failed to adequately locate, design, construct
3 hazardous waste treatment, storage and/or disposal facilities in violation of 42 U.S.C.
4 §6924(a)(4).

5 36. OLYMPIAN OIL, or its predecessors in interest for which it is now responsible for
6 contamination remediation at the Facilities, has failed to adequately implement contingency plan
7 for effective action to minimize unanticipated damage from the treatment, storage or disposal
8 of hazardous waste found at each of the Facilities in violation of 42 U.S.C. §6924(a)(5).

9 37. RIVER WATCH is informed and believes, and thereon alleges, that the violations set
10 forth in Paragraphs 25-29 above have posed and continue to pose an imminent and substantial
11 risk to both the environment and to human health.

12 38. RIVER WATCH alleges that the continuing acts or the failure to act by OLYMPIAN OIL
13 to address these past and continuing violations will irreparably harm RIVER WATCH and its
14 members, for which harm they have no plain, speedy or adequate remedy at law.

15
16 **RELIEF REQUESTED**

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

18 39. Declare OLYMPIAN OIL to have violated and to be in violation of the RCRA for
19 discharging petroleum products and constituents which are known carcinogens and/or
20 reproductive toxins in sufficient quantities to pose an imminent and substantial risk to health and
21 to the environment;

22 40. Enjoin OLYMPIAN OIL from discharging from the Facilities petroleum products and
23 petroleum constituents which pose an imminent and substantial risk to health and the
24 environment;

25 41. Order OLYMPIAN OIL to comply with the substantive and procedural requirements of
26 the RCRA;

27 42. Order OLYMPIAN OIL to pay civil penalties pursuant to provisions of the RCRA
28 including 42 U.S.C. §6928 (a) and §6928 (g), and/or to pay for remediation projects to redress

1 harm caused by OLYMPIAN OIL's violations as alleged herein. Each of the above-described
2 violations subjects the violator to a civil penalties on a per day/per violation basis. Civil penalties
3 may be assessed for violations occurring within five (5) years prior to the initiation of a citizen
4 enforcement action;

5 43. Enter such preliminary injunctions, permanent injunctions or other orders pursuant to the
6 RCRA requiring OLYMPIAN OIL to enjoin and abate the nuisance resulting from the discharge
7 and release of petroleum products and constituents at the Facilities, and to enjoin the migration
8 of petroleum products and constituents into soil and groundwater.

9 44. Impose injunctive relief requiring OLYMPIAN OIL to immediately investigate, access
10 and categorize the extent of pollution and implement the "best available technology" to
11 remediate pollution at the Facilities;

12 45. Impose injunctive relief requiring OLYMPIAN OIL to immediately commence complete
13 remediation of the contamination at and adjacent to the Facilities once the contaminant plume(s)
14 has been adequately characterized.

15 46. Award costs (including reasonable attorney, expert, witness, and consultant fees) to
16 RIVER WATCH as authorized by the RCRA; and,

17 47. Award such other relief as this Court may deem appropriate.

18
19 Dated: January 24, 2011

LAW OFFICE OF JACK SILVER

20
21 By: 
22 JACK SILVER
23 Attorney for Plaintiff
24 NORTHERN CALIFORNIA RIVER WATCH
25
26
27
28

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***

August 23, 2010

Chief Executive Officer
Olympian Oil Company, LLC
Olympian Gulf Properties, Inc.
1300 Industrial Road, Suite 2
San Carlos, CA 94070

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

Dear Sir or Madam:

NOTICE

The Federal Resource Conservation and Recovery 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. (see 40 CFR §§ 254.2 and 254.3). 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.

On behalf of Northern California River Watch (hereafter referred to as "River Watch,") I am providing statutory notification to Olympian Oil Company, LLC and Olympian Gulf Properties, Inc. (hereafter referred to as "Responsible Parties,") of continuing and ongoing violations of the RCRA in conjunction with former or continuing operations at the five underground storage tank sites identified in this Notice. By copy of this Notice, notice of these violations is also provided to the owners of the real property upon which each of the five identified sites is situated. Pursuant to provisions of the RCRA, the current owners of the real properties underlying these sites may be in part responsible for ongoing contamination due to mere ownership of the real property under which hazardous contamination has been found.

As discussed below, Responsible Parties operated non-permitted, hazardous waste treatment, storage and disposal sites; and, have either failed to properly label, track and/or report the type, quantity or disposition of waste from the sites, or have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. River Watch contends Responsible Parties have disposed of wastes or are 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. Their 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.

River Watch hereby notifies Responsible Parties that at the expiration of the appropriate notice periods under the RCRA, River Watch intends to commence a civil action against Responsible Parties on the following grounds:

1. Responsible Parties' use and storage of petroleum products at the Sites identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding storage of petroleum in underground storage tanks (42 U.S.C. § 6972 (a)(1)(A));

2. Responsible Parties' operations at the Sites identified in this Notice have caused petroleum contamination of soil and groundwater which presents an imminent and substantial endangerment to human health and the environment (42 U.S.C. § 6972 (a)(1)(B)); and,
3. Responsible Parties' past and current operations at the Sites identified in this Notice violates the provisions of RCRA subchapter III (Subtitle C) which govern the handling of hazardous wastes. River Watch contends that Responsible Parties have inadequately maintained records of the manner in which their hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning their wastes; inadequately provided storage facilities for their wastes; and in the past have not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which 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 the 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.

The RCRA, enacted in 1976, 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 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 that are at least as stringent as the federal regulations.

Use and storage of waste by Responsible Parties at the Sites identified in this Notice, and the disposal of those wastes as described in this Notice, 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).)

Operations by Responsible Parties at the Sites identified in this Notice have caused or threaten to cause contamination of soil, groundwater, surface waters and residential areas, which contamination presents an imminent and substantial endangerment to human health and the environment. Responsible Parties own or have owned, operate or have operated 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

A Background Section including narratives is 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 the hazardous wastes such as those generated by Responsible Parties. Pollutants described herein and found at the Sites identified in this Notice constitute solid and hazardous waste under the RCRA, and are required to be managed so as to not cause endangerment to the public or the environment. The RCRA specifically protects groundwater.

The liability of Responsible Parties stems from their ownership of the identified Sites and activities conducted on the Sites by Responsible Parties which violate the 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 alleges Responsible Parties to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA. Responsible Parties are guilty of open dumping, as that term is used in the RCRA, by discharging pollutants to the open ground, allowing these pollutants to discharge to both groundwater and surface waters. The Sites identified in this Notice do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as facilities for the disposal of hazardous waste. River Watch alleges Responsible Parties have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Sites identified in this Notice.

The liability of Responsible Parties also stems from their ownership or operation of discrete conveyances, preferential pathways or wells which have caused pollutants to be discharged to groundwater and surface waters via conduits such as pipes, sewer lines, storm

drains, utilities and the like, 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 any hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Past and current operations by Responsible Parties at the Sites identified in this Notice violate provisions of 42 U.S.C. § 6924 which governs the mishandling of hazardous wastes. River Watch contends Responsible Parties have inadequately maintained records of the manner in which their hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning their wastes; inadequately provided storage facilities for their wastes; and in the past have not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants— all of which has presented a substantial endangerment to human health and to the environment.

3. The discharger responsible for the alleged violation.

The dischargers responsible for the violations of the RCRA alleged in this Notice are Olympian Oil Company, LLC and Olympian Gulf Properties, Inc., referred to throughout this Notice as “Responsible Parties”.

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 statute of limitations of 5 years; therefore, although violations of the RCRA as alleged in this Notice have occurred for more than 5 years, the range of dates covered by this Notice is August 16, 2005 through August 16, 2010. River Watch will from time to time update and supplement this Notice to include all violations by Responsible Parties which occur after the date of this Notice. The majority of the violations identified in this Notice such as: threatening to and discharging pollutants to groundwater and surface waters; failure to obtain RCRA-authorized permits; failure to implement the requirements of RCRA; failure to properly label, track or report the type, quantity or disposition of waste; failure to use a manifest system to ensure waste generated is properly handled, stored, treated or disposed of; and, failure to meet water quality objectives, are continuous. Therefore each day is a violation. River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of the other violations are evidenced in Responsible Parties' own records (or lack thereof) or files and records of other regulatory agencies including the Regional Quality Control Board, GeoTracker, Contra Costa County Health Department, San Mateo County Health Department, and local police and fire departments in said counties.

5. 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, email US@ncriverwatch.org. River Watch is dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

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

BACKGROUND HISTORY/THE SITES

2310 A STREET, ANTIOCH, CALIFORNIA

This former Olympian Service Station site is located at the northwest corner of A Street and Rossi Avenue in Antioch within an area of residential properties. The site has operated as an active retail gasoline station since at least 1959, and is currently an active Valero-branded gasoline station with drinking water lines and sewer lines serving the single-story building structure on the property. The real property which underlies the site is owned by Flyers, LLC of Auburn, California.

This facility has contained four underground storage tanks ("USTs") with a total holding capacity of approximately 44,000 gallons. At least one of these steel-walled tanks was replaced with a fiberglass double-wall tank in 1986.

Following an unauthorized petroleum hydrocarbon release from the former service station operations sometime in February of 1999, soil and groundwater contamination was discovered. Quarterly groundwater monitoring commenced by early 2003, and monitoring of affected soil and groundwater was conducted on a quarterly basis thereafter between 2003 and 2010.

Free product was discovered in monitoring wells on site as early as November of 2003, and continues to exist in soil and groundwater at the present time - up to 1.68 feet in

thickness in one location. Oil skimming of free product has been conducted, but no other methods of remediation have been conducted, other than a brief period of soil vapor extraction and air sparging in the latter part of 2007 and early in 2008.

At the present time, over 11 years from the initial release of contaminants, pollution of the soil and groundwater remains almost completely unremediated. According to the latest documentation from records on file with the Regional Water Quality Control Board ("RWQCB,") the contaminant plume has not been adequately characterized, and there is no end in sight for the engineering work which needs to be accomplished. In addition to a complete delineation of the contaminant plume, River Watch believes Responsible Parties must take efforts to protect against aquifer and surface stream impact from this plume, as well as conduct current sensitive receptor and preferential pathway surveys.

As of the latest monitoring reports reviewed by River Watch, high concentrations of petroleum hydrocarbons are present beneath the eastern portions of the property, under A Street, and extending under a city block of residences along E. Madill Road. The dissolved hydrocarbon and MTBE plume extends approximately 750 feet eastward following the predominant flow of groundwater in the area. As noted above, the hydrocarbon plume has not been fully delineated in spite of the length of time since the initial release.

Based upon the most currently available records, well monitoring in the 1st Quarter of 2010 reflects contaminant levels as follows: In addition to pure product (NAPL) at three separate on-site locations, TPHg levels are now as high as 74,000 ug/l; TPHD is as high as 11,000 ug/l; benzene is as high as 10,000 ug/l; toluene is as high as 5,000 ug/l; MTBE is as high as 11,000 ug/l; TBA is as high as 24,000 ug/l; and xylenes are as high as 10,000 ug/l.

As of June of 2009, the RWQCB, San Francisco Bay Region, determined this site was not in compliance with RWQCB directives.

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

1. Complete delineation of the site for the purpose of enabling further remediation work to proceed;
2. Initiation of immediate vapor intrusion testing in each of the areas above the plume to determine whether nearby residents are exposed to injurious levels of hydrocarbon, benzene or other toxic vapors;

3. Initiation of prompt, active remediation work to include elimination of any threats to the adjacent residential population who may currently be exposed to dangerous hydrocarbon and/or benzene vapors;
4. Consideration of further over-excavation to eliminate lingering sources of NAPL, MTBE, and petroleum hydrocarbon constituents from migrating into offsite groundwater and surface water;
5. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells;
6. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite;
7. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site; and,
8. Current residual mass calculations which will allow the measurement of remediation progress once removal processes are initiated.

2195 JUNIPERO SERRA BOULEVARD, DALY CITY, CALIFORNIA

This site is situated at the northeast corner of Junipero Serra and Citrus Avenue. The site has been an Olympian retail gasoline service station since approximately 1960, and continues to operate as such. The land surrounding the site is essentially commercial in character. The real property which underlies the site is owned by Flyers, LLC of Auburn, California.

In conjunction with the discovery of an unauthorized petroleum hydrocarbon release at the site in 1996, four USTs (one 10,000 gallon tank, two 8,000 gallon tanks and one 300 gallon waste oil tank) were removed from the site in April of 1997. The three current USTs were installed on the southeastern portion of the site in 1997. A subsequent release from these newer USTs in approximately 2002 created a separate contaminant plume which also requires remediation. Following the discovery of the hydrocarbon release, and after free product was found in June of 2003, monitoring wells were installed, but not until 2004.

On the basis of a review of current reports from Responsible Parties' engineering consultants, it appears there has been no completion of site characterization to date. While these reports tend to assert that lateral delineation has been finalized, vertical delineation certainly has not. Site monitoring has continued on a regular basis, but no remediation has occurred despite the documented presence of NAPL in several of the monitoring wells in the first quarter of this year. Only recently has testing been conducted for the prospect of contaminant remediation through soil vapor extraction.

In addition to a complete delineation of the contaminant plume, River Watch believes Responsible Parties must take efforts to protect against aquifer and surface stream impact from this plume, as well as conduct current sensitive receptor and preferential pathway surveys. River Watch is concerned that the installed soil vapor extraction system only addresses contamination in the non-saturated contamination zones -- It does nothing to rid the underlying groundwater of its hydrocarbon content. The air sparging component is intended to affect groundwater by volatilizing hydrocarbons in the saturated zone, which can then be recovered by the soil vapor extraction system. The effectiveness of air sparging however, is limited by the amount and reach of the air pumped into saturated zones under the site. Here, the consultant recommends that air sparging should not be used due to the risk of mobilizing contaminants away from the accessible treatment areas.

Given the presence of free product, River Watch believes that over-excavation coupled with groundwater extraction may be preferable at this site, as opposed to reliance only upon an soil vapor extraction system. However, Responsible Parties' consultant seems to have indicated that groundwater extraction is not a viable remediation technology due to the necessary high pumping rates required, and the high cost of such an operation; or, perhaps due to the strong vertical component to the hydraulic gradient at the site. The consultant has indicated that relying upon natural dispersion, groundwater flux and biodegradation, it would take at least 37 years before the site will meet the RWQCB's Basin Plan water quality goals. Obviously, much more proactive remediation is called for.

As of the latest monitoring reports reviewed by River Watch, very significant concentrations of petroleum hydrocarbons are present beneath portions of the property. The dissolved hydrocarbon plume extends westward following the predominant flow of groundwater in the area. According to the consultant, vapor intrusion studies have determined that petroleum hydrocarbons have not been detected in sub-slab soil vapor, either onsite or at a neighboring veterinary hospital. While concentrations of ambient air in the vicinity of the site reflect concentrations of TPHg, benzene, ethylbenzene and xylenes exceeding the applicable RWQCB Environmental Screening Levels, the sources of these constituents of concern appear to be unrelated to the contaminants from the site.

Well monitoring in the first Quarter of 2010 [the most currently available] reflects contaminant levels as follows: In addition to NAPL at several location, TPHg levels are now as high as 200,000 ug/l; benzene is as high as 35,000 ug/l; toluene is as high as 33,000 ug/l; and MTBE is as high as 7,100 ug/l.

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

1. Complete delineation of the site (vertical as well as lateral) for the purpose of enabling further remediation work to proceed effectively;
2. Consideration of further over-excavation to eliminate lingering sources of free product, MTBE and petroleum hydrocarbon constituents from further migrating into offsite groundwater and any surface water in the vicinity. (River Watch is concerned there is an ongoing risk to several municipal supply wells within a 2,000 foot radius of the site);
3. Completion of a current sensitive receptor survey to better define and prevent threats to offsite surface water and local water supply wells;
4. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite;
5. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site or reaches Lake Merced (one mile down gradient) which is apparently fed by an underground groundwater stream; and,
6. Current residual mass calculations (onsite as well as offsite) which will allow the measurement of remediation progress once removal processes are initiated.

131 TERMINAL COURT, SOUTH SAN FRANCISCO, CALIFORNIA

This site is a currently operating, commercial fueling facility located near the intersection of Terminal Court and Produce Avenue in South San Francisco – a commercial industrial area adjoining the Golden Gate Produce Terminal. The real property which underlies the site, to the best of River Watch's knowledge, is Golden Gate Produce, LLC. The facility consists of dispenser islands and three gasoline and diesel USTs.

The first unauthorized petroleum hydrocarbon release was discovered in October of 1998. Following discovery of the release, monitoring activities commenced, and various studies were completed including a preferential pathway evaluation and an indoor air toxicity assessment due to high benzene levels in local soils and groundwater. By October of 2003, oxygen releasing compounds were introduced at the site as a remediation strategy, but ultimately found to be ineffective.

Dual-phase extraction effectiveness was pilot tested in July of 2005, but that too was found to be ineffective by the engineering consultant on the project at that time. A subsequent Remediation Action Plan suggested that over-excavation was probably the only cost-effective means of remediation.

Over-excavation has not been accomplished and apparently will not be conducted until the existing USTs are removed sometime in 2012. Current work at the site consists of soil and groundwater monitoring as well as the installation of additional boring points to more fully assess the lateral and vertical extent of the contaminant plume.

There is evidence of free product in various wells. Groundwater may be found as close to the surface as two feet. Groundwater flow is to the northeast. Reports indicate there may be a subsurface fluvial channel across the north edge of the site taking impacted groundwater eastward towards San Francisco Bay.

As of the latest groundwater monitoring reports [March of 2010] reviewed by River Watch, significant concentrations of petroleum hydrocarbons are present beneath portions of the property. Current well monitoring of the site reflects contaminant levels as follows: TPHg levels at 69,000 ug/l; TPHd at levels as high as 200,000 ug/l; toluene at 6,200 ug/l; benzene at 6,800 ug/l; xylenes at 9,600 ug/l; and MTBE at 800 ug/l.

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

1. Complete delineation of the site for the purpose of enabling further remediation work to proceed effectively. (The initial release was discovered 12 years ago.)
2. Consideration of immediate over-excavation to eliminate lingering sources of free product and petroleum hydrocarbon constituents from further migrating into offsite groundwater and any surface water in the vicinity. (Delay of over-excavation until sometime in 2012 does not seem justified in view of the risks presented by the site. Consultant's reports indicate that additional hydrocarbon

impacted soil remains beneath the fuel lines, possibly beneath the dispensers, and adjacent to the USTs. It is apparent this condition calls for the removal and replacement of these USTs;

3. Completion of a current sensitive receptor survey to outline and prevent threats to offsite surface water and local water supply wells;
4. Completion of an upgraded preferential pathway study to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite;
5. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site, or whether the fluvial channel is allowing hydrocarbons to migrate; and,
6. Current residual mass calculations which will allow the measurement of remediation progress once removal processes are initiated.

35 SOUTH LINDEN AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA

This site is located on the east side of South Linden Avenue near its intersection with South Canal Street. The site may be operated by Nella Oil Company as a branded Olympian gasoline station, but San Mateo County Health Department acting as the lead agency with oversight of the facility has flagged Olympian Oil Company, LLC, owner of the real property underlying the station, as the primarily responsible party for remediation. The site is situated in a heavily commercial and industrial area of South San Francisco, bound by Union Pacific Railway to the east, a manufacturing facility to the south, South Linden Avenue to the west, and Colma Creek to the north. Groundwater flow is northwesterly, generally towards Colma Creek.

This facility consists of two groups of USTs and two main fueling areas. In November of 2006 the site was split into two separate environmental cases termed the "Western USTs" and the "Eastern USTs." The first reported, unauthorized release occurred sometime in the late 1980s, and was filed with the RWQCB by 1989. Groundwater monitoring has taken place since 1995. Subsequent subsurface investigations determined that Colma Creek was at risk for hydrocarbon impact, and by 1998 it was concluded that active remediation was necessary. The USTs were upgraded in late 1999 and early 2000.

Second Quarter 2010 consultant's reports indicate free product has recently been found in four of the monitoring wells, ranging in thicknesses from 0.04 ft. to 0.16 ft. These thicknesses represent an increase from previous testing. While pilot tests have shown for years that dual-phase extraction would be a feasible remediation strategy, it has yet to be started. Apparently there are concerns as to the effect of methane vapors resulting from dual-phase extraction as well as concerns about the ability to treat or dispose of the extracted groundwater – perhaps due to financial considerations.

Current assessments involve whether there are preferential pathways which may allow hydrocarbon migration offsite. These assessments have resulted in the determination that dissolved-phase hydrocarbons have impacted the sanitary sewer on the site, such that it seems probable the sewer trench is acting as a preferential pathway.

As of the most recent groundwater monitoring reports reviewed by River Watch [May of 2010,] significant concentrations of petroleum hydrocarbons are present beneath portions of the property deemed to be the “Western USTs”. Current well monitoring reflects contaminant levels as follows: TPHg levels at 32,000 ug/l; TPHd at levels as high as 55,000 ug/l; toluene at 1,000 ug/l; benzene at 12,000 ug/l; xylenes at 1,500 ug/l; and MTBE at 31,000 ug/l.

Groundwater monitoring for the portion of the site deemed to be the “Eastern USTs” reflects contamination levels as follows: TPHg at 32,000 ug/l; TPHd at 27,000 ug/l; benzene at 2,500 ug/l; toluene at 1,800 ug/l; xylenes at 6,500 ug/l; and MTBE at 490 ug/l. While these levels confirm less contamination at this portion of the site, it does not explain or justify the use of monitored natural attenuation which is the current method of remediation for that area.

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

1. Complete delineation of the site (vertical as well as lateral) for the purpose of enabling further remediation work to proceed effectively;
2. Immediate implementation of dual-phase extraction remediation, as well as consideration of over-excavation to eliminate lingering sources of free product, MTBE and petroleum hydrocarbon constituents from further migrating into offsite groundwater and any surface water in the vicinity. (River Watch is concerned that there is an ongoing risk to Colma Creek);

3. Completion of a current, more comprehensive sensitive receptor survey to better define and prevent threats to offsite surface water and local water supply wells. (The earlier study was only conducted within a 1/8 mile radius of the facility;
4. Completion of a current preferential pathway study to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite;
5. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site; and,
6. Current residual mass calculations (onsite as well as offsite) which will allow the measurement of remediation progress once removal processes are initiated.

501 SERRAMONTE BOULEVARD, DALY CITY, CALIFORNIA

This site is an actively operating, gasoline and diesel service station located at the southwest corner of Serramonte Boulevard and Gellert Boulevard, in an area of commercial properties. The real property which underlies the site is owned by Southport Land And Commercial Company of Martinez, California.

The first unauthorized hydrocarbon release was discovered in 1985 during UST removal operations. Regular groundwater monitoring was not commenced until 1992. Following efforts to delineate the site, a dual-phase extraction remediation system was installed and activated from December of 2000 to April of 2004. A conduit study was conducted in 2000 as well. A subsequent preferential pathway study focused only upon one conduit, a 60-inch storm sewer, for grab groundwater sampling. Investigation of other potential preferential conduits running across the site was deferred.

On the basis of groundwater monitoring conducted in February of 2010 (the most recent available to River Watch), contamination at the site continues to be extensive, although it seems limited to one general area. In that area TPHg levels are as high as 79,000 ug/l; benzene is as high as 10,000 ug/l; toluene is as high as 6,100 ug/l; xylenes are at 14,000 ug/l; and MTBE is at 4,600 ug/l.

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

1. Prompt implementation of further dual-phase extraction remediation, as well as consideration of over-excavation to prevent lingering sources of MTBE and petroleum hydrocarbon constituents from further migrating into offsite groundwater and any surface water in the vicinity. (There has been no remediation activity at the site over the past six years, and the current strategy of monitored natural attenuation will not succeed in achieving California's Maximum Contaminant Levels within a reasonable time frame.)
2. Completion of a current, more comprehensive sensitive receptor survey to better define and prevent threats to offsite surface water and local water supply wells;
3. Completion of a current preferential pathway study to determine whether there are other conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and constituents may be migrating offsite;
4. Completion of a current aquifer profile to determine whether the plume has impacted any underlying aquifer which communicates with groundwater under the site; and,
5. Current residual mass calculations (onsite as well as offsite) which will allow the measurement of remediation progress once removal processes are initiated.

REGULATORY STANDARDS

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

California's Water Quality Objectives 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 that 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 ("Basin Plan") which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The RWQCB has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene, 150 ppb for toluene and 5 ppb for MTBE.

VIOLATIONS

PERMITS, STANDARDS AND REGULATIONS (42 U.S.C. § 6972(A)(1)(A))

Responsible Parties' use and storage of petroleum products at the Sites identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding storage of petroleum in underground storage tanks. (42 U.S.C. § 6972(a)(1)(A).)

Between August 16, 2005 and August 16, 2010, Responsible Parties have caused or permitted, cause or permit, or threaten to cause or permit, petroleum contaminants, petroleum constituents and other hazardous waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and now creates, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of such petroleum waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

MISHANDLING OF HAZARDOUS WASTE (42 U.S.C. § 6924 ET SEQ.)

Between August 16, 2005 and August 16, 2010, Responsible Parties used and stored petroleum products at the Sites identified in this Notice in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath each of the Sites and beneath adjacent properties. The contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at the Sites are significantly greater than the allowable MCLs and/or WQOs for said constituents.

River Watch alleges that between August 16, 2005 and August 16, 2010, Responsible Parties have engaged in the following activities or omissions in violation of the RCRA's waste handling provisions:

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

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

**UNPERMITTED HANDLING, TREATMENT, STORAGE, TRANSPORTATION
AND/OR DISPOSAL OF HAZARDOUS WASTE
(42 U.S.C. § 6925 et. seq.)**

River Watch alleges that between August 16, 2005 and August 16, 2010, Responsible Parties have engaged in the following activities or omissions in violation of the RCRA's waste handling provisions:

1. Responsible Parties' deposition and maintenance of hazardous waste as described in this Notice has caused and continues to cause the generation and discharge of hazardous waste to the environment;

2. Responsible Parties have installed and maintained a system of conveyances to dispose of the hazardous generated and released from the Sites identified in this Notice;
3. Responsible Parties do not possess permits for the handling, storage, treatment, transportation, and/or disposal of their hazardous or solid waste at any of the Sites identified in this Notice; and,
4. Responsible Parties' unpermitted handling, storage, treatment, transportation and/or disposal of their hazardous waste as detailed in this Notice is in violation of RCRA § 3005, 42 U.S.C. § 6925.

Information currently available to River Watch indicates that Responsible Parties' handling, treatment, storage, transportation, and/or disposal of their hazardous waste in violation of RCRA § 3005, 42 U.S.C. § 6925 et. seq., has occurred every day in the past five years, or on numerous separate occasions, and that those violations are continuing.

**PROHIBITION AGAINST OPEN DUMPING
(42 U.S.C. § 6945 ET. SEQ.)**

River Watch alleges that between August 16, 2005 and August 16, 2010, Responsible Parties have engaged in the following activities or omissions in violation of the RCRA's waste handling provisions:

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

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

UST REGULATIONS
(42 U.S.C. § 6991 AND 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.), and above ground tanks used for the same purposes. 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 August 16, 2005 and August 16, 2010, Responsible Parties' use and storage of petroleum at the Sites identified in this Notice have 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's 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 each of the Sites identified in this Notice, River Watch alleges Responsible Parties are 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 releases, in violation of 40 CFR §§ 280.34, 280.50, 280.52, 280.53, 280.63(b) and California Health & Safety Code §§ 25289, 25293 and 25295(a)(1); and,
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).

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

**IMMINENT AND SUBSTANTIAL ENDANGERMENT
(42 U.S.C. § 6972 (A)(1)(B))**

Between August 16, 2005 and August 16, 2010, Responsible Parties used and stored petroleum products at the Sites identified in this Notice in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the Sites and beneath adjacent properties. The contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater at said Sites are significantly greater than the allowable MCL and/or WQO for said constituents. Benzene, MTBE, TAME, and TBA are known or suspected carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. In their concentrations at these locations, these pollutants are now creating an imminent and substantial endangerment to public health and the environment.

The violations alleged in this Notice are knowing and intentional in that Responsible Parties have used, stored and sold petroleum products at the Sites identified in this Notice which are known to contain hazardous substances; and, have intended that such products will be sold to and used by the public. Responsible Parties have known of the contamination at said Sites at least since the late-1990's, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to said Sites, and to continually contaminate and re-contaminate actual and potential sources of drinking water.

Information currently available to River Watch indicates that Responsible Parties' handling, treatment, storage, transportation, and/or disposal of their hazardous waste in violation of RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972 (a)(1)(B), has occurred every day over the past five years, or on numerous separate occasions, and that those violations are continuing.

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.

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

CONTACT INFORMATION

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

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

CONCLUSION

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

However, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Responsible Parties 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 raised by River Watch in this Notice before these claims under RCRA are filed. River Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time following the mailing of this Notice.

Very truly yours,


Jack Silver

JS:lhm
cc:
Administrator
U.S. Environmental Protection Agency
401 M Street, N.W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Executive Director
Calif. Integrated Waste Mgmt. Board
1001 "I" Street
Sacramento, CA 95814

California Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

California Environmental Protection Agency
P.O. Box 2815
Sacramento, CA 95812-2815

Daniel P. Trump, Esquire
Trump Aloto Trump & Prescott
Registered Agent
Olympian Gulf Properties, Inc.
2280 Union Street
San Francisco, CA 94123

Thomas A. Dwelle, Registered Agent,
Managing Partner, Owner
Flyers, LLC
Nella Oil Company, LLC
2360 Lindbergh Street
Auburn, CA 95602

Managing Partner,
Golden Gate Produce, LLC
Olympian Oil Service Station
131 Terminal Court
South San Francisco, CA 94080

David R. Fischer, Esquire
Registered Agent
Southport Land And Commercial Company
P.O. Box 1997
Martinez, CA 94553

Operator,
Flyers Antioch 252 / Valero Antioch
2310 A St.
Antioch, CA 94509

Operator,
Olympian Oil Service Station
Nella Oil
2195 Junipero Serra Blvd.
Daly City, CA 94014

Operator,
Flyers South San Francisco No. 216
Olympian Oil Service Station
35 South Linden Avenue
South San Francisco, CA 94080

Operator,
Olympian Oil Service Station
Nella Oil
501 Serramonte Blvd.
Daly City, CA 94015