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*Via Registered Mail -*

November 14, 2011

Gregory J. Goff, President and CEO  
Tesoro Corporation  
Tesoro Refining and Marketing Company  
19100 Ridgewood Parkway  
San Antonio, TX 78259

Owner/Site Manager  
Tesoro Golden Eagle Refinery  
Tesoro Refining and Marketing Company  
150 Solano Way  
Martinez, CA 94533-1487

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

Dear Mr. Goff and Site Manager:

The Resource Conservation and Recovery Act ("RCRA," 42 U.S.C. § 6901 *et seq.*) requires that sixty days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the U.S. Environmental Protection Agency and the State in which the violation is alleged to have occurred. [42 U.S.C. § 6972(b)(1)(A)] The RCRA also requires that a private party provide ninety 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 for an imminent and substantial endangerment to human health or the environment. [42 U.S.C. § 6972(b)(2)(B)]. However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (sub-chapter III, 42 U.S.C. § 6921 *et seq.*).

On behalf of Northern California River Watch (River Watch,) I am providing statutory notification to Tesoro Corporation and Tesoro Refinery and Marketing Company as operator of the Tesoro Golden Eagle Refinery facility and owner of the underlying real property at 150 Solano Way in Martinez, California, of continuing and ongoing violations of the RCRA in conjunction with former or continuing operations at that facility. Pursuant to RCRA provisions, the current owner of the real property underlying this facility is also responsible for ongoing contamination due to ownership of the real property under which the hazardous contamination has been found.

River Watch hereby notifies Tesoro Corporation and Tesoro Refinery and Marketing Company (Tesoro) that at the expiration of the appropriate notice periods provided under RCRA, River Watch intends to commence a civil action Tesoro on the following grounds:

1. The handling, transportation and unauthorized releases of various petroleum products at the Tesoro Golden Eagle Refinery in Martinez has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding the past and/or present handling, storage, treatment, transportation and/or disposal of hazardous products [42 U.S.C. § 6972 (a)(1)(A)];

2. Past and current operations at the Tesoro Golden Eagle Refinery in Martinez have caused petroleum and other contamination in soils, in groundwater and in surface waters, which contamination presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972 (a)(1)(B)].

3. Past and current operations the Tesoro Golden Eagle Refinery in Martinez violates the provisions of RCRA sub-chapter III (Subtitle C) which governs the handling of hazardous wastes. River Watch contends Tesoro 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 or transportation 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 and continues to present a substantial endangerment to human health and to the environment.

## **SITE HISTORY**

The Golden Eagle Refinery in Martinez (Refinery) is situated on approximately 2,200 acres. The Refinery is bounded to the north by Suisun Bay, to the east by open space and the Point Edith Marsh, and to the west by Pacheco Creek and Pacheco Slough. South of the Refinery lie industrial parks and Mallard Reservoir.

Groundwater flow varies depending upon the location. In Tract 1 groundwater flow is primarily towards Point Edith Marsh and Hastings Slough. In Tract 2 the groundwater flow is primarily towards Pacheco Slough. Both Pacheco Slough and Hastings Slough are tidally influenced and drain into Suisun Bay. Groundwater in Tracts 3 and 4 flow towards Pacheco Slough. In Tracts 6 and 7, groundwater flows mostly northward, but also may reach Hastings Slough.

The Refinery began operation in 1913 and currently possesses a crude oil capacity of approximately 166,000 barrels per day. The Refinery's primary products are gasoline and diesel fuel. Other products include liquid petroleum gas, heating oil and petroleum coke.

Tesoro became primarily responsible for remediation at the Refinery in 2007 although it is apparent that historical facility owners have contributed to the current existing contamination in the course of previous operations.

In terms of hydrogeology, the Refinery contains two groundwater zones – the Shallow Zone and the Alluvial Aquifer. According to reports by Tesoro's consultant, shallow groundwater is found predominantly within the Bay mud deposits in Tracts 1 and 3, in addition to areas of Tracts 4 and 6 where Bay mud is absent. The Alluvial Aquifer is primarily a sandy zone with a base elevation of approximately 50 feet or more below mean sea level. This is a highly permeable zone which extends laterally beneath and beyond the property. Lenses of coarser-grained material in the Alluvial Aquifer unit may represent, according to Tesoro's consultant, former channels of meandering streams cut into predominantly clay substrate.

The current groundwater monitoring system includes perimeter and interior monitoring wells, piezometers, and recovery wells (used to remove existing LNAPL) – 393 self-monitored wells consisting of 79 perimeter wells, 166 interior wells, 59 piezometers, 58 recovery wells, 17 perimeter alluvial wells, 14 interior alluvial wells and 21 surface water gauging stations (for the measurement of surface water elevations). The piezometers are not typically monitored, but are used to measure groundwater elevation and LNAPL thickness.

LNAPL is present in measurable and recoverable quantities throughout the Refinery property, and is predominantly detected in wells located in Tracts 1, 2 and 3. As of June of this year, there are 21 active, 12 passive, and 25 inactive LNAPL recovery wells on the property. At the present time, total fluid extraction systems and passive skimming systems are used to recover these petroleum hydrocarbon pools and deposits.

Current remediation activities at the Refinery are limited to the hydrocarbon recovery systems mentioned above; an evaluation of the lateral extent of the LNAPL; regular updates of the recovery system performance and maintenance activities; and, assessment of recovery well performance.

In addition to the naturally occurring surface waters surrounding the Refinery, there are man-made surface water storage and conveyance features on the Refinery property, including Clean Water Canal, West Canal, and East Canal. Also, six surface water impoundments – Inner Coke Pond, Outer Coke Pond, Surge Pond #1, Surge Pond #2, Bio-Oxidation Pond, and the Water Reservoir. More than four intermittent stormwater retention basins exist – (Deacon’s Pond, South Pond, Cardox Pond, Walnut Creek Holding Basin, and unnamed basins along the margins of Tract 4.

In addition to product recovery work, current remediation efforts at the Refinery specifically include only the following:

1. Collection and recording of organic vapors above monitoring well casings;
2. Gauging of groundwater elevations at accessible wells;
3. Gauging of surface water elevations at selected stations;
4. Gauging of LNAPL thicknesses, where applicable;
5. Measurement of specific gravity of Alluvial Aquifer groundwater wells;
6. Collection and submission of groundwater samples from select wells.

As of the last published groundwater monitoring data (June 2011 SMP Report) LNAPL levels have been found as thick as 14 feet in Tract 1 (CHW-11). LNAPL is currently found at several perimeter wells adjacent to Pacheco Slough (MW-173 and T2-A3). LNAPL has recently been measured throughout the Refinery in a total of 41 interior wells, 5 piezometers and 54 recovery wells, ranging in thickness from 0.01 feet to 14.12 feet. Based upon a comparison the reports of Summer/Fall 2010 and Winter/Spring 2011, some LNAPL levels have increased while others have decreased.

The W/S 2011 SMP Report for the Refinery notes 21 increases and 28 increases of at least one order-of-magnitude (i.e. 10x) in organic and inorganic compound concentrations in groundwater samples collected from the interior wells for that monitoring event. The report also notes that there were 25 increases and 72 decreases of at least one order-of-magnitude in detected concentrations of organic and inorganic compounds in groundwater samples collected in the perimeter wells during the same monitoring event. Generally, on the basis of the W/S 2011 SMP Report, there continue to be “statistically significant increases” in a variety of contaminants of concern around the Refinery, including arsenic, barium, chromium, TPHg and vanadium.

On the basis of the current conditions of the Golden Eagle Refinery, River Watch believes the following investigatory and remediation work must be implemented immediately in order to more effectively and comprehensively manage the levels of contamination:

1. Complete delineation of the Refinery site (including vertical contaminant delineation) for the purpose of enabling a comprehensive evaluation of the extent of underlying contamination so that adequate remediation work may proceed. This should include an evaluation of the potential for migration into the surface waters of Pacheco Slough, Point Edith Marsh, and Hastings Slough, as well as into each of the man-made surface waters at the Refinery site. Tesoro's consultant assumes that "good hydraulic communication occurs between the surface water bodies at the site and groundwater, with the exception of the Water Reservoir and the South Pond, which are lined." (W/S 2011 SMP Report, 5-2)
2. Initiation of one or more effective remediation strategies designed to eliminate or significantly reduce the current threat to the environment and human health, either by over-excavation, or by means of other methods, such as bioremediation, that have a strong likelihood of achieving state mandated Maximum Contaminant Levels or pre-existing background levels within a reasonable time frame across the Refinery campus;
3. Recovery of LNAPL via other more proactive strategies such as high vacuum, dual-phase extraction, in light of the persistence of LNAPL in historical ranges that remain fairly constant;
4. Initiation of efforts to achieve hydraulic control of the Refinery groundwater by any means available, including a French drain system with sump pumps;
5. Given the potential for flooding in and around the Refinery (especially in Tract 3) due to very high groundwater levels and the impact of seasonal precipitation, attention should be given to the potential for storm water runoff that allows the migration of contaminated flood waters offsite, and the elimination of that potential;
6. Initiation of vapor intrusion testing in any buildings or work areas above the plume to determine whether nearby employees and/or third parties are being exposed to injurious levels of hydrocarbon, benzene or other toxic vapors;
7. Completion of preferential pathway studies to determine whether there are conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and petroleum constituents may be migrating offsite;
8. Current residual mass calculations which will allow the measurement of remediation progress once remediation 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 that has been contaminated by hazardous waste and hazardous products, including petroleum hydrocarbons and gasoline formula constituents. The RCRA establishes a national policy that, wherever feasible, the generation of hazardous waste must be reduced or eliminated as expeditiously as possible. The RCRA is a strict liability statute with a statute of limitations of five years. California has enacted laws and regulations that must be observed in conjunction with RCRA 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 Regional Water Quality Control Board has adopted a Water Quality Control Plan or 'Basin Plan' which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The Regional Board has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of the Golden Eagle Refinery of 50 ppb for TPHg, 1 ppb for benzene, 150 ppb for toluene and 13 ppb for MTBE.

## **VIOLATIONS**

### **Permits, Standards and Regulations**

**[42 U.S.C. § 6972(a)(1)(A)]**

River Watch alleges that between November 10, 2006 and November 10, 2011, Tesoro's use, storage, handling and transportation of petroleum products at the Golden Eagle Refinery in Martinez 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).]

River Watch contends that between November 10, 2006 and November 10, 2011, Tesoro has 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 at the Golden Eagle Refinery in Martinez where it is, or probably will be, discharged into waters of the State and now create, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of such petroleum waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

**Mishandling of Hazardous Waste  
RCRA § 3004; [42 U.S.C. § 6924 et seq.]**

River Watch contends that between November 10, 2006 and November 10, 2011, Tesoro has used, handled, stored and transported petroleum products at the Golden Eagle Refinery in Martinez in a manner which has allowed significant quantities of hazardous petroleum constituents and other toxic chemicals to be discharged to soil and groundwater beneath the Refinery and beneath adjacent properties. The contaminant levels of TPHg, benzene, and other toxic contaminants in groundwater at the Refinery are significantly greater than the allowable MCLs and/or WQOs for said constituents.

River Watch contends that between November 10, 2006 and November 10, 2011 Tesoro 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 at the Golden Eagle Refinery in Martinez as identified in this Notice which were used, handled, treated, stored or otherwise disposed of on or offsite [42 U.S.C. §6924(a)(1)];
2. Failure to satisfactorily monitor, inspect, and report hazardous wastes at the Golden Eagle Refinery in Martinez [42 U.S.C. §6924(a)(2)];
3. Failure to adequately use, handle, treat, store or properly dispose of hazardous waste that were found at the Golden Eagle Refinery in Martinez [42 U.S.C. §6924(a)(3)];
4. Failed to have adequately located, designed and constructed hazardous waste treatment, storage or disposal facilities [42 U.S.C. §6924(a)(4)];
5. Failure to properly implement contingency plans for effective action to minimize unanticipated damage from the handling, transportation, treatment, storage or disposal of hazardous waste found at the Golden Eagle Refinery in Martinez [42 U.S.C. §6924(a)(5)].

**Unpermitted Handling, Treatment, Storage, Transportation  
and/or Disposal of Hazardous Waste  
RCRA § 3005; [42 U.S.C. § 6925 *et seq.*]**

River Watch contends that between November 10, 2006 and November 10, 2011 Tesoro has engaged in the following activities or omissions in violation of the RCRA's waste handling provisions:

1. Deposition and maintenance of hazardous waste at the Golden Eagle Refinery in Martinez as described in this Notice, which causes and has caused the generation and discharge of hazardous waste to the environment;
2. Installation and maintenance of a system of conveyances to dispose of hazardous generated and released from the Golden Eagle Refinery in Martinez;
3. Failure to possess permits for the handling, storage, treatment, transportation, and/or disposal of its hazardous or solid waste at the Golden Eagle Refinery in Martinez;

**Prohibition Against Open Dumping  
RCRA § 4005; [42 U.S.C. § 6945 *et seq.*]**

River Watch contends that between November 10, 2006 and November 10, 2011 Tesoro has engaged in the following activities or omissions in violation of the RCRA's waste handling provisions:

1. Open dumping by the discharge of hazardous waste at the Golden Eagle Refinery in Martinez to open ground, where the hazardous waste will and has contaminated the soils, groundwater and surface waters identified in this Notice;
2. The Golden Eagle Refinery in Martinez 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.;
3. Failure to possess a RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Golden Eagle Refinery in Martinez.

**Violation of RCRA Underground Storage Tank Regulations  
RCRA § 9001;[42 U.S.C. § 6991 and 42 U.S.C. §6972 (a)(1)(A)]**

Provisions of the RCRA govern the use and operation of underground storage tanks used for storage of petroleum products (sub-chapter IX, 42 U.S.C. § 6991 *et seq.*), and above

ground tanks used for the same purposes. The RCRA underground storage tank 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.*).

River Watch contends that between November 10, 2006 and November 10, 2011, Tesoro's use and storage of petroleum and other chemicals at the Golden Gate Refinery in Martinez has allowed significant quantities of hazardous chemical constituents to be released or discharged into soil and groundwater at and surrounding the Refinery in violation of provisions of the RCRA and California's underground storage tank regulatory programs including, but not limited to, provisions governing general operating requirements for underground storage tanks, release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements.

Specifically, River Watch contends Tesoro is responsible for the following statutory violations with regard to operations at the Golden Eagle Refinery in Martinez:

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);
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).

**Violations Resulting in Imminent and Substantial Endangerment  
RCRA § 7002(a)(1)(B); [42 U.S.C. § 6972 (a)(1)(B)]**

River Watch contends that between November 10, 2006 and November 10, 2011, Tesoro has used, handled, transported and/or stored petroleum products and other chemicals at the Golden Eagle Refinery in Martinez in a manner which has allowed significant quantities of hazardous petroleum and chemical constituents to be discharged to soil and groundwater beneath the Refinery and beneath adjacent properties. The contaminant levels of TPHg, benzene, and other toxic compounds in groundwater at and surrounding the Refinery are significantly greater than the allowable MCLs and/or WQOs for said constituents. Benzene and TPHg are known or suspected carcinogens. These substances are known to

harm both plants and animals. In their concentrations at this location in Martinez, 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 Tesoro has used, stored and sold these chemical substances and products at the Golden Eagle Refinery in Martinez which are known to contain hazardous substances, and has intended that such products will be sold to and used by the public. River Watch contends Tesoro has known of the contamination at the Refinery at least since the past five years from the date of this Notice, 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 Refinery, and to continually contaminate and re-contaminate actual and potential sources of drinking water.

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.

In addition to the violations which are set forth above, this Notice is intended to cover all violations of the RCRA by Tesoro at the Golden Eagle Refinery in Martinez evidenced by information which becomes available to River Watch after the date of this Notice.

## **IDENTIFICATION OF THE PERSON BRINGING NOTICE**

The entity bringing this Notice of Northern California River Watch – a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. Northern California River Watch is organized under the laws of the State of California. Its address is P.O. Box 817, Sebastopol, CA, 95472; telephone number (707) 824-4372.

The violations of the RCRA by Tesoro as set forth in this Notice effect the economic stability, physical health and aesthetic enjoyment of members of River Watch who reside and recreate in the affected watershed areas identified in this Notice. 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 this natural resource are conditions specifically impaired by the violations alleged in this Notice.

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

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## CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of the RCRA as to the conditions of the Golden Eagle Refinery in Martinez. At the close of the notice periods or substantially earlier, River Watch intends to file a suit against Tesoro under RCRA provisions for each of the violations as alleged herein.

However, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Tesoro wishes to pursue such discussions in the absence of litigation, you are encouraged to initiate such discussions immediately so that we might be on tract to resolving the issues of River Watch as identified in this Notice before these claims are filed. River Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time following the service of this Notice.

Very truly yours,

  
Jack Silver

JS:lhm

cc: Administrator  
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