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9 Northern California River Watch

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 NORTHERN CALIFORNIA RIVER
13 WATCH, a non-profit Corporation,

14 Plaintiff,

15 v.

16 BENJAMIN SHIMEK AND ROY
17 SHIMEK, dba USA SERVICE
18 STATION, and DOES 1-10, Inclusive,

19 Defendants.

20 CASE NO.: 7 2220
21 COMPLAINT FOR INJUNCTIVE RELIEF,
22 CIVIL PENALTIES, RESTITUTION AND
23 REMEDIATION
24 [Resource Conservation & Recovery Act,
25 42 U.S.C. § 6901 et seq.]

26 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,
27 "RIVER WATCH") by and through its attorneys, and for its complaint against defendants,
28 BENJAMIN SHIMEK AND ROY SHIMEK, dba USA SERVICE STATION, and DOES 1-
10, inclusive (hereafter, the SHIMEKS"), states as follows:

29 **I. INTRODUCTION**

30 1. This is a civil suit brought against the SHIMEKS under the citizen suit enforcement
31 provisions of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.
32 (hereafter, "RCRA") and California law governing the Underground Storage of Hazardous
33 Substances: California Health & Safety Code §. 25280 et seq. This Complaint seeks relief for
34 the SHIMEKS' discharge of pollution from their current retail gasoline station facilities or

1 properties located at 938 13th Street, Richmond, California (hereafter, the “Facilities”) into the
2 waters of the State of California and the United States in violation of the above-enumerated
3 statutes and laws.

4 2. By this Complaint RIVER WATCH seeks:

- 5 a. To enjoin the SHIMEKS from discharging pollutants from the Facilities into the
6 groundwater and surface waters surrounding and downstream of the Facilities;
- 7 b. A court order directing the SHIMEKS to comply with the substantive and
8 procedural requirements of the above enumerated statutes and laws;
- 9 c. A court order directing the SHIMEKS to pay civil penalties or establish
10 remediation projects in lieu of penalties for violations of the above enumerated
11 statutes and laws; and,
- 12 d. A court order directing the SHIMEKS to reimburse RIVER WATCH for its
13 reasonable costs of suit, including attorney’s fees, as allowed under Section
14 7002(e) of RCRA, and 42 U.S.C. § 6972(e).

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16 **II. JURISDICTION**

17 3. This Court has subject matter jurisdiction over all federal causes of action in this
18 Complaint pursuant to RCRA §§ 7002(a)&(b), and 42 U.S.C. §§ 6972 (a)&(b) and 28 U.S.C.
19 § 1221 (an action for declaratory and injunctive relief arising under the Constitution and laws
20 of the United States). This Court has supplemental jurisdiction over all State-based causes of
21 action in this Complaint pursuant to 28 U.S.C. §1367, as those claims form part of the same
22 case or controversy as the federal causes of action.

23 4. On or about July 10, 2006, RIVER WATCH provided notice of the SHIMEKS’
24 violations of RCRA, and of its intent to file suit against SHIMEKS by way of a “Notice of
25 Violations and Intent to File Suit under the Resource Conservation and Recovery Act”
26 (hereafter, “RCRA Notice”) to the Administrator of the United States Environmental
27 Protection Agency (hereafter, “EPA”), the Administrator of the Environmental Protection
28 Agency - Region IX, the Executive Director of the State Water Resources Control Board, the

1 Executive Director of the California Integrated Waste Management Board, and to the
2 SHIMEKS, as required by RCRA. A true and correct copy of the RCRA Notice letter is
3 attached hereto as Exhibit A and fully incorporated into this Complaint.

4 5. Members and supporters of RIVER WATCH reside in the vicinity of, derive
5 livelihoods from, own property near, and/or recreate on, in or near, and/or otherwise use,
6 enjoy and benefit from the affected watershed area and associated natural resources into
7 which the SHIMEKS discharge, or by which the SHIMEKS' operations adversely affect
8 members' interests, in violation of the above-enumerated laws or statutes. The health,
9 economic, recreational, aesthetic and environmental interests of RIVER WATCH's members
10 may be, have been, are being, and will continue to be adversely affected by the SHIMEKS'
11 unlawful violations of the above-enumerated laws or statutes. RIVER WATCH contends that
12 there exists an injury in fact to its members, causation of that injury by the conduct of the
13 SHIMEKS complained of herein, and a likelihood that the requested relief will specifically
14 redress that injury. RIVER WATCH, through its members, has standing to bring this action.
15 A copy of this Complaint shall be provided to the United States Attorney General, the
16 Administrator of the United States EPA, and the Attorney General of California.

17 18 **III. INTRADISTRICT ASSIGNMENT**

19 6. The basis for assignment of this case to the Northern District of California, pursuant to
20 RCRA §§ 7002(a)&(b), and 42 U.S.C. §§ 6972 (a)&(b), is that the Facilities and operations at
21 the Facilities are located in this District.

22 23 **IV. PARTIES**

24 7. RIVER WATCH is a 501(c)(3) non-profit public benefit corporation duly organized
25 under the laws of the State of California. Its headquarters are located in Sebastopol,
26 California. RIVER WATCH is dedicated to protecting, enhancing and helping to restore the
27 waters of Northern California, including its drinking water sources, groundwater, rivers,
28 creeks and tributaries. Many of RIVER WATCH's members live in areas affected by the

1 SHIMEKS' pollution as set forth in this Complaint. Said members have an interest which is
2 or may be adversely affected by the SHIMEKS' violations as set forth in this Complaint.
3 Said members use the affected watershed for domestic water supply, agricultural water
4 supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like.
5 Furthermore, the relief sought will specifically redress the injuries in fact and the likelihood
6 of future injuries and interference with the interests of RIVER WATCH's members.

7 8. RIVER WATCH is informed and believes and on said information and belief alleges
8 that defendant BENJAMIN SHIMEK is an individual residing in the State of California, and
9 doing business in Richmond, California under the name of USA SERVICE STATION

10 9. RIVER WATCH is informed and believes and on said information and belief alleges
11 that defendant ROY SHIMEK is an individual residing in the State of California, and doing
12 business in Richmond, California under the name of USA SERVICE STATION.

13 10. RIVER WATCH is informed and believes and on said information and belief alleges
14 that the SHIMEKS are co-owners of the real property on which the Facilities are located.

15 11. Defendants DOES 1-10, inclusive, respectively, are persons, partnerships, corporations
16 and/or entities, who are, or were, responsible for, or in some way contributed to, the
17 violations which are the subject of this Complaint, or are, or were, responsible for the
18 maintenance, supervision, management, operations, or insurance coverage of the Facilities.
19 The names, identities, capacities, and functions of DOES 1-10, inclusive, are presently
20 unknown to RIVER WATCH. RIVER WATCH shall seek leave of court to amend this
21 Complaint to insert the true names of said DOES when the same have been ascertained.

22 23 **V. STATEMENT OF FACTS**

24 12. RIVER WATCH is informed and believes and on said information and belief alleges
25 that the SHIMEKS have owned, operated and/or leased the Facilities at least since 1983.

26 13. The SHIMEKS have stored and/or currently store large quantities of petroleum
27 products in underground storage tanks (hereafter, "USTs") at the Facilities. In 1991
28 petroleum contamination was detected in soil and groundwater beneath the Facilities.

1 Subsequent investigation indicated the contamination is attributable to leakage from USTs
2 and piping systems, surface spills and/or poor maintenance or operational practices.

3 14. Regulatory agencies have ordered the SHIMEKS to investigate and remediate
4 petroleum contamination at the Facilities following discovery of petroleum releases. The
5 SHIMEKS have conducted some investigative and remedial work at the Facilities in response
6 to agency directives; however, significant levels of petroleum contamination remain in soil
7 and groundwater beneath and adjacent to the Facilities.

8 15. Regulatory agencies have designated surface and groundwater in this area of California
9 as capable of supporting domestic supply, and have established maximum contaminant levels
10 for petroleum constituents in surface and groundwater.

11 16. Benzene and toluene are known carcinogens and/or reproductive toxins, and have been
12 listed chemicals under Proposition 65 since at least 1991. Surface and groundwater at the
13 Facilities are potential sources of drinking water under applicable Regional Water Quality
14 Control Board Water Quality Control Plans (aka Basin Plans). In the course of doing business
15 the SHIMEKS have discharged benzene and toluene to surface and groundwater at the
16 Facilities on a daily basis since at least approximately November of 1991.

17 17. The SHIMEKS have used and/or stored petroleum at the Facilities in a manner which
18 has allowed significant quantities of hazardous petroleum constituents, including MTBE, to
19 be discharged to soil and groundwater beneath the Facilities and beneath adjacent properties.

20 18. The SHIMEKS have conducted some site investigations and remedial work at the
21 Facilities. Based upon current levels of contamination, however, they have been unsuccessful
22 in abating the contamination. To date, the levels of TPHg, benzene, toluene, ethylbenzene,
23 and xylenes remain high above the allowable Maximum Contaminant Levels and/or Water
24 Quality Objectives for said constituents, creating an imminent and substantial endangerment
25 to public health and the environment. Significant quantities of MTBE are also being detected
26 in soil and groundwater beneath the Facilities and adjacent properties, creating an imminent
27 and substantial endangerment to public health and the environment.

28

1 19. The discharges by the SHIMEKS as alleged in the RCRA Notice (Exhibit A) are both
2 knowing and intentional. The SHIMEKS presently use, store and sell petroleum products at
3 the Facilities, and in the past have used, stored and sold these products, which are known to
4 contain benzene, toluene, TPHg, ethylbenzene, xylenes, and/or MTBE, and intend or have
5 intended that such products be sold to and used by the public. The SHIMEKS have known of
6 the contamination at the Facilities since at least 1991, and are also aware that failing to
7 remediate the pollution allows the contamination to migrate through soil and groundwater at
8 and adjacent to the Facilities, and to continually contaminate and re-contaminate actual and
9 potential sources of drinking water.

10 20. Violations of RCRA and other statutes by the SHIMEKS as alleged in this Complaint
11 are a major cause of the continuing decline in water quality, and a continuing threat to
12 existing and future drinking water supplies in Northern California. With every discharge,
13 groundwater supplies are contaminated. These discharges can and must be controlled in order
14 for the groundwater supply to be returned as a safe source of drinking water.

15 16 **VI. FIRST CLAIM FOR RELIEF**

17 **Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(A)**

18 21. RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through
19 20 and Exhibit A as though fully set forth herein. RIVER WATCH is informed and believes,
20 and based on such information and belief alleges:

21 22. RCRA § 7002(a)(1)(A), and 42 U.S.C. § 6972(a)(1)(A), provide that any person may
22 commence a civil action against any person or governmental entity alleged to be in violation
23 of any permit, standard, regulation, condition, requirement, prohibition, or order which has
24 become effective pursuant to RCRA. Civil penalties may be assessed against any person or
25 entity in violation of such permits, etc., pursuant to RCRA under the provisions of RCRA, 42
26 U.S.C. §§ 6928 (a) and (g).

27 23. RIVER WATCH is informed and believes and on said information and belief alleges
28 that the SHIMEKS own and operate the Facilities at which they store or have stored, and

1 transfer or have transferred, gasoline, diesel, fuel oil and mixed oils to or from USTs. The
2 SHIMEKS' USTs are regulated by appropriate Regional Water Quality Control Board and/or
3 the Contra Costa County Department of Health.

4 24. The Regional Water Quality Control Board and/or the Contra Costa County
5 Department of Health have imposed remediation and monitoring requirements to ensure
6 compliance with the RCRA UST program.

7 25. RIVER WATCH is informed and believes, and on said information and belief alleges
8 that the SHIMEKS have failed to comply with the statutory and regulatory leak prevention,
9 leak detection, monitoring, and remediation requirements imposed under RCRA and
10 described in the RCRA Notice attached as Exhibit A.

11 26. Continuing failure by the SHIMEKS to effectively remediate the on-going
12 contamination at the Facilities will irreparably harm RIVER WATCH and its members, for
13 which harm RIVER WATCH and its members have no plain, speedy or adequate remedy at
14 law.

15 27. Wherefore, RIVER WATCH prays judgment against the SHIMEKS as set forth
16 hereafter.

17 18 **VII. SECOND CLAIM FOR RELIEF**

19 **Violation of 42 U.S.C. Sec. 6901 et seq., specifically 42 U.S.C. Sec. 6972(a)(1)(B)**

20 28. RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through
21 27 and Exhibit A as though fully set forth herein. RIVER WATCH is informed and believes,
22 and based on such information and belief alleges:

23 29. RCRA § 7002(a)(1)(B), and 42 U.S.C. §6972(a)(1)(B) provide that any person may
24 commence a civil action against any person or governmental entity including a past or present
25 generator, transporter, owner or operator of a treatment, storage or disposal facility who has
26 contributed to the past or present handling, storage, treatment, transportation, or disposal of
27 any solid or hazardous waste which may present an imminent and substantial endangerment
28 to health or to the environment. Civil penalties may be assessed against any person or entity

1 in violation of this section, under the provisions of RCRA, 42 U.S.C. §§ 6928 (a) and (g).
2 The RCRA UST regulatory program is adopted and implemented in California under the
3 provisions governing the Underground Storage of Hazardous Substances (California Health &
4 Safety Code § 25280 et seq.).

5 30. RIVER WATCH is informed and believes and on said information and belief alleges
6 that the SHIMEKS own and operate the Facilities at which they store or have stored, and
7 transfer or have transferred, gasoline, diesel, fuel oil and mixed oils.

8 31. RIVER WATCH is informed and believes and on said information and belief alleges
9 that the Facilities either have USTs which are leaking or have leaked petroleum chemicals
10 including benzene, toluene, TPHg, ethylbenzene, xylenes, and MTBE into groundwater; or
11 petroleum products have been washed off the Facilities into nearby surface waters.

12 32. Petroleum products are known to be hazardous to the environment, and if released into
13 the environment in sufficient quantity pose an imminent and substantial risk to public health
14 and to the environment

15 33. Chemicals within these petroleum products such as benzene and toluene are known
16 carcinogens and/or reproductive toxins, and if released into the environment in sufficient
17 quantity pose an imminent and substantial risk to public health and to the environment in
18 general.

19 34. For purposes of RCRA, petroleum products and their constituents: TPHg, benzene,
20 toluene, ethylbenzene, xylenes, and MTBE, are both “solid wastes” and “hazardous wastes”
21 within the meaning of the statutes referenced herein

22 35. RIVER WATCH is informed and believes and on such information and belief alleges
23 that the amounts of petroleum products and their constituents, TPHg, benzene, toluene,
24 ethylbenzene, xylenes, and/or MTBE released by the SHIMEKS at the Facilities are in
25 sufficient quantity to pose an imminent and substantial risk to both the environment and to
26 human health.

27 //

1 36. Continuing acts or failure to act by the SHIMEKS to address these violations will
2 irreparably harm RIVER WATCH and its members, for which harm they have no plain,
3 speedy or adequate remedy at law.

4 37. Wherefore, RIVER WATCH prays judgment against the SHIMEKS as set forth
5 hereafter.

6
7 **VIII. RELIEF REQUESTED**

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

9 38. Declare the SHIMEKS to have violated and to be in violation of RCRA for discharging
10 petroleum products and constituents which are known carcinogens and/or reproductive toxins
11 from the Facilities in sufficient quantity to pose an imminent and substantial risk to health and
12 to the environment;

13 39. Enjoin the SHIMEKS from discharging petroleum products and constituents from the
14 Facilities, which petroleum products and constituents pose an imminent and substantial risk to
15 health and the environment;

16 40. Order the SHIMEKS to comply with the substantive and procedural requirements of
17 RCRA;

18 41. Order the SHIMEKS to pay civil penalties, pursuant to RCRA provisions, including 42
19 U.S.C. §§ 6928 (a) and (g), and/or pay for remediation projects to redress harm caused by
20 their violations of RCRA. Each of the above-described violations of RCRA subjects the
21 violator to a civil penalties on a per day per violation basis. Civil penalties may be assessed
22 for violations occurring within five (5) years prior to the initiation of a citizen enforcement
23 action;

24 42. Enter a judgment that the SHIMEKS are required to pay civil penalties and exemplary
25 damages according to proof;

26 43. Enter such preliminary injunctions, permanent injunctions or other orders pursuant to
27 RCRA requiring the SHIMEKS to enjoin and abate the nuisance resulting from the discharge
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and release of petroleum products and constituents from the Facilities, and the migration of petroleum products and constituents into soil and groundwater at or near the Facilities;

44. Impose injunctive relief requiring the SHIMEKS to immediately investigate, access and categorize the extent of pollution at the Facilities, and implement the “best available technology” to remediate said pollution;

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

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

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

DATED: January 10, 2007

Respectfully submitted,



JACK SILVER
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469
Phone 707-528-8175
warrioreco@yahoo.com

Santa Rosa, California 95402
Fax 707-528-8675



Via Registered Mail - Return Receipt Requested

July 10, 2006

Mr. Roy E. Shimek
Mr. Ben Shimek
444 Divisadero St. Suite 100
San Francisco, CA 94118

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

Dear Sirs:

On behalf of Northern California River Watch ("River Watch"), I am providing statutory notification to you and to the USA Service Station (hereafter "USA"), located at 938 13th Street, Richmond, California, currently owned or operated by yourselves and/or your employees, agents, franchisees or assigns, of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6901 et seq., in conjunction with the continuing remediation operations at that service station site.

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

1. USA's use and storage of petroleum products at the service station site as identified in this **Notice** has and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding storage of petroleum in underground storage tanks ("USTs") [42 U.S.C. § 6972(a)(1)(A)];

2. USA's operations at the service station site as 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)].

THE SITE

The USA service station site (hereafter, "the Site"), is located on the northeast corner of 13th Street and Lincoln Avenue in Richmond in an area of mixed commercial and residential units. A petroleum hydrocarbon release from the USTs or related piping at the Site was first reported to Water Quality authorities in approximately November of 1991.

As of the last monitoring report which reported contamination levels tested in February of 2006, the Site continued to have very high levels of TPHg and BTEX constituents in soil and groundwater beneath and around the Site. Levels from the February analysis were as high as 100,000 ug/l for TPHg, 15,000 ug/l for TPHd, 33,000 ug/l for benzene, 4,200 ug/l for toluene, 2,500 ug/l for ethylbenzene, and 4,900 ug/l for xylenes, and 6,100 ug/l for MTBE.

Depth to groundwater in this area is between 6 and 9 feet. Groundwater flow apparently fluctuates towards the west, southwest and east, depending upon seasonal variations. Water Quality Control Board records document the presence of 3 wells within 262 feet of the contamination at the Site, although the engineering consultant's sensitive receptor survey claims there are no water wells within 2,000 feet of this location.

On the basis of a recent preferential pathway study, there are significant hydrocarbon concentrations (as high as 47,000 ug/l for TPHg) in one of the sewer lines at the Site. This sewer trench acts as a conduit allowing contamination to migrate to the south of the Site.

At the present time, the pollution of the soil and groundwater remains undelineated, and no progress towards remediation has occurred. (The contaminant plume appears to have been delineated to the east, but not to the north, south and west.) River Watch presumes that hydrocarbon contamination continues to seep into groundwater and possibly surface waters of the United States in violation of both RCRA and the Clean Water Act.

According to the latest documentation from Water Quality Control Board files, there is no estimated end in sight for the engineering work which needs to be accomplished. Reports from USA's consultants fail to indicate the amount of petroleum hydrocarbons which remain under and around the Site. In addition to achieving complete delineation of the contaminant plume, River Watch believes USA must take more proactive efforts to protect against surface water impact from this plume, as well as conduct current sensitive

receptor surveys. The nearest surface waters are Wild Cat Creek and the Sante Fe Channel in the Richmond inner harbor area. Specific measures to protect these surface waters should have been implemented.

Accordingly, this is a case in which River Watch must rely upon federal statutory provisions which authorize citizen suits where regulatory agency processes have not resulted in viable and timely solutions to the petroleum contaminant problems in our Northern California communities.

REGULATORY STANDARDS

Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist. 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 ("Basin Plan") which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The Board has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ug/l for TPHg, 1 ug/l for benzene, 150 ug/l for toluene and 5 ug/l for MTBE.

Petroleum and petroleum constituents have been characterized as "hazardous waste" and as "solid waste" within the meaning of RCRA provisions. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of petroleum and petroleum constituents and products.

Violations of Permits, Standards and Regulations [42 U.S.C. § 6972(a)(1)(A)]

Between approximately July 10, 2001 and the date of this **Notice**, USA has caused or permitted, causes or permits, or threatens 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 threatens to create, conditions of pollution or nuisance. The discharges and threatened discharges of such petroleum waste are deleterious to the beneficial uses of water, and are creating and threaten to create various conditions of pollution and nuisance which will continue unless the discharges and threatened discharges are permanently abated.

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

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

Between approximately July 10, 2001 and the date of this **Notice**, USA's use and storage of petroleum at the Site 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 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, USA is responsible for the following statutory violations:

1. Failure to prevent a release, in violation of 40 CFR §§ 280.30, 280.31 and California Health & Safety Code §§ 25292.1(a) - (c), 25292.3(a) and (b).
2. Failure to properly detect and monitor releases, in violation of 40 CFR §§ 280.40 - 280.44 and California Health & Safety Code § 25292.
3. Failure to properly report and keep records of the release, in violation of 40 CFR §§ 280.34, 280.50, 280.52, 280.53, 280.63(b) and California Health & Safety Code §§ 25289, 25293 and 25295(a)(1).
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).

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

Between approximately July 10, 2001 and the date of this **Notice**, USA used and stored, and continues to use and store, petroleum products at the Site in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil

and groundwater beneath the Site and beneath adjacent properties. The contaminant levels of TPHg, benzene, toluene, and MTBE in groundwater 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 concentration at the Site, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

The violations alleged in this **Notice** are knowing and intentional in that USA in the past has used, stored and sold petroleum products at the Site which are known to contain hazardous substances; and, in that it intended that such products be sold to and used by the public. USA has known of the contamination at the Site since at least November of 1991, and has also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Site, and to continually contaminate and re-contaminate actual and potential sources of drinking water in addition to surface waters.

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

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

River Watch is 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. River Watch is organized under the laws of the State of California. Its address is 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA, 95472; its telephone number is (707) 824-4372.

The violations of USA as set forth in this **Notice** affect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by these violations of RCRA. In some cases the economic interests of individual River Watch members have been directly impaired by the violations of USA as set forth in this **Notice**.

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

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

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

River Watch believes this **Notice** sufficiently states grounds for filing suit under the statutory and regulatory provisions of RCRA as to the Site. At the close of the notice periods or shortly thereafter, River Watch intends to file a suit against USA under RCRA provisions for each of the violations as alleged herein, and with respect to the existing conditions at the Site.

During the 90 day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this **Notice**. If USA wishes to pursue such discussions in the absence of litigation, we would encourage you to initiate such discussions immediately so that we might be on track to resolving our issues before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the 90-day notice period ends.

Very truly yours,


Jack Silver

cc:

Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, D.C. 20460

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

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

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

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