

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of the 11th day of August 2005 by and between Atlantic Richfield Company (“Atlantic Richfield”) and BP Products North America Inc. (“BP”), on the one hand, and Northern California River Watch (“River Watch”) on the other hand. Atlantic Richfield, BP, and River Watch are hereinafter each referred to as a “Party” or collectively as “Parties.”

### RECITALS

WHEREAS, Atlantic Richfield owns, or owned, certain real property located at 56 South Weed Blvd., Weed, CA (known as Site No. 389), 712 Lewelling Blvd., San Leandro, CA (known as Site No. 601), 899 Rincon Ave., Livermore, CA (known as Site No. 771), 731 West MacArthur Blvd., Oakland, CA (known as Site No. 4931) and 785 East Stanley Blvd., Livermore, CA (known as Site No. 6113). These sites have been operated from time to time as retail gasoline stations.

WHEREAS, on December 31, 2003, River Watch sued Atlantic Richfield with respect to Sites 389, 601, 771, 4931, and 6113 (hereafter “River Watch I Sites”), alleging various environmental claims, including claims under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (“RCRA”), in an action entitled Northern California River Watch v. Atlantic Richfield Company (U.S. Dist. Court, Northern Dist. California, Case No. C 03-5908 (hereafter “River Watch I Lawsuit”). Thereafter, River Watch dismissed Site Nos. 389 and 4931 from the River Watch I Lawsuit.

WHEREAS, on or about March 19, 2004, River Watch served BP Corporation North America, Inc. with a purported notice of violation (“Notice of Violation”) under environmental statutes including RCRA. A copy of the Notice of Violation is attached

hereto as Exhibit A. The Notice of Violation related to alleged environmental and operational violations at six retail sites previously allegedly owned and/or operated by BP. These sites include sites known as Site No. 11102 (100 MacArthur Blvd., Oakland, CA), No. 11117 (7210 Bancroft Ave., Oakland, CA), No. 11126 (1700 Powell St., Emeryville, CA), No. 11147 (690 Ygnacio Valley Blvd., Walnut Creek, CA), No. 11148 (2350 San Ramon Valley Rd., San Ramon, CA), and No. 11149 (12319 San Pablo Ave., Richmond, CA). Hereafter these sites will be referred to collectively as the “River Watch II Sites” and all the disputes between BP and River Watch concerning those sites shall be referred to as the “River Watch II Dispute.”

WHEREAS, in the River Watch I Lawsuit and the River Watch II Dispute, River Watch contends that Atlantic Richfield and BP discharged petroleum products and chemicals associated with such products (including MTBE) into the soil and groundwater at and near the River Watch I Sites and River Watch II Sites. River Watch contends, among other things, that Atlantic Richfield and BP violated various environmental and operational laws (including without limitation RCRA and associated regulations) by allegedly failing to comply with various reporting, release prevention, monitoring, and remediation regulations, directives, and guidelines, and by creating or allowing such contamination to remain in the soil and groundwater in a manner that may create an imminent and substantial endangerment to health and/or the environment.

WHEREAS, the Parties and their counsel participated in a mediation on June 29, 2005 with mediator William Nagle. At the mediation, the Parties entered into a settlement agreement in principle to resolve all of their disputes in the River Watch I Lawsuit and the monetary components of the River Watch II Dispute, as further set forth

below. The Parties agreed to confirm and memorialize their agreement in a formal settlement agreement.

NOW, THEREFORE, in consideration of the terms and covenants of this Agreement, the Parties hereto agree as follows:

1. Payment to River Watch. In consideration for all of the agreements in this Agreement, including the settlement of the entirety of the River Watch I Lawsuit and the monetary components of the River Watch II Dispute, Atlantic Richfield shall pay River Watch and its counsel, by a joint check, the sum of \$75,000. Such payment will be made within 15 business days upon execution of this Agreement and delivery of a fully executed copy to counsel for Atlantic Richfield, at the address for notices set forth in Section 17 below. River Watch shall provide Atlantic Richfield with its federal tax identification number contemporaneously with the delivery of the executed Agreement, for the purpose of issuing the check payable under this Agreement. Within 5 business days of receipt of the payment, River Watch will file a request for dismissal of the entire River Watch I Lawsuit with prejudice, in the form attached hereto as Exhibit B.

2. Atlantic Richfield Projects. Atlantic Richfield shall complete the following, subject to prior approval by any and all regulatory agencies asserting jurisdiction over the River Watch I Sites:

a. Two samples of water (if any) in the sanitary sewer “lateral” lines leading from the bathroom at each of the Sites 601, 771, and 6113. One sample shall be taken in the “dry season” for Site 601 and one shall be taken in approximately February for Sites 601, 771, and 6113. Sampling shall be performed for BTEX. Atlantic Richfield shall share the data from these tests (but not any privileged communications) with River

Watch. Sampling shall be performed through the “clean outs” for the sewer laterals, and no drilling into the sewer lines shall be required. Each sampling shall be performed once, not periodically.

b. Atlantic Richfield shall perform at least one sampling of groundwater at Site 601 at a depth sufficient to reach “non detect” readings for BTEX. Atlantic Richfield reserves the right to determine (with regulatory agency approval) the methodology and techniques used to perform this sampling (e.g. CPT, hydro punch, installation of a well, or discrete depth sampling). Atlantic Richfield shall share the resulting data (but not any privileged communications) with River Watch.

c. Atlantic Richfield shall re-start or implement a bio-sparge system (injection of air into water in certain wells, as needed) at each of Site 771 and 6113 and shall operate the same until Atlantic Richfield obtains agency approval to discontinue operation. The remediation approach at Site 601 shall continue to be natural attenuation bio-remediation.

d. Atlantic Richfield reserves the right to determine, in its discretion, whether it will perform the work described above, or whether one of its affiliated companies or an independent contractor will perform the work.

e. Nothing in this Agreement shall be construed as conferring upon or creating in favor of River Watch, or any other person or entity, any claim, cause of action, or remedy of any kind whatsoever arising out of or relating to the conduct or the results of the additional sampling and testing and remediation described in this Section.

3. Atlantic Richfield’s Right to Advocate to Agencies. Atlantic Richfield and BP and each of their past, present, and future affiliated companies, dealers,

franchisees, site operators, trustors, trustees, beneficiaries, predecessors, partners, parents, subsidiaries, officers, directors, shareholders, principals, employees, servants, sureties, representatives, agents, insurers, and attorneys, and their respective successors and assigns successors and assigns (hereafter collectively “Atlantic Richfield/BP Parties,” and individually “Atlantic Richfield/BP Party”) reserve the right to request, lobby, and advocate to, the appropriate regulatory agencies concerning investigation and remediation work at the River Watch I Sites. Without limiting the foregoing, the Atlantic Richfield/BP Parties reserve the right to request, lobby and advocate for site closure, discontinuation of bio-sparging or any other remediation or investigation, including sampling, or sampling at particular time intervals. River Watch, on behalf of itself, and its successors and assigns, and its past, present and future members, affiliates, administrators, trustors, trustees, beneficiaries, predecessors, partners, parents, subsidiaries, officers, directors, shareholders, principals, agents, employees, servants, representatives, insurers, sureties, and attorneys (hereafter collectively “River Watch Parties,” and individually “River Watch Party”) agree that they will not lobby, request, or advocate that the regulatory agencies require the Atlantic Richfield/BP Parties to perform or continue to perform investigation, remediation, and/or other environmental work at the River Watch I Sites.

4. Atlantic Richfield To Provide Notice to River Watch. The Atlantic Richfield/BP Parties agree to make their best efforts to provide River Watch reasonable advance notice (not less than 7 calendar days) of any written materials they intend to submit to the regulatory agencies asserting jurisdiction over the River Watch I Sites, if those materials request agency approval to materially change the environmental activities

at the Sites. The Atlantic Richfield/BP Parties agree to consider in good faith any comments or concerns River Watch may have with respect to their proposed submissions. If the Atlantic Richfield/BP Parties disagree with River Watch's comments, however, the Atlantic Richfield/BP Parties reserve the right to submit its materials to the agency without using or addressing River Watch's comments.

5. All Parties To Bear Past Costs and Fees. Each of the Parties shall bear their own attorneys' fees and costs and expert fees and costs in the River Watch I Lawsuit. Each of the Parties shall bear their own attorneys' fees and costs and expert fees and costs in the River Watch II Dispute as set forth in Section 8, below. Atlantic Richfield shall pay the mediator's costs for the mediation on June 29, 2005.

6. Release by River Watch. The River Watch Parties, and each of them, hereby release and forever discharge the Atlantic Richfield/BP Parties, and each of them, from any and all claims, demands, liabilities, causes of action, obligations, liens, penalties, damages, losses, costs, attorneys' fees, experts' fees, and expenses of every kind and nature whatsoever, in their own capacities and in their representative capacities (including any rights pursuant to statutes authorizing private attorney general, citizen and/or taxpayer suits), known and unknown, suspected and unsuspected, liquidated and unliquidated, fixed and contingent, arising out of, in connection with, or relating to acts, omissions, transactions and events: i) that were asserted or could have been asserted in the River Watch I Lawsuit and/or with respect to the River Watch I Sites, including without limitation any claims for penalties, attorneys' fees and costs, expert fees and costs, and environmental work including investigation and/or remediation, and ii) any and all monetary claims (including attorneys' fees and costs, expert fees and costs, and

any penalties) that have been asserted, could have been asserted, or may be asserted with respect to the River Watch II Sites and/or the River Watch II Dispute. This release does not apply with respect to rights and obligations created or reserved in this Agreement.

7. Unknown Facts. It is understood and agreed that the claims released in this Agreement include all claims of every nature and kind whatsoever, known and unknown, suspected and unsuspected, and the River Watch Parties hereby waive any and all rights under Section 1542 of the Civil Code of California, and all similar federal laws, rules and decisions. The consequences of such waiver have been explained by counsel to the River Watch Parties. Section 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The River Watch Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now know or believe to be true with respect to the claims released by this Agreement and agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery thereof.

8. Disputes Concerning River Watch II Sites. BP and River Watch shall forthwith meet and confer and attempt to agree upon whether any further investigation and/or remediation at the River Watch II sites is necessary, and, if so, the scope of such further investigation and/or remediation. If BP and River Watch cannot resolve such disputes, disputes concerning any investigation and/or remediation shall be governed by the alternative dispute resolution procedure set forth in Section 9, below. Regardless of whether BP and River Watch are able to reach an agreement on any such investigation

and/or remediation, a) the River Watch Parties shall not seek or recover any penalties for any violations alleged in any lawsuit that the River Watch Parties may file with respect to any of the River Watch II Sites and/or the River Watch II Dispute, and b) the River Watch Parties shall not seek or recover any attorneys' fees and costs, or expert fees and costs incurred in whole or in part prior to the date that it (they) file any lawsuit concerning any of the River Watch II Sites and/or the River Watch II Dispute.

9. Future Remediation At River Watch I Sites and Future Remediation and Investigation at River Watch II Sites. If 1) BP and River Watch cannot resolve their disputes concerning any investigation and/or remediation for any of the River Watch II Sites, and/or 2) the River Watch Parties contend in the future that additional remediation activities are necessary at the River Watch I Sites, such disputes shall be resolved as follows:

a. Definitions.

(i) "Covered Contaminants" refers to petroleum hydrocarbons and any additives, oxygenates (including without limitation MTBE), constituents, and components thereof (including without limitation any degradation products and byproducts of any and all such compounds).

(ii) "Covered Sites" means the River Watch I Sites and the River Watch II Sites.

(iii) "Covered Contamination" refers to discharge and/or presence, at any time, of one or more Covered Contaminants at one or more of the Covered Sites.

b. Covenant Not to Sue. Consistent with the Parties' desire to resolve the River Watch Parties' claims with respect to the Covered Sites, the River Watch Parties covenant and agree not to bring or assert against the Atlantic Richfield/BP Parties any suit, administrative proceeding, claim, cause of action, debt, penalties, or liabilities of any kind, whether in law, equity or otherwise and whether in their individual or representative capacities (including pursuant to any statute authorizing private attorney general, citizen or taxpayer suits) arising out of or relating to the Covered Contamination or Covered Contaminants at the Covered Sites, subject only to the following exceptions. If 1) the River Watch Parties contend in the future that additional remediation activities are necessary at the River Watch I Sites, and/or 2) River Watch and BP cannot resolve their disputes concerning any investigation and/or remediation for any of the River Watch II Sites, then the River Watch Parties may file a lawsuit seeking relief only with respect to such disputes but, before doing so, must first satisfy each of the following conditions precedent:

(i) The River Watch Party desiring to assert a claim, lawsuit, etc., has provided written notice to the allegedly responsible Atlantic Richfield/BP Party of the Covered Contamination or Covered Contaminants at one or more of the Covered Sites ("Notice of Violation");

(ii) The River Watch Party has met and conferred in good faith with the allegedly responsible Atlantic Richfield/BP Party with respect to the Covered Contamination and/or Covered Contaminants;

(iii) After such meet and confer process but no earlier than sixty (60) days after giving the Notice of Violation, the River Watch Party has

determined that the Covered Contamination and/or Covered Contaminants at the Covered Site(s) in question then presents an imminent and substantial endangerment to health and/or the environment, or that the Atlantic Richfield/BP Party is then in violation of a permit, standard, regulation, condition, requirement, prohibition or order effective pursuant to RCRA with respect to the Covered Site(s), and has notified the allegedly responsible Atlantic Richfield/BP Party in writing of such determination and of the facts and evidence that the River Watch Party contends support that determination (“Notice of Inadequacy”); and

(iv) A neutral arbitrator mutually agreed upon by the Parties has issued a written finding that that the River Watch Party has established that the Covered Contamination and/or Covered Contaminants at the Covered Site(s) in question then presents an imminent and substantial endangerment to health and/or the environment, or that the Atlantic Richfield/BP Party is then in violation of a permit, standard, regulation, condition, requirement, prohibition, or order effective pursuant to RCRA with respect to the Covered Site(s). In the absence of a signed written agreement signed by the Parties providing otherwise, William L. Nagle of Burlingame California shall serve as the neutral arbitrator.

c. Arbitration Provisions.

(i) Absent a written agreement signed by the Parties providing otherwise, the Parties shall conduct the meet and confer process referenced in Section 9.b no later than thirty (30) days after the Atlantic

Richfield/BP Party receives the Notice of Inadequacy. In such meet and confer process, the Atlantic Richfield/BP Party shall, at its cost, provide the River Watch Party, upon request, such then existing information and data as are reasonably necessary to assess the extent of the Covered Contamination at issue. The Atlantic Richfield/BP Party shall have the option, in its/their discretion, of inviting the participation of a representative of any regulatory agency with jurisdiction over the Covered Contamination to participate in the meet and confer process, and/or the arbitration.

(ii) The Parties shall make reasonable efforts to conclude the arbitration referenced in Section 9.b within ninety (90) days after the Notice of Inadequacy is received. The arbitration shall be conducted pursuant to the standard procedures of the neutral arbitrator and/or such other procedures as may be mutually agreed upon by the Parties. The Parties shall each bear their own attorney's fees and costs and expert fees and costs incurred in connection with such arbitration and in connection with the meet and confer process.

(iii) In any arbitration conducted pursuant to this Section, there shall be rebuttable presumptions that Covered Contamination and/or Covered Contaminants at the Covered Site(s) do not present an imminent or substantial endangerment to health or the environment, that the Atlantic Richfield/BP Party is not in violation of any permit, standard, regulation, condition, requirement, prohibition or order, and that no further

environmental work, including investigation and/or remediation is necessary or appropriate provided that 1) the regulatory agency asserting jurisdiction over the Covered Site(s) in question currently is requiring only no further action, monitoring of the contamination, monitored natural attenuation, and/or property use or deed restrictions, and 2) the Atlantic Richfield/BP Party is substantially complying with such requirement, or requirements.

d. No Waiver. Nothing contained in this Section 9 shall be construed as waiving any rights or defenses which the Atlantic Richfield/BP Parties have or may have, or as creating any rights, claims or causes of action in favor of the River Watch Parties, in any suit or proceeding brought by the River Watch Parties or any other person or entity, with respect to the Covered Contamination.

e. Confidentiality of Arbitration. The Parties agree that any and all findings, rulings, decisions, orders or statements made by the arbitrator, any briefs and/or documents submitted by the Parties, and any written, oral, electronic, or in person communications made by anyone, during and/or in connection with, any meet and confer process, and/or any arbitration, conducted pursuant to this Section shall not be admissible in any proceeding, including any lawsuit filed after such arbitration, and shall remain confidential and shall not be disclosed by anyone to any third party.

10. Attorneys' Fees. The Parties agree that in the event any Party to this Agreement files or initiates any action, lawsuit, or any other proceeding to enforce or interpret this Agreement (except an arbitration and/or meet and confer process under Section 9 above), the prevailing Party in that action or proceeding shall be entitled to

recover from the losing Party all of its expenses reasonably incurred in connection with that action, lawsuit or proceeding, including reasonable attorneys' fees and expert fees, and out of pocket costs and expenses. Any action, lawsuit, or other proceeding brought or initiated to enforce or interpret this Agreement shall be filed in the United States District Court, Northern District of California, San Francisco Division. If the River Watch Parties, or a River Watch Party, should pursue a lawsuit or other proceeding against the Atlantic Richfield/BP Parties for allegedly violating any environmental laws, regulations, standards, permits, orders, prohibitions, etc. (and not to interpret or enforce this Agreement) then the rights of the Parties (if any) to recover their attorneys' fees and costs or expert fees and costs shall be governed by the law applicable to those alleged violations.

11. Confidentiality. The Parties agree that they shall keep the terms of this Agreement confidential and shall not disclose the same to third parties except as set forth in this Agreement. A Party may disclose this Agreement or its terms if required by an order or subpoena issued in a legal proceeding where the Party is subject to the court's jurisdiction. The Parties may disclose the fact of settlement (but not its terms) to the court in the River Watch I Lawsuit for the purpose of informing the court of the fact of settlement. The Parties may disclose the Agreement and its terms, to the extent necessary in any arbitration conducted pursuant to this Agreement and to the extent necessary otherwise to enforce its terms. The Atlantic Richfield/BP Parties may disclose this Agreement and its terms in any legal, administrative or regulatory proceeding (formal and/or informal) and in any application for reimbursement to the California UST Fund or for other reimbursement, in which the Atlantic Richfield/BP Parties seek to establish or

demonstrate the work that they have performed under the Agreement, or the settlement, release, and covenant not to sue in the Agreement. The Atlantic Richfield/BP Parties may disclose this Agreement and its terms to any past, present, or future owner or operator of any of the River Watch I Sites and/or the River Watch II Sites. The Parties may disclose the Agreement as necessary in connection with any tax audit or proceeding and may also disclose the fact of settlement and the amount of the settlement if necessary on any tax returns or filings.

12. No Admission. This Agreement represents a compromise of claims. Nothing in this Agreement, nor any acts performed pursuant to this Agreement, shall be construed as an admission by any of the Atlantic Richfield/BP Parties that they have any responsibility or liability for the claims that were or could have been asserted in the River Watch I Lawsuit or River Watch II Dispute. Neither this Agreement nor any acts performed pursuant to this Agreement may be introduced as evidence in any court, or any administrative, or other legal proceeding to establish such responsibility or liability.

13. Interpretation. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

14. Authority. The Parties, and each of them, represent and warrant to each other that the persons executing this Agreement on their behalf have all the necessary authority to enter into this Agreement and to perform the obligations hereunder.

15. No Assignment. Each Party to this Agreement represents and warrants that it has not previously assigned or transferred, or purported to transfer or assign, to any

person, or entity, any claim, demand, damages, debt, liability, action or cause of action released in this Agreement. Each Party agrees to indemnify, defend, and hold harmless each other Party to this Agreement against any claim, demand, damages, debt, liability, action, cause of action, and expense, including attorneys' fees actually paid or incurred, arising out of or in connection with any transfer or assignment, or purported or claimed transfer or assignment, contrary to the terms of this paragraph.

16. Successors. This Agreement is binding upon, and shall inure to the benefit of, the Parties and each of their respective successors and assigns.

17. Notices. Any notice relating to or provided for in this Agreement shall be given in writing and shall be sent by facsimile and by U.S. mail, with first-class postage pre-paid, as follows:

If to Atlantic Richfield: Deborah P. Felt  
Senior Attorney  
BP America, Inc.  
Legal Western Region  
6 Centerpointe Drive, Room 548  
La Palma, CA 90623  
Fax: (714) 228-6570

with a copy to: Matthew S. Covington, Esq.  
DLA Piper Rudnick Gray Cary US LLP  
153 Townsend Street, Suite 800  
San Francisco, CA 94107  
Fax: 415-836-2501

If to River Watch: Essra Mostafavi  
Project Manager, River Watch  
6741 Sebastopol Ave., Suite 140  
Sebastopol, CA 95472

with copy to: Jack Silver, Esq.  
Law Offices of Jack Silver  
P. O. Box 5469  
Santa Rosa, CA 95402-5469  
Fax: (707) 542-7139

18. Validity. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

19. Entire Agreement. This Agreement shall constitute the entire Agreement between the Parties and supersedes all prior or contemporaneous understandings or agreements. No supplement, modification, waiver or termination of this Agreement shall be binding or enforceable unless executed in writing by the Party to be bound thereby. No waiver of any provision of this Agreement shall be deemed a waiver of any of its other terms, nor shall such waiver constitute a continuing waiver.

20. Advice of Counsel. The undersigned acknowledge that they have been advised and are aware of their right to be represented by counsel in the negotiation and preparation of this Agreement and discussed this Agreement with the counsel of their choice; that they have read the Agreement; that they are fully aware of its contents and of its legal effect; that the preceding paragraphs recite the sole consideration for this Agreement; that the agreements and understandings between the Parties to this Agreement are embodied and expressed herein; and that each Party enters into this Agreement freely, without coercion, and based on the Party's own judgment and not in reliance on any representations or promises made by the other Party, other than those contained herein.

21. Captions. Any captions to the paragraphs of this Agreement are solely for the convenience of the Parties, are not a part of the Agreement, and shall not be used for the interpretation of a determination of the validity of this Agreement or any part thereof.

22. Execution in Counterparts. This Agreement may be executed in counterparts and by facsimile. Each of said counterparts, when so executed and delivered, shall be deemed an original and, taken together, shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement in full on the date indicated opposite their signature line.

NORTHERN CALIFORNIA RIVER WATCH

Dated: August \_\_, 2005 By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Title]

ATLANTIC RICHFIELD COMPANY

Dated: August \_\_, 2005 By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
[Title]

BP PRODUCTS NORTH AMERICA INC.

Dated: August \_\_, 2005

By:

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Print Name]*

\_\_\_\_\_  
*[Title]*

**APPROVED AS TO FORM:**

LAW OFFICES OF JACK SILVER

Dated: August \_\_, 2005

By:

\_\_\_\_\_  
Jack Silver, Esq.  
Attorneys for NORTHERN CALIFORNIA  
RIVER WATCH

DLA PIPER RUJDNICK GRAY CARY US LLP

Dated: August \_\_, 2005

By:

\_\_\_\_\_  
Matthew S. Covington  
Attorneys for ATLANTIC RICHFIELD  
COMPANY and BP PRODUCTS NORTH  
AMERICA INC.

EXHIBIT A

JMH COPY

# Law Offices of Jack Silver

Post Office Box 5469 Santa Rosa, California 95402-5469  
Phone 707-528-8175 Fax 707-542-7139



March 19, 2004

## CERTIFIED MAILING - RETURN RECEIPT REQUESTED

President and/or CEO  
BP Corporation North America, Inc.  
28100 Torch Parkway  
Warrenville, IL 60555-1036

James J. Mulva, President and CEO  
Conoco Phillips  
600 No. Dairy Ashford Street  
Houston, TX 77079-1100

**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 (hereafter, "River Watch"), I am providing statutory notification to BP Corporation North America, Inc., (hereafter, "BP") [formerly British Petroleum Oil Co.] and to Conoco Phillips [formerly Tosco Corporation] of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (hereafter, "RCRA") in conjunction with their continuing operations at each of the Northern California gasoline service station sites as listed below.<sup>1</sup>

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

1) BP and Conoco Phillips's use and storage of petroleum products at the gasoline station sites as identified in this Notice has and continues to violate permits, standards,

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<sup>1</sup> River Watch takes the position that BP is legally responsible for the remediation of each of the six sites listed herein, and that Conoco Phillips is legally responsible for the remediation of the first five of this list of six.

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)];

2) BP and Conoco Phillips's operations at the gasoline station sites 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)].

**1. BP / Conoco Phillips Gasoline Service Station No. 11102  
100 MacArthur Blvd., Oakland, California**

A petroleum release was first discovered at this location in 1988, when the site was operated as a gasoline service station for Mobil Oil. Following the removal of a 550 gallon waste oil underground storage tank, soil and groundwater samples at the location of the tank reflected TPHd levels of 1,700,000 ppb and TOG<sup>2</sup> levels of 65,000,000 ppb. In 1989 three monitoring wells were installed at the site. Monitoring was commenced under the oversight of the Alameda County Health Care Services Agency (hereafter, "ACHCSA") and the California Regional Water Quality Control Board (hereafter, "RWQCB").

Mobile Oil conducted quarterly monitoring of these wells until BP purchased the property in mid-1992 and assumed formal responsibility for the clean-up of the site. Sometime in approximately December of 1994, this site was purchased from BP by the Tosco Corporation [now Conoco Phillips]. Despite subsequent regular monitoring and analyses, contaminant levels remained fairly high at this site. TPHg levels in 1997 were as high as 7,900 ppb; TPHd as high as 1,700 ppt; benzene as high as 12 ppb and MTBE as high as 15,000 ppb.

By January of 1999, the delineation of the contaminant plume had still not been accomplished. There were still only three monitoring stations at the site and none situated offsite – which means that the plume delineation cannot be achieved until more monitoring wells have been installed. Without the delineation of the underground plume, remediation efforts can have no effective guidance.

A sensitive receptor survey was accomplished in April of 2000. This survey revealed that Echo Glen Creek runs approximately 1,000 feet from the site to the northwest, which may be in the path of the contaminant plume. The survey also showed

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<sup>2</sup> Total oil and grease.

that there are storm and sanitation sewers within 50 feet of the site, as well as a water line main, a natural gas line main and buried electrical cables. In addition, according to a letter to BP from ACHCSA, there appears to be a stormwater culvert running along MacArthur Blvd. immediately adjacent to the downgradient boundary of the site. This culvert apparently discharges into Lake Merritt. However, by January of 1999, BP had not determined whether this culvert could be influencing the migration of the underground plume, or whether Lake Merritt's water quality was threatened by this contamination source.

As of the date of the last well monitoring analysis, the highest contaminant levels were as follows: TPHg of 45,000 ppb and MTBE of 32,000 ppb. There is no indication in the agency files or the online data that BP's engineering consultants are engaged in any methods of remediation of this site other than natural attenuation. River Watch takes the position that for this location as for many others, BP and Conoco Phillips must employ the best available technology to redress the contamination which still persists at this site.

**2. BP / Conoco Phillips Gasoline Service Station No. 11117  
7210 Bancroft Ave., Oakland, California**

BP owned this former Mobil Oil gasoline station approximately between 1989 and December of 1994, when it sold the property and its improvements to the current operator, Conoco Phillips. Conoco Phillips operates this station at the present time as a '76'-branded retail gasoline outlet.

BP has retained the responsibility for remediating this site and continues to do so at the present time. River Watch takes the position, however, that Conoco Phillips may also share liability for levels of contaminants at this site which have been found and monitored since December of 1994. This site includes three subsurface 12,000 gallon petroleum product tanks and one 10,000 diesel underground storage tank in addition to associated product lines and dispensers. These double-walled tanks replaced former underground storage tanks in this location, and were added in 1998 by Tosco [now Conoco Phillips] in compliance with 1998 California underground storage tank leak prevention requirements.

A petroleum release was first documented at this site during 1991 when a site assessment was performed in support of the property owner's plans to refinance an adjacent shopping center property - which includes the BP/Conoco Phillips site.

Under the oversight of the ACHSCA and the RWQCB, BP engaged an engineering firm to install monitoring wells and begin the systematic screening of soil and groundwater samples for petroleum hydrocarbons with the stated intention of remediating the site. Contaminant samples were finally tested on an annual and/or semi-annual basis commencing in January of 1992. At that time the highest levels found in the nine monitoring wells which had been previously installed were as follows: TPHg: 57,000 ug/l; TPHd: 50,000 ug/l; benzene: 2,400 ug/l; toluene: 1,000 ug/l; ethylbenzene: 1,100 ug/l; xylenes: 3,100 ug/l.

Little remediation work was conducted at this site over the next 5 years. In January of 1997, at least one of the site's monitoring wells reflected the following levels of soil and groundwater contamination: TPHg: 99,000 ug/l; benzene: 17,000 ug/l; toluene: 30,000 ug/l; ethylbenzene: 4,300 ug/l; xylenes: 22,700 ug/l; and MTBE: 79,000 ug/l. Groundwater levels had gradually risen by this time, and there was no clear indication as to the sources of these increased contamination levels.

In June of 1999, because of reports of consistently high levels of contamination data at this site, the ACHCSA directed that BP increase its well monitoring to quarterly at each of the 10 wells which had been installed by that time. In March of 2001, however, the ACHCSA noted that BP had not increased its well-monitoring as directed, and again ordered BP to comply with its earlier request.

One year earlier, in March and April of 2000, BP conducted a short-term groundwater extraction process to determine the feasibility of using this method to remediate this site. Over the course of this two month period, 11,000 gallons of take-up water were extracted from 3 wells during 8 site visits. However, following this effort concentration trends showed stable to only slightly decreasing contaminants levels, and MTBE slightly increased at one monitoring station.

By June of 2001, there was still little active remediation taking place at this location. A Hazardous Materials Specialist for the ACHCSA observed that BP had not delineated the underground plume. At that time the ACHCSA requested that BP provide a Corrective Action Plan for the site, including an assessment of impacts, a feasibility study, and an analysis of cleanup levels.

As of the last monitoring analysis (March 20, 2001) for which records were available at the ACHCSA, the highest levels found in the 10 monitoring wells at this site reflected the following contamination present at the site: TPHg: 140,000 ug/l; benzene:

15,900 ug/l; toluene: 24,800 ug/l; ethylbenzene: 3,700 ug/l; xylenes: 22,100 ug/l; and MTBE: 12,900 ug/l.

Records available at the RWQCB do not disclose estimates of how much longer the BP consultants expect to be engaged at this site; but, from all appearances BP seems to be content to naturally attenuate the pollution that has been released, or that is currently being released, from the underground storage tanks and/or the fuel dispenser system. Such process of natural attenuation could take another decade. A Potential Receptor Survey undertaken by BP in April of 2000 disclosed that a water main, a storm sewer and a sanitary sewer exist within 50 feet of the site, and that there are buried telephone and electrical cables within 50 feet of the site.

Because of the continuous danger to groundwater in this urban location, and because of the proximity of storm drains, water mains and buried cables – any of which could provide preferential pathways for the existing contaminants to spread far beyond its apparent present location – River Watch believes that BP and/or Conoco Phillips must be compelled to authorize more proactive intervention at this site.

### **3. BP / Conoco Phillips Gasoline Service Station No. 11126 1700 Powell St., Emeryville, California**

BP owned this former Mobil Oil gasoline station between 1989 and December of 1994, when it sold the property and its improvements to the Tosco Corporation [now Conoco Phillips]. BP has retained the responsibility for remediating this site, and continues to do so at the present time. River Watch takes the position, however, that Conoco Phillips may also share liability for levels of contaminants at this site which have been found and monitored since December of 1994. This site includes three subsurface 10,000 gallon petroleum product tanks in addition to associated product lines and dispensers.

In May of 1989, a release of petroleum hydrocarbons was initially discovered as the site's underground tanks were being removed and replaced. At that time oil contaminants in excess of 10,000 ppm (i.e. the equivalent of 10,000,000 ug/l) were found in adjacent soil on the site. Analytical data from 1992 revealed that TPHg levels were still as high as 12,000 ug/l; benzene as high as 3,900 ug/l; toluene as high as 1,300 ug/l; and xylenes as high as 2,300 ug/l. MTBE was not tested for at that time.

Under the oversight of the ACHCSA, BP engaged an engineering firm to install monitoring wells and begin the systematic screening of soil and groundwater samples for

petroleum hydrocarbons with the stated intention of remediating the site. In December of 1992, a sensitive receptor survey was performed which noted that there were no public or private water supply wells within 1,000 feet of this site, but did verify that a surface body of water (the San Francisco Bay) was within 1,000 feet of the contamination. The groundwater in this area flows to the west-southwest – towards the Bay.

By December of 1994, the extent and magnitude of the contamination had not been fully characterized. At that time the late 1994 levels of contaminants found at this site were as follows: TPHg as high as 16,000 ug/l; benzene as high as 2,000 ug/l; toluene as high as 140 ug/l; ethylbenzene as high as 170 ug/l; xylenes as high as 950 ug/l and MTBE as high as 2,417 ug/l.

Further quarterly analytical testing documented that by 1998 MTBE concentrations at the site were as high as 400,000 ug/l at MW-1, located southeast of the underground storage tanks. At this same time the MTBE concentrations sampled in an offsite well (MW-5) had increased by an order of magnitude as compared to results reported for the previous quarter. Accordingly, it would appear as though an additional release had occurred during this time frame.

In May of 2000, further analytical testing established that TPHg levels had reached 110,000 ug/l; benzene was as high as 700 ug/l; toluene was as high as 44 ug/l; ethylbenzene was as high as 140 ug/l; xylenes were as high as 250 ug/l and MTBE was as high as 320,000 ug/l.

As of the most recent analytical sampling in February of 2003, the presence of hydrocarbon contaminants remains remarkably high at this site despite BP's ongoing efforts at remediation. TPHg levels are still as high as 78,000 ug/l; benzene as high as 1,100 ug/l; and MTBE as high as 81,000 ug/l. Despite the fact that this site has been monitored for over 12 years for the effects of its petroleum discharges, historical levels of contaminants have not been reduced. The site has not been fully characterized as to its linear or vertical extent. The current environmental consulting firm is only engaged in monitoring and sampling the site's wells on a quarterly basis. There is no active remediation of the site, and BP and/or Conoco Phillips appear to be satisfied to attempt to restore the soil and groundwater to MCL standards by the unreasonably slow process of natural attenuation.

In a letter as recent as April 25, 2003, the ACHCSA raised concerns with BP that the "contaminant plume does not appear stable and continues to migrate offsite." This agency ordered BP to implement migration control and employ a "pump and treat"

process to reduce the risk of further groundwater contamination. Because of the danger to groundwater in this urban location, River Watch believes that BP and/or Conoco Phillips must authorize more proactive intervention at this site, so that remediation will not require another decade to accomplish.

#### **4. BP / Conoco Phillips Gasoline Service Station No. 11147 690 Ygnacio Valley Road, Walnut Creek, California**

According to information currently available to River Watch, British Petroleum Oil Co. [now BP Corporation North America, Inc.] was the owner and operator of the this service station in July of 1987, when an unauthorized underground storage tank release was discovered at this site during tank removal and replacement operations. BP had purchased the site from Mobil Oil around that same time. In 1994 BP sold this facility to Tosco [now Conoco Phillips] which is now operating the site as a "76"-branded service station. River Watch takes the position that Conoco Phillips may also share liability for levels of contaminants at this site which have been found and monitored since December of 1994. The site has three underground storage tanks and one underground used oil storage tank.

Gradually three monitoring wells were installed under the direction and oversight of the Contra Costa County Health Services Division ("CCCHSD") and the RWQCB. Regular quarterly well monitoring began in late 1992, and has continued up to the present time. Petroleum product was initially observed at thicknesses of up to 1.95 feet in MW-2 and MW-3 in this time frame. Following the initial levels, subsequent monitoring reflected fairly low levels of petroleum hydrocarbons in the 7 monitoring wells which had been installed at this site by mid-1993.

In 1997, however, contaminant levels sky-rocketed. Groundwater concentrations of TPHg were found as high as 120,000 ppb; toluene as high as 16,000 ppb; benzene was found as high as 7,000 ppb; ethylbenzene as high as 3,200 ppb, xylenes as high as 16,500 ppb, and MTBE as high as 25,000 ppb.

By July of 1999, the RWQCB staff person assigned to this contamination case noted that groundwater samples taken in May of 1999 showed TPHg levels of up to 2,700,000 ppb, 7,500 ppb of benzene and 4,400 ppb of MTBE. At that time the RWQCB demanded plume delineation and a proposed Remedial Action Plan for the mitigation of soil and groundwater pollution at the site.

By October of 2000, the RWQCB again asked BP and Tosco for plume delineation and again noted the high levels of contaminants which were showing up at the monitoring wells. The situation had not been remedied by January of 2002, when the RWQCB again demanded adequate plume delineation information in addition to isoconcentration maps of TPHg, benzene and MTBE at the site.

At the present time very little additional work has been done by BP and/or Conoco Phillips to remediate this site. The consulting engineering firm engaged by BP to decontaminate the site apparently has not conducted any active remediation operations. As of the last monitoring before February of 2003, TPHg levels ranged from 64,000 ppb to 100,000 ppb; benzene levels ranged from 1,900 ppb to 2,200 ppb and MTBE ranged from 670 ppb to 8,700 ppb. Without adequate delineation the RWQCB has little information on which to base its recommendations for site remediation. There is a surface body of water (Walnut Creek) within 700 feet from this site. River Watch remains concerned that unless BP and/or Conoco Phillips initiate best available technology to remediate this site, further damage to soil and groundwater supplies could result, eventually threatening nearby surface waters.

**5. BP / Conoco Phillips Gasoline Service Station No. 11148  
2350 San Ramon Valley Rd., San Ramon, California**

British Petroleum Oil Co. (now BP Corporation North America, Inc. ) was the owner and operator of this service station on or about October 2 of 1992, when an unauthorized underground storage tank release was discovered. At that time groundwater concentrations of TPHg were found as high as 190,000 ppb; TPHd as high as 5,300 ppb; toluene as high as 35,000 ppb; benzene was found as high as 11,000 ppb; ethylbenzene as high as 5,400 ppb and xylenes as high as 32,000 ppb in the onsite vicinity of the discovered leakages. In approximately December of 1994, this site was purchased by the Tosco Marketing Company [now Conoco Phillips]. River Watch takes the position that as the purchaser of a gasoline service station which continues to have hydrocarbon contaminants that affect the soil and groundwater under this site, Conoco Phillips shares liability with BP under the provisions of RCRA for remediation expenses and other costs associated with the removal of the current level of contaminants.

Under the oversight of the CCCHSD and the RWQCB, BP engaged an engineering firm to install monitoring wells and begin the systematic screening of soil and groundwater samples for petroleum hydrocarbons with the stated intention of remediating the site. Contaminant samples were finally tested on a quarterly basis commencing in April of 1996, three and one-half years after the initial release was

discovered. During that time apparently little remediation work was accomplished at the site. By December of 1997, TPHg levels were found as high as 84,000 ppb; benzene as high as 550 ppb; toluene as high as 8,100 ppb; ethylbenzene as high as 2,800 ppb; xylenes as high as 22,200 ppb and MTBE at approximately 1,000 ppb in one of the monitoring wells.

In January of 2000, the RWQCB advised BP that historically elevated contaminant concentrations at this site warranted further remediation work including better site characterization. In March of 2000, a Potential Receptor Survey was completed which noted the presence of a storm sewer, a water line main, a natural gas line, and buried telephone and electric cables within 50 feet of the site, and a surface water (San Ramon Creek) within 900 feet of the site.

As of the last sampling report in RWQCB files, the frequency of contaminant concentration analyses had been reduced to semi-annual. As of September of 2002, TPHg levels were found to be as high as 120,000 ppb; benzene as high as 120 ppb; toluene as high as 330 ppb; ethylbenzene as high as 3,700 ppb; xylenes as high as 17,000 ppb and MIBE as high as 1,200 ppb – all far above the MCL limits for California.

In addition to contaminant levels which remain significantly high at this site, there is no indication in available RWQCB files that an adequate characterization of the lateral and vertical extent of the pollution has been determined. This 0.44 acre site has only 5 onsite wells and only 2 monitoring wells which are 50 to 70 feet offsite. Of these, only 1 well is positioned in the downgradient direction – which means that delineation of the site remains incomplete. Without adequate delineation the RWQCB has little information on which to base its recommendations for site remediation. Once the linear area and depth of pollution is determined, decisions might be made about the processes available to rid the soil and groundwater of the contaminants.

Records available at the RWQCB do not disclose estimates of how much longer BP consultants expect to be engaged at this site, but from all appearances BP and/or Conoco Phillips seem to be content to naturally attenuate the pollution that has been released, or that is currently being released, from the underground storage tanks and/or the fuel dispenser system. Such process of natural attenuation could take another decade. Because of the continuous danger to groundwater in this urban location, and because of the proximity of storm drains, water mains, natural gas lines and buried cables – any of which could provide preferential pathways for the existing contaminants to spread – River Watch believes that BP and/or Conoco Phillips must be compelled to authorize more proactive intervention at this site.

**6. BP Gasoline Service Station No. 11149  
12319 San Pablo Avenue, Richmond, California**

BP acquired this former Mobil Oil gasoline station in 1989, following an exchange of properties with the Mobil Oil Corporation. A petroleum release occurred on this property while it was still owned by Mobil Oil. Mobil's monitoring of the petroleum plume commenced as early as September of 1987, and BP assumed the responsibility for remediating this site following its acquisition and continues to do so at the present time. BP vacated the site in 1994, after removing the underground storage tank system and other improvements. The site is currently being used as a parking lot for an adjacent restaurant business.

Under the oversight of the CCCHSD and the RWQCB, BP engaged an engineering firm to install monitoring wells and begin the systematic screening of soil and groundwater samples for petroleum hydrocarbons with the stated intention of remediating the site. The residuals of a significant petroleum discharge were evident in at least one of the monitoring wells at this site. In September of 1989, for example, MW-11 was found to have over 3 feet of petroleum product thickness in the well casing; in April of 1992, this well had 3.5 feet of petroleum product in the casing; and by April of 1993, there was still slightly over 2 feet of product in the casing at this monitoring location. Contaminant samples were finally tested on a regular semi-annual or quarterly basis commencing in approximately April of 1991. At that time the highest recorded levels found in the monitoring wells which had been previously installed were as follows: TPHg: 9,830 ug/l; benzene: 534 ug/l; toluene: 985 ug/l; ethylbenzene: 288 ug/l; xylenes: 1,460 ug/l. (The free product samples found in 1989 through 1993 were obviously not subjected to this chemical constituent analysis. Free product results in findings of grams per liter, as opposed to micrograms per liter.)

Although the site had been abandoned as an active gasoline outlet in 1994, subsequent monitoring well data at the site did not reflect that effective bioremediation was occurring. By means of monitoring analyses done in December of 1997 at this site, highest recorded levels found in the monitoring wells were as follows: TPHg: 500,000 ug/l; benzene: 36,000 ug/l; toluene: 70,000 ug/l; ethylbenzene: 12,000 ug/l; xylenes: 65,000 ug/l and MTBE: 10,000 ug/l. In MW-7 free product thickness was approximately 0.40 of one foot at this same time.

In October of 2001, BP advised the RWQCB that "liquid petroleum hydrocarbon accumulations have been abated from nearly all of the wells as a result of the remediation performed at this site," and that the "dissolved hydrocarbon concentrations should remain

stable or show a decreasing trend.” The available agency records, however, have not documented either an active or effective effort to remediate the site, and current monitoring data reflect that this BP site continues to present serious risks to area aquifers and groundwater. As of the last recorded well monitoring analysis done in January of 2003, the following highest levels of contaminants were found (in MW-11): TPHg: 150,000 ug/l; benzene: 30,000 ug/l; toluene: 23,000 ug/l; ethylbenzene: 2,600 ug/l; xylenes: 15,000 ug/l and MTBE: 500 ug/l.

As of March of 2003, there were 17 monitoring wells installed at this site. Due to a property owner's plans to construct a restaurant on the site, 9 of these wells are scheduled to be abandoned. The engineering consulting firm contends that with the addition of 2 new wells, plume monitoring would be allowed to continue without any loss of the ability to gauge the downgradient spread.

At the present time, there seems little data in the agency records which reflect an adequate plume delineation at this site. There is clear evidence of free product still in monitoring wells MW-7 and MW-9, and a sheen of petroleum in MW-1 and MW-3. Cumulative free product removal in the first quarter of 2003 was limited to 1.85 gallons of petroleum. The consulting firm recommends nothing more than “free product bailing and monitored natural attenuation as the Corrective Action Plan for this site. Meanwhile the downgradient direction of the plume presumably continues to move to the southwest.

Because of the continuous danger to groundwater in this urban location, and because of the proximity of storm drains, water mains and buried cables – any of which could provide preferential pathways for the existing contaminants to spread far beyond its apparent present location – River Watch believes that for this site as well, BP must be compelled to authorize more proactive intervention to achieve full site remediation within a reasonable amount of time. This site has been problematic for the presence of petroleum hydrocarbons for over 15 years and at the present rate of attenuation and remediation, it could easily take another 15 years before this site is returned to low-risk levels of contamination.

### Regulatory Standards

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 which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels

attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

### **Violations**

Between March 19, 1999 and March 19, 2004, at the sites described above, BP and/or Conoco Phillips have caused or permitted, cause or permit, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and create, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which threatens to continue unless the discharge and threatened discharge is permanently abated.

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

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

Between March 19, 1999 and March 19, 2004, BP's use, and more recently, Conoco Phillips's use and storage of petroleum at these sites has allowed significant quantities of hazardous petroleum constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California'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, with respect to each of these sites, BP and Conoco Phillips 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 release, 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)]**

The RWQCB has adopted a Water Quality Control Plan ("Basin Plan") which designates all surface and groundwater within the North Coast region 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, 42 ppb for toluene and 5 ppb for MTBE.

Between March 19, 1999 and March 19, 2004, BP and its successor, Conoco Phillips, used and stored, and continue to use and store, petroleum products at the above-referenced sites 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. At each of these sites, 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 carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. 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 BP and/or Conoco Phillips use, store and sell, or have used, stored and sold petroleum products at the above-referenced sites which are known to contain hazardous substances, and they intend that such products will be sold to and used by the public. BP and/or Conoco Phillips have known of the contamination at these sites since at least 1987, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the sites, and

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to continually contaminate and re-contaminate actual and potential sources of drinking water.

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 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465; its telephone number is (707) 874-2579.

The violations of BP and Conoco Phillips 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 is specifically impaired by these violations of RCRA.

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

Jack Silver, Esq.  
Law Offices of Jack Silver  
Post Office Box 5469  
Santa Rosa, CA 95402-5469  
Tel. (707) 528-8175  
Fax (707) 542-7139

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

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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 the grounds for filing suit under the statutory and regulatory provisions of RCRA as to the sites referenced above. At the close of the notice periods or shortly thereafter, River Watch intends to file a suit against BP and Conoco Phillips under RCRA for each of the violations as alleged herein, with respect to the existing conditions at the sites referenced above.

During the notice period, River Watch is willing to discuss effective remedies for the violations noted in this Notice. If BP and/or Conoco Phillips wish to pursue such discussions in the absence of litigation, it is suggest that those in discussions be initiated immediately so that they may be completed before the end of the notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

  
Jack Silver, Esq.

cc:

Michael O. Leavitt, Administrator  
U.S. Environmental Protection Agency  
401 M Street, N.W.  
Washington, D.C. 20460

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

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March 19, 2004  
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Celeste Cantù, 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 "T" Street  
Sacramento, CA 95814

BP Corporation North America, Inc.  
c/o Prentice Hall Corporation System, Inc.  
Registered Agent  
2730 Gateway Oaks Dr. Suite 100  
Sacramento, CA 95833-3505

Conoco Phillips, Inc.  
c/o Corporation Service Co.  
Lawyers Incorporation Service  
Registered Agent  
2730 Gateway Oaks Dr., Suite 100  
Sacramento, CA 95833-3503

Station Owner  
Service Station No. 11102  
100 MacArthur Blvd.  
Oakland, CA 94610-1321

Station Owner  
Service Station No. 11117  
7210 Bancroft Ave.  
Oakland, CA 94605-2410

Station Owner  
Service Station No. 11126  
1700 Powell St.  
Emeryville, CA 94608-2417

BP Corporation North America, Inc.  
Conoco Phillips  
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Station Owner  
Service Station No. 11147  
690 Ygnacio Valley Road  
Walnut Creek, CA 94596-3820

Station Owner  
Service Station No. 11148  
2350 San Ramon Valley Road  
San Ramon, CA 94583-1608

**EXHIBIT B**

1 Jack Silver, Esq. SBN #160575  
2 Law Office of Jack Silver  
3 P.O. Box 5469  
4 Santa Rosa, California 95402-5469  
5 Telephone: (707) 528-8175  
6 Facsimile: (707) 542-7139

7 Attorneys for Plaintiff  
8 NORTHERN CALIFORNIA RIVER WATCH

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

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

14 Plaintiff,

15 vs.

16 ATLANTIC RICHFIELD COMPANY, and  
17 DOES 1-10, Inclusive,

18 Defendants.

Case No. C03-5908 JSW

**STIPULATED DISMISSAL WITH  
PREJUDICE**

**[FRCP 41(a)(1)]**

19  
20 WHEREAS, on June 28, 2005, the parties in the above-captioned case participated in  
21 a court-ordered private mediation at which the parties settled their disputes and signed a settlement  
22 memorandum.

23 WHEREAS, the parties have executed a final settlement agreement resolving,  
24 releasing and discharging any and all claims that were asserted or could have been asserted in this  
25 lawsuit and/or with respect to the sites involved in this lawsuit.

26 THEREFORE, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, IT  
27 IS HEREBY STIPULATED by and between plaintiff NORTHERN CALIFORNIA RIVER  
28 WATCH and defendant ATLANTIC RICHFIELD COMPANY that this action — Civil Action No.

1 C03-5908 JSW — and all claims in this action asserted by plaintiff NORTHERN CALIFORNIA  
2 RIVER WATCH against defendant ATLANTIC RICHFIELD COMPANY be and hereby are  
3 DISMISSED IN THEIR ENTIRETY WITH PREJUDICE, with each side to bear its own costs of  
4 suit and attorneys' fees.

5  
6 DATED: August 11, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

7  
8 By: /s/ Matthew Covington  
9 Matthew S. Covington  
10 Attorneys for Defendant ATLANTIC  
RICHFIELD COMPANY

11 In addition to stipulating to the above, I, Jack Silver, attest that concurrence in the  
12 filing of this Stipulated Dismissal With Prejudice has been obtained from the other signatory to this  
13 document.

14 DATED: August 11, 2005

NORTHERN CALIFORNIA ENVIRONMENTAL  
DEFENSE CENTER

15  
16  
17 By: /s/ Jack Silver  
18 Jack Silver, Esq.  
19 Attorneys for Plaintiff NORTHERN  
20 CALIFORNIA RIVER WATCH  
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