

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



**CERTIFIED MAIL --
RETURN RECEIPT REQUESTED**

August 6, 2007

Union Pacific Railroad Company
1400 Douglas St.
Omaha, NE 68179

West Coast Metals, Inc.
P. O. Box 791
Windsor, CA 95492

Daniel Guerra, President
Aeris, Inc.
P.O. Box 2328
Menlo Park, CA 94026

RE: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Managing Agents and/or Owners:

Clean Water Act § 505(b), 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action for violations under Clean Water Act § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of intent to sue to the alleged violator, the Environmental Protection Agency, and the State in which the violations occur.

Northern California River Watch (hereafter, "River Watch") hereby places Union Pacific Railroad, West Coast Metals, Inc. and Aeris, Inc. (collectively hereafter identified as "Polluters") on notice that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against Polluters for their continuing violations of "an effluent standard or limitation", permit

condition or requirement and/or “an order issued by the Administrator or a State with respect to such standard or limitation” under Clean Water Act § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Polluters’ illegally discharging from the site described below, without an National Pollutant Discharge Elimination System (“NPDES”) permit.

The Clean Water Act regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the NPDES, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit, all discharges from Polluters’ site identified below to waters of the United States, are illegal.

BACKGROUND

Union Pacific Railroad Company currently owns real property located at 99 Frances Street, Santa Rosa, California, Sonoma County Assessor’s Parcel Number 37-012-1, hereinafter the “Site”. Union Pacific Railroad Company is the successor in interest to Southern Pacific Transportation Company, formerly known as Northwestern Pacific Railroad Company.

In 1967 Northwestern Pacific Railroad Company leased the Site to West Coast Welders Supply which operated the Site as a scrap metal facility until June of 1979 at which time the lease was terminated. Site improvements during that time included a 60-foot truck scale, a disassembly building and material storage areas. Operations at the Site included disassembly of automobiles, steam cleaning of trucks and automobile parts, storage of metals, batteries and transformers, and miscellaneous refuse. These operations were located for the most part on the northern portion of the Site as shown by aerial photographs from the City of Santa Rosa Department of Public Works for the period 1970 through 1977. West Coast Welders Supply merged with Wine Country Gases, which was subsequently acquired by Aeris. Aeris is the current successor in interest to West Coast Welders Supply.

In June, 1979 Southern Pacific Transportation Company leased the Site to West Coast Metals, Inc. which used the Site for metal salvage recycling operations, including purchase of metal waste material from industrial businesses and sorting, condensing, and re-sale of metal scrap. A hydraulic press was used to flatten automobiles. Aerial photographs of the Site, taken during the time of West Coast Metals, Inc.’s lease, show the former disassembly building, the tractor trailer beds for storage of metals, large cylindrical storage containers, and numerous stockpiles of miscellaneous parts, tanks, cars and other debris scattered over

the entire Site. In 1986, the lease was terminated and West Coast Metals, Inc. abandoned its operations on the Site.

On July 11, 1988 the Regional Water Quality Control Board ("RWQCB") issued Cleanup and Abatement Order ("CAO") No. 88-101 to Southern Pacific Railroad, West Coast Welders Supply, and West Coast Metals, Inc. CAO No. 92-87 was issued to these same parties on June 17, 1992 replacing CAO No. 88-101. CAO No. 94-43 was issued to these parties on February 10, 1993 replacing CAO No. 92-87.

The Site is located adjacent to property at 1143 Briggs Avenue which is subject to separate CAOs issued from the RWQCB. CAO No. 92-17 was issued on January 17, 1992 to Richard L. Bradley, West Coast Scrap Producers, Donald S. Ethel J. Kesler, Irving Kesler and William Whitman, and West Coast Metals, Inc. The contamination originating on the 1143 Briggs Avenue site appears to be co-mingled with the contamination originating on the Site which is the subject of this NOTICE letter.

A total of 39 monitoring wells, 14 groundwater extraction wells, and 11 piezometers have been installed on and off the Site. Out of the 39 monitoring well, 37 remain in place. Groundwater monitoring activities have been conducted under Revised Monitoring and Reporting Order No. 94-43, issued on July 3, 2001. Results of on-going monitoring and investigation of the Site confirmed the presence of halogenated organic compounds in groundwater extending approximately one-half mile to the west of the Site. Chemicals found in groundwater in the area investigated include trichloroethylene ("TCE") at up to 23,000 parts per billion (ppb), 1,1,1-trichloroethane at up to 5,800 ppb, freon 113 at up to 19,000 ppb, benzene at up to 18 ppb and other related volatile organic compounds ("VOCs"). Other compounds previously detected in groundwater include heavy metals and fuel constituents.

Extensive domestic well sampling was conducted during 1991 and 2002, primarily in the area west of the Site. In 1991 laboratory results revealed VOCs contamination in groundwater in 33 residential wells, including TCE at up to 150 ppb. In 2002 laboratory results revealed VOCs contamination in groundwater in domestic wells, including TCE at up to 36 ppb. The Site is located within 1,000 feet of a large, City of Santa Rosa municipal well, which was found to be contaminated with TCE, 1,1,1-trichloroethane, freon 113, and 1,1-dichloroethene.

The Site is in the vicinity of Santa Rosa Creek, a tributary of the Russian River. Pollutants discharged from the Site migrate through ground water tributaries into Santa Rosa Creek and the Russian River, both waters of the United States.

On February 7, 1994, Polluters began operating an on-site groundwater extraction and treatment system as an interim remedial measure. On November 2, 1994 they added an off-site extraction and treatment system. Together, the treatment system includes 9 on-site

extraction wells and 4 off-site extraction wells. The interim remedial system involves extraction and treatment of contaminated groundwater from the upper 3 water-bearing zones. Groundwater is treated in an air stripper to remove VOCs. River Watch contends that further remedial actions are necessary for effective cleanup of all impacted aquifers.

The April 15, 2002 *Draft Pilot Study Work Plan* and March 24, 2005 *Addendum to Pilot Study Work Plan* were submitted by Polluters to the RWQCB. Both documents propose the scope of work and schedule for conducting an in-situ bioremediation pilot study for remediation of chlorinated VOCs at the Site. Data generated during the pilot study will be evaluated to determine an appropriate, final remedial action to achieve water quality objectives within a reasonable time frame.

NOTICE

The Clean Water Act requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The specific standard, limitation, or order alleged to have been violated.

To comply with this requirement River Watch has noticed Polluters of the fact they have no NPDES permit allowing them to discharge pollutants to waters of the United States as required by Clean Water Act § 301(a), 33 U.S.C. § 1311(a) and Clean Water Act §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b).

2. The activity alleged to constitute a violation.

To comply with this requirement River Watch has set forth above narratives describing with particularity the activities leading to violations. The major activity is the discharging of pollutants from Polluters' Site to surface waters. These activities are detailed in this NOTICE as well as in the records of the RWQCB, local fire department and the City of Santa Rosa.

3. The discharger responsible for the alleged violation.

The discharger responsible for the alleged violations are the entities collectively referred to as "Polluters" throughout this NOTICE.

4. The location of the alleged violation.

The location or locations of the various violations are identified in the BACKGROUND section of this NOTICE and in records either created or maintained by or for Polluters which relate to Polluters' activities alleged herein.

5. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.

As described in the BACKGROUND section of this NOTICE, this Site has been in continuous violation from 1970 to the present. However, this NOTICE covers only the statutory period of limitations to date running from July 31, 2002 through July 31, 2007. River Watch will from time to time update and supplement this NOTICE to include all violations which occur after the date of this NOTICE. The majority of Polluters' violations set forth herein, such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the Clean Water Act, failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation. River Watch believe all violations set forth in this NOTICE are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the RWQCB, City of Santa Rosa, County Health and local police and fire departments.

6. The full name, address, and telephone number of the person giving notice.

The entity giving this Notice is Northern California River Watch, 6741 Sebastopol Ave., Suite 140, Sebastopol, CA 95472, telephone number 707-824-4372.

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.

VIOLATIONS

From July 31, 2002 through July 31, 2007, Polluters have violated the Clean Water Act, the Basin Plan and the Code of Federal Regulation for discharging pollutants into waters of the United States without an NPDES permit. Polluters have also caused waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State of California and the United States, and creates a condition of pollution or nuisance. Continuing discharges as identified herein are in violation of the Clean Water Act, the Porter-Cologne Water Quality Control Act and provisions of the Water Quality Control Plan for the North Coast Region ("Basin Plan").

Beneficial uses of areal groundwater include domestic, irrigation, and industrial supply. Beneficial uses of Santa Rosa Creek, a tributary to the Laguna de Santa Rosa and the Russian River are as follows:

- a. municipal and domestic supply
- b. agricultural supply
- c. industrial process supply
- d. groundwater recharge
- e. navigation
- f. hydropower generation
- g. water contact recreation
- h. non-contact water recreation
- i. commercial and sport fishing
- j. warm freshwater habitat
- k. cold freshwater habitat
- l. wildlife habitat
- m. migration of aquatic organisms
- n. spawning, reproduction, and/or early development.

Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. 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 must evaluate the feasibility of, at a minimum: (a) cleanup to background levels, (b) cleanup to levels attainable through application of best practicable technology, and (c) cleanup to protective water quality criteria levels.

Discharge prohibitions contained in the Basin Plan apply to this Site. State Water Resources Control Board Resolution 68-16 (Statement of Policy With Respect To Maintaining High Quality of Waters in California) applies to this Site. State Water Resources Control Board Resolution 92-49 also applies to this Site and sets forth Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code.

Clean Water Act §301(a), 33 U.S.C. §1311(a), the Environmental Protection Agency and the State of California have formally concluded that the violations by Polluters as set forth in this NOTICE are prohibited by law. Beneficial uses of Santa Rosa Creek, the Russian River and its tributaries in the vicinity of the Site are being affected in a prohibited manner by these violations. Pursuant to Clean Water Act § 304, 33 U.S.C. §1311, the Environmental Protection Agency and the State have identified Polluters' Site as a point source, the discharges from which contribute to violations of applicable water quality standards.

These enumerated violations are based upon review of the RWQCB files for Polluters as well as studies conducted by Polluters in compliance with orders from regulatory agencies. In addition to all of the above violations, this NOTICE covers any and all violations evidenced by Polluters' records and monitoring data which Polluters have submitted (or failed

to submit) to the RWQCB or other agencies. This NOTICE also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the RWQCB or other agencies.

Pursuant to CWA § 309(d), 33 U.S.C. § 1319(d), each of the above described violations of the Clean Water Act subjects the violator to a penalty of up to \$32,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, River Watch will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Clean Water Act §§ 505(a) and 505(d), 33 U.S.C. §§ 1365(a) and 1365(d), and such other relief as is permitted by law. Lastly, Clean Water Act § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

The violations of Polluters as set forth in this NOTICE affect the health and enjoyment of members of River Watch who reside and recreate in the Russian River watershed. The members of River Watch use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Polluters' violations of the Clean Water Act as set forth herein.

CONTACT INFORMATION

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
Tel. 707-528-8175 / Fax. 707-528-8675

CONCLUSION

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit against Polluters for violations at the Site under Clean Water Act § 505(a)

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this NOTICE. However, if Polluters wish to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the 60-day notice

period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Sincerely,



Jack Silver

cc:

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

Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105-3901

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

W. H. Pohle, Agent for Service of Process
Union Pacific Railroad Company
10031 Foothills Blvd. #200
Roseville, CA 95747

Jack Gardner, Agent for Service of Process
West Coast Metals, Inc.
10439 Old Redwood Highway
Windsor, CA 95492