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June 28, 2010

Via Registered Mail - Return Receipt Requested

Deputy Director of Public Works
Director Planning and Community Development Dept.
Paul Cayler, City Manager
City of Willits
111 East Commercial Street
Willits, CA 95490

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

Dear Agency Heads:

NOTICE

On behalf of Northern California River Watch (“River Watch”), I am providing statutory notification to the City of Willits of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. § 6901 *et seq.*, in conjunction with continuing operations at the City of Willits’ corporate yard located at 380 East Commercial Street, Willits, California (“Site”).

The RCRA requires that 60 days prior to the initiation of an action for violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, a private party must give notice of the violation to the alleged violator, the Administrator of the Environmental Protection Agency and the state in which the violation is alleged to have occurred. If the alleged violator is a state or local agency, service of notice shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the head of that agency. However, such an action may be brought immediately after such notification when a violation of Subtitle C of the RCRA is alleged (subchapter III, 42 U.S.C. § 6921, *et seq.*)

The RCRA also requires that a private party provide 90 days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the state in which the violation is alleged to have occurred before initiating an action which alleges violations resulting in imminent and substantial endangerment to human health or the environment. However, such an action may be brought immediately after such notification when a violation of Subtitle C of RCRA is alleged (subchapter III, 42 U.S.C. § 6921 *et seq.*)

Subchapter C of the RCRA requires hazardous waste to be tracked from the time of its generation to the time of its disposal, and further requires that such waste not be disposed of in a manner which may create a danger to human health or to the environment. As discussed below, the City of Willits operates a non-permitted, hazardous waste treatment, storage and disposal site. The City of Willits has either failed to properly label, track and/or report the type, quantity or disposition of waste from the Site, or has failed to use a manifest system to ensure the waste generated at the Site is properly handled, stored, treated or disposed of.

River Watch alleges the City of Willits is disposing wastes off-site without compliance with either the various requirements under the RCRA, or with the State of California's hazardous waste requirements authorized under the RCRA; and that the City of Willits' mishandling of wastes in violation of Subchapter C of the RCRA has created and is creating an imminent and substantial endangerment to human health or the environment.

River Watch alleges violations of Subchapter C with regard to both a violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, as well as for an imminent and substantial endangerment to human health or the environment.

On behalf of its members, River Watch hereby provides statutory notification to the City of Willits of continuing and ongoing violations of the RCRA. River Watch hereby notifies the City of Willits that at the expiration of the appropriate notice periods under the RCRA, River Watch intends to commence a civil action against the City of Willits on the following grounds:

1. The City of Willits' use and storage of petroleum products at the Site identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding storage of petroleum in underground storage tanks ("USTs") [42 U.S.C. § 6972(a)(1)(A)];
2. The City of Willits' operations at the Site 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)];

3. The City of Willits' past and current operations at the Site identified in this Notice violate the provisions of subchapter III of the RCRA, specifically 42 U.S.C. § 6924, which governs the mishandling of hazardous wastes. River Watch contends the City of Willits has inadequately maintained records with respect to the manner in which its hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning its wastes; inadequately provided storage facilities for its wastes; and in the past has not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which has presented a substantial endangerment to human health and to the environment.

Under the RCRA, notice to a violator regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under RCRA shall include sufficient information to permit the recipient of the notice to identify the permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation (or reasonable range), and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

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

Enacted in 1976, the RCRA is a federal law of the United States contained in 42 U.S.C. §§ 6901-6992k. Its goals are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes.

The Environmental Protection Agency's ("EPA") waste management regulations are codified at 40 C.F.R. §§ 239-282. Regulations regarding management of hazardous waste begin at 40 C.F.R. § 260. Pursuant to the RCRA, the State of California has enacted laws and promulgated regulations at least as stringent as the federal regulations.

River Watch alleges the use and storage of wastes at the Site identified in this Notice by the City of Willits, and the disposal of those wastes as described in this Notice, has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding hazardous waste. [42 U.S.C. § 6972(a)(1)(A)].

River Watch further alleges that operations at the Site identified in this Notice by the City of Willits have caused or threatens to cause contamination of soil, groundwater, surface waters and residential areas, which contamination presents an imminent and substantial endangerment to human health and the environment. The City of Willits owns or operates

discreet conveyances, preferential pathways or wells which have contributed to the transportation, treatment, storage, or disposal of the wastes at the identified Site. [42 U.S.C. § 6972(a)(1)(B)].

2. The Activity Alleged to Constitute a Violation

Narratives are set forth below describing with particularity the activities leading to the violations alleged in this Notice. In summary, the RCRA requires that the environment and public be protected from hazardous wastes such as those generated by the City of Willits. Pollutants as described herein and found at the Site identified in this Notice constitute solid and hazardous waste under the RCRA, and are required to be managed so as to not cause endangerment to the public or the environment. The RCRA specifically protects groundwater.

The liability of the City of Willits stems from its ownership of the identified Site and its activities conducted on the Site which violate the RCRA and have contributed to the past or present handling, storage, treatment, transportation, or disposal of a hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also alleges the City of Willits to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA.

River Watch alleges the City of Willits is guilty of open dumping as that term is used in the RCRA, by discharging pollutants to the open ground, thereby allowing these pollutants to discharge to both groundwater and surface waters. The Site identified in this Notice does not qualify as a landfill under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of hazardous waste. Also, the City of Willits has no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Site.

The liability of the City of Willits also stems from its ownership or operation of discrete conveyances, preferential pathways or wells which have caused pollutants to be discharged to groundwater and surface waters via the City of Willits' conduits such as pipes, sewer lines, storm drains, utilities and the like, thereby facilitating pollutant migration and discharge to waters of the State of California and waters of the United States, and contributing to the past or present handling, storage, treatment, transportation, or disposal of a hazardous waste which may present an imminent and substantial endangerment to health or the environment.

The City of Willits' past and current operations at the Site identified in this Notice violate the provisions of the RCRA, 42 U.S.C. § 6924, which governs the mishandling of hazardous wastes. River Watch contends the City of Willits has inadequately maintained records of the manner in which its hazardous wastes have been treated, stored and/or

disposed of; inadequately monitored, reported and/or complied with existing regulations concerning its wastes; inadequately provided storage facilities for its wastes; and in the past has not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which presents a substantial endangerment to human health and to the environment.

3. The discharger responsible for the alleged violation.

The discharger responsible for the violations alleged in this Notice is the City of Willits.

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

The RCRA is a strict liability statute with a 5 year statute of limitations; therefore, although violations of the RCRA by the City of Willits have occurred for more than 5 years, the range of dates covered by this Notice is July 1, 2005 through the date of this Notice. River Watch will from time to time update and supplement this Notice to include all violations by the City of Willits which occur after the date of this Notice. The majority of the violations identified in this Notice such as threatening to and discharging pollutants to groundwater and surface waters; failure to obtain RCRA-authorized permits; failure to implement the requirements of RCRA; failure to properly label, track or report the type, quantity or disposition of waste; failure to use a manifest system to ensure waste generated is properly handled, stored, disposed of or treated and, failure to meet water quality objectives, are continuous. Therefore each day is a violation.

River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of the other violations are evidenced in the City of Willits own records (or lack thereof) or files and records of other regulatory agencies including the Regional Water Quality Control Board, GeoTracker, Mendocino County Health and local police and fire departments.

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

The entity giving notice is Northern California River Watch, identified throughout this Notice as “River Watch”. River Watch is a non-profit corporation organized under the laws of the State of California, located at 500 North Main Street, Suite 110, Sebastopol, CA, 95472 - telephone (707) 824-4372. River Watch is dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

The violations of the City of Willits as set forth in this Notice affect the economic stability, physical health and aesthetic enjoyment of members of River Watch who reside and

recreate in the affected watershed areas. The members of River Watch use the 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 the violations of the RCRA by the City of Willits as alleged in this Notice.

BACKGROUND HISTORY

The Site - the City of Willits Corporation Yard - is located at 380 East Commercial Street in Willits, California, north of East Commercial Street at the east side of the City. The Site continues to be used actively by the City of Willits. The Site is at an approximate elevation of 1,364 feet above mean sea level. The majority of the Site is paved with asphalt and gently slopes westward towards Broaddus Creek approximately 100 feet to the west, and towards storm drains.

The Site is located within Willits Valley. The basin is drained by the Eel River which flows from southeast to the northwest. Willits Valley is bisected by several small creeks including Baechtel, Broaddus, Davis, Haehl, and Willits Creeks, which eventually empty into the Eel River. Subsurface investigations demonstrate groundwater has been found to flow north to northwest in the direction of Broaddus and Baechtel Creeks. First encountered groundwater levels at the project site have been observed to range from ten to twelve feet below ground-surface with static groundwater levels ranging from approximately three to seven feet below ground-surface.

In August 1999, a 500-gallon UST was removed from the eastern side of the southeast portion of the Site, and was reported to have contained waste oil. A soil sample collected from the tank pit after removal of the UST contained concentrations of oil and grease at 480 mg/kg. This Site also contained a former gasoline UST located 175 feet northwest of the former waste oil UST.

In July 2007, EBA supervised Clear Heart Drilling of Santa Rosa, California in the drilling of three soil borings in the vicinity of the waste oil UST. These borings were also used to collect groundwater. Soil samples collected during the boring indicated detections of bis(2-ethylhexyl)phthalate (DEHP), a semi-volatile organic compound, found in levels above the State's Maximum Contaminant Levels (MCLs). The groundwater samples collected indicate TPH-mo and DEHP above MCLs.

Third quarter 2009 test results still showed contamination of soil and groundwater to be high and an immediate and substantial threat to health and the environment: MTBE 110 µg/l; TPH-g 6,340 µg/l; TPH-d 1,710 µg/l; BTEX 692.8 µg/l; and, TBA 229 µg/l – all exceeding the MCL and Water Quality Objectives (WQOs) for these constituents by magnitudes. (The MCL for MTBE is only 5 µg/l.)

River Watch seeks engineering assurances from the City of Willits that the underlying aquifers are not at risk; and, that residual contamination at the Site is not migrating to outlying groundwater and potentially to surface waters. Proactive remediation using “best available technology” must be implemented. Some efforts to estimate the residual plume mass and the amount of time necessary to remediate the Site must be accomplished in keeping with standard cleanup protocols in the industry.

Groundwater in the vicinity of the Site has been designated as having a beneficial use for municipal, industrial, and agricultural applications, according to the Regional Water Quality Control Board’s Water Quality Control Plan for the North Coast Region.

The Site remains a threat to the human population and the local area environment. No estimates of the residual contaminant plume mass have been found, and no estimate of the length of time to remediate the Site to below MCLs or WQOs has been made. River Watch believes the City of Willits must work much more proactively to remediate the soil and groundwater beneath and around the Site by employing best available technology as required by the Water Quality Control Plan.

REGULATORY STANDARDS

Enacted in 1976, the RCRA is a federal law of the United States, the goals of which are protection of the public and the environment from harm caused by waste storage and disposal, and to mandate the proper remediation of soil and groundwater which has been contaminated by hazardous waste and hazardous products, including petroleum hydrocarbons and gasoline formula constituents. The RCRA is a strict liability statute with a statute of limitations of 5 years. Pursuant to the RCRA, California has enacted laws and regulations which must be observed in conjunction with provisions of the RCRA.

California’s WQOs exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist. The most stringent WQOs 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.

The Regional Water Quality Control Board has adopted a Water Quality Control Plan or Basin Plan which designates all surface and groundwater within the North Coast Region as capable of supporting domestic water supply. The Regional Board has adopted MCLs and/or WQOs for petroleum constituents in surface and groundwater within the region of 50 µg/l for TPHg, 1 µg/l for benzene, 150 µg/l for toluene and 5 µg/l for MTBE.

VIOLATIONS

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

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

Between July 1, 2005 and the date of this Notice, use and storage of petroleum at the Site by the City of Willits 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 UST regulatory programs including, but not limited to, provisions governing general operating requirements for USTs, release detection and prevention requirements, release reporting and investigation requirements, and release response and corrective action requirements.

Specifically, with respect to the Site, the City of Willits 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); and,
4. Failure to take proper corrective action in violation of 40 CFR §§ 280.53, 280.60 - 280.66 and California Health & Safety Code § 25295(a)(1).

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

Between July 1, 2005 and the date of this Notice, the City of Willits has 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, THPd, BTEX, TBA and MTBE in groundwater at the Site are significantly greater than the allowable MCLs and/or WQOs for said constituents. Benzene, MTBE, and TBA are known or suspected carcinogens. Toluene is a reproductive toxin. Ethylbenzene, methanol and xylene are live toxins. All are known to harm both plants and animals. In their

concentrations at the Site, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

3. Mishandling of Hazardous Waste - [42 U.S.C. § 6924 *et seq.*]

The City of Willits has used and stored 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, TBA, BTEX, and MTBE in groundwater at the Site are significantly greater than the allowable MCLs and/or WQOs for said constituents.

River Watch alleges that between July 1, 2005 and the date of this Notice the City of Willits has engaged in the following activities or omissions in violation of the RCRA's waste handling provisions:

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

These pollutants in their concentrations at the Site have continued to cause an imminent and substantial endangerment to public health and the environment.

The violations alleged in this Notice are knowing and intentional in that the City of Willits has used, stored and sold petroleum products the Site which are known to contain hazardous substances. The City of Willits has known of the contamination at the Site for numerous years 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 as well as 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 the RCRA by the City of Willits evidenced by information which becomes available to River Watch after the date of this Notice

CONTACT INFORMATION - COUNSEL FOR RIVER WATCH.

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

Jack Silver, Esquire
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CONCLUSION

As stated in the NOTICE section above, the RCRA requires a private party to give notice of violations 60 days prior to the initiation of an action alleging violation of a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA (42 U.S.C. § 6972(b)(1)(A)), and 90 days prior to the initiation of an action alleging violations which create an imminent and substantial endangerment to human health or the environment. (42 U.S.C. § 6972(b)(2)(A)).

However, actions that allege violations of Subtitle C, including the mishandling of hazardous waste, can be brought without observing the 60/90 day notice waiting periods which are applicable to 42 U.S.C. § 6972(a)(1)(A) and 42 U.S.C. § 6972(a)(1)(B) claims; and, when Subtitle C claims are brought in conjunction with 42 U.S.C. § 6972 § (a)(1)(A) or 42 U.S.C. § 6972 § (a)(1)(B) claims, none of the claims require a waiting period before a lawsuit under the provisions of the RCRA may be filed.

River Watch believes this Notice sufficiently states grounds for filing a lawsuit under the statutory and regulatory provisions of the RCRA as to the Site. River Watch and its counsel are willing to discuss effective remedies for the violations referenced in this Notice. If the City of Willits wishes to pursue such discussions in the absence of litigation, we would encourage the City to initiate such discussions within 60 days of receipt of this Notice. River

Watch will not delay the filing of a lawsuit if discussions have not commenced within that period of time.

Very truly yours,

Jack Silver

Jack Silver

JS:lh

cc: Lisa Jackson, Administrator
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