

# Law Office of Jack Silver

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July 9, 2010

## **VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ecodyne Corporation  
Lawyers Incorporating Service – Registered Agent  
2730 Gateway Oaks Drive, Suite 100  
Sacramento, CA 95833

The Shiloh Group, LLC  
Brian C. Carter – Registered Agent  
930 Shiloh Road  
Windsor, CA 95492

### **Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

To: Owner, Site Manager, Managing Agent:

### **NOTICE**

I am writing on behalf of Northern California River Watch (“River Watch”) with regard to the discharges of pollutants from the facilities of the former Ecodyne Corporation (“Ecodyne”) located in Windsor, California, into waters of the United States, in violation of the Clean Water Act (“CWA”).

By this Notice, River Watch is providing statutory notification to Ecodyne and The Shiloh Group LLC as current or former owners, site managers, or managing agents (hereafter referred to as “Polluters”), of continuing and ongoing 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 CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Polluters’ illegal discharge of pollutants from a point source to waters of the United States without a National Pollution Discharge Elimination System (“NPDES”) permit.

This Notice also addresses the ongoing violations of the substantive and procedural requirements of CWA § 402(p) and NPDES General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit” or “General Permit”). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

CWA § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), a citizen must give notice of his/her intent to sue. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur, and the registered agent of the alleged violator. River Watch believes this Notice provides proper notice of Polluters’ violations as required by the CWA.

The CWA 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 NPDES permit pursuant to the CWA, 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 CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit **all surface and subsurface** discharges from a point source to waters of the United States are illegal.

River Watch hereby notices Polluters of the fact that they have no NPDES permit allowing them to discharge pollutants from the Site identified in this Notice and numerous point sources including the storage tanks identified in this Notice, to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a), CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as CWA § 402(p), 33 U.S.C. 1342(p). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

The CWA 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:

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

The CWA 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 NPDES permit pursuant to the Act, 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 CWA § 301(a), 33 U.S.C. § 1311(a) prohibition. Without a NPDES permit **all surface and subsurface** discharges from a point source to waters of the United States are illegal.

River Watch hereby notices Polluters of the fact that they have no NPDES permit allowing them to discharge pollutants from the Site identified in this Notice and numerous point sources including the storage tanks, former structures and ponds identified in this Notice, to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a), CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b) as well as § 402(p), 33 U.S.C. 1342(p). The CWA prohibits storm water discharges without a permit pursuant to 33 U.S.C. § 1342; 40 C.F.R. § 122.26.

**2. The activity alleged to constitute a violation.**

To comply with this requirement River Watch has set forth below narratives describing with particularity the activities leading to violations. In summary the CWA requires that all discharges of pollution from a point source to a water of the United States without a NPDES permit are prohibited. River Watch alleges Polluters are discharging pollutants including toxic metals such as hexavalent chromium from the Site and various point sources within the Site as identified in this Notice, to waters of the United States. The point sources were tanks, structures such as the tower, ponds and the like, which have been subsequently removed. The solid and hazardous waste discharged from these tanks is also a point source. These point sources continue to discharge from the Site to the surface waters adjacent to the Site.

The liability of Polluters stems from their ownership or operation of the Site, or due to the activities conducted on the Site by Polluters as well as ownership and control of conduits which act as preferential pathways and point sources for the pollutants.

**3. The discharger responsible for the alleged violation.**

The dischargers responsible for the alleged violations are Ecodyne Corporation, The Shiloh Group, LLC, as current or former owners, site managers, or managing agents of the Site identified in this Notice. Those dischargers are 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 as well as in records either created or maintained by or for Polluters which relate to Polluters’ activities at the Site identified herein.

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

Disposition, discharge and release of pollutants has been ongoing for several years. The CWA is a strict liability statute with a 5-year statute of limitations; therefore, the range of dates covered by this Notice is July 9, 2005 through July 9, 2010. 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 the violations identified in this Notice 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 CWA, 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 Regional Quality Control Board ("RWQCB"), GeoTracker, Sonoma County Health and local police and fire departments.

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

The person giving this Notice is Northern California River Watch, referred to throughout this Notice as "River Watch". 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 ground water in Northern California. River Watch is organized under the laws of the State of California. Its address is 500 South Main Street, Suite 110, Sebastopol, CA, 95472. Phone / Fax: (707) 824-4372. Email US@ncriverwatch.org.

### **BACKGROUND**

The Site is located in a portion of the Shiloh Road Industrial Park. The Shiloh Road Industrial Park comprises approximately 28 acres and is subdivided into numerous parcels, separated by chain link fencing, many of which are leased to small commercial and industrial businesses. It is unclear if any of these business have been informed of their proximity to the Site.

From 1953 to 1961, Santa Fe Tank & Tower Company and Fluor Corporation (Fluor) manufactured wood products consisting of cross-arms, pipes, tanks and cooling towers on the Site. Creosote, lead, and pentachlorophenol (PCP) were part of the manufacturing processes. It is quite likely that other toxic metals and possible solvents were used in these processes especially chromium, arsenic and copper.

From approximately 1962 to 1970, Fluor and its subsidiaries operated the property as a paint shop. During this time, toxic metals and materials such as asbestos, PCBs and even DDT were at one time or another used in various paint formulations. Lead is well known as a toxic metal which may be found in paint; however, other toxic metals used in the past in the formulation of paint should be considered as well, including: chromium, cadmium, mercury, tin, copper, arsenic and radium.

In 1971, Ecodyne demolished the facility buildings used in the wood and metal treatment operations on the Site and covered the areas where these buildings had been located with a layer of dirt and shale. Residual materials from the operations of Fluor and Ecodyne remain

in soils and groundwater, including dioxin, lead, copper, PCP, hexavalent chromium, polycyclic aromatic hydrocarbons (PAHs) and possibly arsenic.

Ecodyne operated a wood treatment facility from July 1965 to January 1984, at the current Shiloh Road Industrial Park. Chromic acid, sodium dichromate, and copper sulfate were used, among other chemicals, in the wood treatment process. The Ecodyne pond site was used as a drip treatment facility for wood and metal products until the early 1970's. During site operations, pentachlorophenol (PCP), creosote and lead were used to treat wood. Chemicals used in those operations were stored in above ground storage tanks as well as below grade storage tanks. It is currently unclear but suspected, that arsenic may also have been used as part of the wood preserving process. Some of the wood treatment solutions were applied to lumber in a pressure vessel. The surplus chemical solutions were pumped to unlined evaporation and settling ponds, which illegally discharged to surface drainage. The surface drainage discharged to wetlands, Pruitt Creek and eventually the Russian River.

Between 1984 and 1987, the property went through a number of ownership changes, and as of September 1987, became part of the Shiloh Industrial Park. In 1999, The Shiloh Group, LLC acquired the entire area comprising the Shiloh Industrial Park and thus became the owner of the Site.

## **VIOLATIONS**

### **Discharge of Contaminated Stormwater**

Polluted stormwater containing hexavalent chromium as well as other materials from the Site is discharged, untreated, directly to the culvert adjacent to the Site. This culvert drains into Pruitt Creek which drains into the Russian River. The Russian River has many designated beneficial uses including municipal and domestic supply, agricultural supply, groundwater recharge, recreation, fishing, wildlife habitat, fish migration and spawning and aquaculture.

Hexavalent chromium has been found in the stormwater on the Site at 3.5 µg/L. Hexavalent chromium is recognized as a human carcinogen. Hexavalent chromium is known to cause skin rashes, stomach ulcers, respiratory problems, kidney and liver damage and death. The proposed public health goal for hexavalent chromium is 0.6 µ/l. Hexavalent chromium is also toxic to fish and can cause severe gill damage.

Pruitt Creek is the receiving water of the contaminated stormwater from the Site. Polluted stormwater run off is the biggest source of pollution of the nation's waterways. The CWA is intended to protect against this type of stormwater pollution. Stormwater drains into the on-site culvert which connects directly to Pruitt Creek. The culvert is inadequately protected.

Pruitt Creek is a watercourse in the Russian River watershed. All surface waters in this area drain to the Russian River which is also listed as impaired even thirty years after the adoption of the CWA. The Russian River and its tributaries are habitat to naturally spawned populations of

Coho salmon (*Oncorhynchus kisutch*), Steelhead trout (*Oncorhynchus mykiss*), and Chinook salmon (*Oncorhynchus tshawytscha*) inhabiting the California Coast Province. These salmon and trout have been federally listed as threatened under the Endangered Species Act. Critical habitat has also been designated for these species to include all estuarine and river reaches accessible to salmonids below longstanding, naturally impassable barriers.

### **Direct Discharges from Subsurface Releases**

Existing records indicate pollutants continue to be discharged from the Site to waters of the United States via subsurface, hydrologically connected, contaminated groundwaters. Former tanks, the tower and pond are some of the point sources contributing to the surface discharges. Other point sources include the drainage ditches which act as conduits for the transmission for pollutants from the Site to waters of the United States. Pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), the EPA and the State of California have formally concluded that violations by Polluters as identified in this Notice are prohibited by law. Beneficial uses of surface waters are being affected in a prohibited manner by these violations. The EPA and the State of California have identified Polluters' operations at the Site as a point source, the discharges from which contribute to violations of applicable water quality standards.

River Watch alleges that from July 8, 2005 through July 8, 2010, Polluters have violated the CWA by failing to acquire a NPDES permit and for discharging pollutants into waters of the United States without a NPDES permit. Each and every discharge is a separate violation of the CWA.

These enumerated violations are based upon review of the RWQCB files and Geotracker files for Polluters. 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 have failed to submit) to the RWQCB and/or other agencies during the period July 8, 2005 through July 8, 2010. 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, Geotracker or other agencies.

Pursuant to CWA § 309(d), 33 U.S.C. § 1319(d), each of the above-described violations of the CWA subjects the violator to a penalty 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 CWA pursuant to CWA § 505(a) and § 505(d), 33 U.S.C. §§ 1365(a) and (d), and such other relief as is permitted by law. Lastly, CWA § 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 River Watch members who reside, work and recreate in the affected area. River Watch members use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, property rights, use and

enjoyment of this area is specifically impaired by Polluters' violations of the CWA as alleged in this Notice.

**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 95402-5469  
Tel. 707-528-8175  
Fax 707-528-8675

**CONCLUSION**

River Watch is willing to work with Polluters to bring them into compliance with the CWA. However, unless contact with the undersigned is initiated before the expiration of the 60-day Notice period, River Watch intends to file suit in federal court to compel compliance.

Very truly yours,



Jack Silver

JS:lh

cc:

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

Regional Administrator  
U.S. Environmental Protection Agency Region 9  
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Executive Director  
State Water Resources Control Board  
P.O. Box 100  
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