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NORTHERN CALIFORNIA RIVER WATCH

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 NORTHERN CALIFORNIA RIVER  
11 WATCH, a 501(c)(3) non-profit Public  
Benefit Corporation,

CASE NO.: 3:10-cv-05105 MEJ

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF, CIVIL PENALTIES,  
RESTITUTION AND REMEDIATION  
(Environmental - RCRA - 42 U.S.C. 6901 *et seq.*;  
CWA - U.S.C. 1251 *et seq.*)**

12 Plaintiff,

13 v.

14 ECODYNE CORPORATION and  
15 DOES 1-30, Inclusive,

16 Defendants.

17  
18 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH a 501(c)(3) non-  
19 profit Public Benefit Corporation (“PLAINTIFF”) by and through its attorneys, and for its First  
20 Amended Complaint against Defendants, ECODYNE CORPORATION and DOES 1-30, Inclusive  
21 (“DEFENDANTS”) states as follows:

22 **I. NATURE OF THE CASE**

23 1. This is a citizen’s suit brought against DEFENDANTS under the citizen suit  
24 enforcement provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*,  
25 (“RCRA”), specifically RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) and RCRA § 4005;  
26 42 U.S.C. § 6945, to stop DEFENDANTS from repeated and ongoing violations of the RCRA.  
27

1 These violations are detailed in the Notice of Violations and Intent to File Suit (“RCRA  
2 NOTICE”) attached hereto as EXHIBIT A and made part of these pleadings.

3 2. As described in the RCRA NOTICE and herein, PLAINTIFF alleges  
4 DEFENDANTS to be past or present generators, past or present transporters, or past or present  
5 owners or operators of a treatment, storage, or disposal facility, which has contributed or which  
6 is contributing to the past or present handling, storage, treatment, transportation, or disposal of a  
7 solid or hazardous waste which may present an imminent and substantial endangerment to health  
8 or the environment. [42 U.S.C. § 6972(a)(1)(B); 42 U.S.C. § 6945.]

9 3. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations,  
10 the imposition of civil penalties, and other relief for DEFENDANTS’ violations of the RCRA’s  
11 standards and regulations applicable to the handling, disposal, transportation, treatment, use or  
12 storage of solid or hazardous waste as described in the RCRA NOTICE and for DEFENDANTS’  
13 violation of the RCRA’s prohibition against creating an imminent and substantial endangerment  
14 to human health or the environment.

15 4. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), permits citizen suits to enjoin  
16 the effects of pollution which creates or may create an imminent and substantial endangerment to  
17 human health or the environment.

18 5. This is also a citizen’s suit for relief brought against DEFENDANTS under the  
19 Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, specifically 33 U.S.C. § 1311, 33  
20 U.S.C. § 1342, and 33 U.S.C. § 1365 to stop DEFENDANTS from repeated and ongoing  
21 violations of the CWA. These violations are detailed in the Notice of Violations and Intent to File  
22 Suit (“CWA NOTICE”) attached hereto as EXHIBIT B and made part of these pleadings.  
23 PLAINTIFF contends DEFENDANTS are discharging pollutants from a point source without a  
24 National Pollutant Discharge Elimination System (“NPDES”) permit in violation of 33 U.S.C. §  
25 1311(a).



1 headquarters located at 500 North Main Street, Suite 110, Sebastopol, California. PLAINTIFF is  
2 dedicated to protecting, enhancing and helping to restore the waters of Northern California  
3 including its drinking water sources, groundwater, rivers, creeks and tributaries.

4 12. PLAINTIFF is informed and believes, and on such information and belief alleges  
5 that Defendant, ECODYNE CORPORATION was, and at all times herein mentioned is, a  
6 corporation headquartered in Chicago, Illinois, registered with the State of California and doing  
7 business within the State of California.

8 13. PLAINTIFF is informed and believes, and on such information and belief alleges  
9 that Defendants DOES 1 - 30, Inclusive, respectively, are persons, partnerships, corporations or  
10 entities, who are, or were, responsible for, or in some way contributed to, the violations which are  
11 the subject of this First Amended Complaint or are, or were, responsible for the maintenance,  
12 supervision, management, operations, or insurance coverage of DEFENDANTS' site or operations  
13 on DEFENDANT's identified herein. The identities and capacities of DEFENDANTS DOES 1 -  
14 30, Inclusive are presently unknown to PLAINTIFF. PLAINTIFF shall seek leave of court to  
15 further amend this Complaint to insert the true names of said DOES Defendants when the same  
16 have been ascertained.

17 **III. JURISDICTIONAL ALLEGATIONS**

18 14. Subject matter jurisdiction is conferred upon this Court by RCRA § 7002(a)(1), 42  
19 U.S.C. § 6972(a)(1), which states in part,

20 “. . . any person may commence a civil action on his own behalf (A) against any  
21 person . . . who is alleged to be in violation of any permit, standard, regulation,  
22 condition requirement , prohibition or order which has become effective pursuant  
23 to this chapter, or (B) against any person . . . who has contributed or who is  
24 contributing to the past or present handling, storage, treatment, transportation or  
25 disposal of any solid or hazardous waste which may present an imminent and  
26 substantial endangerment to health or the environment.”

1           15.     PLAINTIFF's members reside in the vicinity of, derive livelihoods from, own  
2 property near, or recreate on, in or near or otherwise use, enjoy and benefit from the watersheds,  
3 land, rivers, and associated natural resources into which DEFENDANTS pollute, or by which  
4 DEFENDANTS' operations adversely affect those members' interests, in violation of RCRA §  
5 7002 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The health, economic, recreational, aesthetic or  
6 environmental interests of PLAINTIFF's members have been, are being, and will continue to be  
7 adversely affected by DEFENDANTS' unlawful violations as alleged herein. PLAINTIFF  
8 contends there exists an injury in fact, causation of that injury by DEFENDANTS' complained of  
9 conduct, and a likelihood that the requested relief will redress that injury.

10           16.     Pursuant to RCRA § 7002(2)(A), 42 U.S.C. §6972(2)(A), PLAINTIFF gave  
11 statutory notice of the RCRA violations alleged in this First Amended Complaint prior to the  
12 commencement of this lawsuit to: (a) DEFENDANTS, (b) the United States Environmental  
13 Protection Agency, both Federal and Regional, (c) the State of California Water Resources Control  
14 Board, and (d) the State of California Integrated Waste Management Board.

15           17.     Pursuant to RCRA § 7002(b), 42 U.S.C. § 6972(b) venue lies in this District as the  
16 site and operations under DEFENDANTS' control and where illegal activities occurred which are  
17 the source of the violations complained of are located within this District.

18           18.     Subject matter jurisdiction is also conferred upon this Court by CWA § 505(a)(1),  
19 33 U.S.C. § 1365(a)(1), which states in part,

20           “any citizen may commence a civil action on his own behalf against any person  
21 . . . .who is alleged to be in violation of (A) an effluent standard or limitation . .  
22 . . or (B) an order issued by the Administrator or a State with respect to such a  
23 standard or limitation.” For purposes of CWA § 505, “the term ‘citizen’ means  
24 a person or persons having an interest which is or may be adversely affected.”  
25  
26  
27



1 or hazardous waste which may present an imminent or substantial endangerment to human health  
2 or the environment. Further, that DEFENDANTS' handling, use, transport, treatment, storage or  
3 disposal of waste at the Site violated and continues to violate permits, standards, regulations,  
4 conditions, requirements or prohibitions effective pursuant to the RCRA regarding hazardous or  
5 solid waste. [42 U.S.C. §6972(a)(1)(B)].

6 24. PLAINTIFF is informed and believes, and on said information and belief alleges that  
7 DEFENDANTS have no RCRA-authorized permits authorizing the activities on the Site related  
8 to hazardous wastes described in the RCRA NOTICE.

9 25. Regulatory agencies have designated surface waters and groundwaters in the area  
10 of the Site as capable of supporting multiple beneficial uses including domestic, agricultural and  
11 industrial water supply, recreation, habitat, fishing and the like and have established Maximum  
12 Contaminant Levels and Water Quality Objectives for these pollutants in surface water and  
13 groundwaters.

14 26. The pollutants identified in the RCRA NOTICE and CWA NOTICE are known  
15 carcinogens or reproductive toxins, and have been listed chemicals under Proposition 65. Surface  
16 water and groundwater at and around the Site are potential sources of drinking water under the  
17 applicable RWQCB's Basin Plan. PLAINTIFF is informed and believes, and on said information  
18 and belief alleges that DEFENDANTS, in the course of doing business, have discharged and  
19 continue to discharge pollutants to surface water and groundwater at and around the Site as  
20 discussed in the RCRA NOTICE and CWA NOTICE.

21 27. PLAINTIFF is informed and believes, and on said information and belief alleges that  
22 DEFENDANTS' handling, use, transport, treatment, storage or disposal of pollutants at the Site  
23 has occurred in a manner which has allowed significant quantities of hazardous constituents to be  
24 discharged to soil, groundwater and surface waters beneath and around the Site and beneath and  
25 around adjacent properties as well as off site.

1           28. To date, the levels of pollutants at the Site remain high above the allowable  
2 Maximum Contaminant Levels and Water Quality Objectives for said constituents, creating an  
3 imminent and substantial endangerment to public health or the environment.

4           29. PLAINTIFF is informed and believes and on this information and belief alleges that  
5 the activities of DEFENDANTS as alleged in the RCRA NOTICE and CWA NOTICE have been  
6 both knowing or intentional; that DEFENDANTS have discharged or are intentionally and  
7 illegally continuing to discharge hazardous waste in violation of the RCRA and the CWA.  
8 Further, that DEFENDANTS have known of the contamination at the Site for at least 20 or more  
9 years, or are also aware that continuing discharges or failure to remediate the pollution allows the  
10 contamination to migrate through the ground or groundwater at or adjacent to said Site, or to  
11 continually contaminate or re-contaminate actual or potential sources of drinking water as well as  
12 ground water or surface waters. The CWA and RCRA are strict liability statutes. The range of  
13 dates covered by the CWA NOTICE and RCRA NOTICE are the five year statute of limitations  
14 as discussed therein.

15           30. The CWA regulates the discharge of pollutants into navigable waters. The statute  
16 is structured in such a way that all discharge of pollutants is prohibited with the exception of  
17 several enumerated statutory exceptions. One such exception authorizes a polluter who has been  
18 issued a NPDES permit pursuant to the Act, to discharge designated pollutants at certain levels  
19 subject to certain conditions. Without a NPDES permit **all surface and subsurface** discharges  
20 from the Site to waters of the United States are illegal.

21           31. PLAINTIFF is informed and believes and on such belief alleges that  
22 DEFENDANTS have no NPDES permit allowing them to discharge pollutants from the Site to  
23 waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§  
24 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b).



1 32. PLAINTIFF is informed and believes and on such belief alleges that  
2 DEFENDANTS are discharging pollutants found at the Site, from the Site and various point  
3 sources within the Site to waters of the State or United States.

4 33. PLAINTIFF is informed and believes and on such belief alleges the liability of  
5 DEFENDANTS stems from their current or past ownership or operation of the Site, or due to  
6 activities conducted on the Site by DEFENDANTS, their subsidiaries, contractors, employees or  
7 agents.

8 34. The majority of the violations identified in the CWA NOTICE such as discharging  
9 pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES  
10 permit, failure to implement the requirements of the CWA, failure to meet water quality  
11 objectives, etc., are continuous, and therefore each day is a violation. PLAINTIFF alleges that all  
12 violations set forth in the CWA NOTICE are continuing in nature or will likely continue after the  
13 filing of this First Amended Complaint. Specific dates of violations are evidenced in  
14 DEFENDANTS' own records (or lack thereof) or files and records of other regulatory agencies  
15 including the RWQCB, GeoTracker, Sonoma County Health and local police and fire departments.

16 **V. FIRST CLAIM FOR RELIEF**

17 **Imminent and Substantial Endangerment to Health or to the Environment**  
18 **(42 U.S.C. § 6972(a)(1)(B))**

19 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 34 as  
20 though fully set forth herein. PLAINTIFF is informed or believes, and based on such information  
21 or belief alleges as follows:

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



1 41. DEFENDANTS have no RCRA-authorized permit for disposal, storage or treatment  
2 of solid or hazardous waste of the type currently and historically discharged at the Site.

3 42. Information currently available to PLAINTIFF indicates that DEFENDANTS' open  
4 dumping in violation of RCRA § 4005 has occurred every day since at least May 5, 2005, or on  
5 numerous separate occasions, and that those violations are continuing.

6 43. Continuing activities by DEFENDANTS as alleged herein irreparably harm  
7 PLAINTIFF's members, for which harm PLAINTIFF has no plain, speedy or adequate remedy  
8 at law.

9 Wherefore, PLAINTIFF prays judgment against DEFENDANTS as set forth hereafter.

10 **VII. THIRD CLAIM FOR RELIEF**

11 **Discharge of Pollutants from a Point Source Must be Regulated by a NPDES Permit 33**  
12 **(33 U.S.C. §§ 1342 (a) and (b), 33 U.S.C. § 1311)**

13 PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 43 as  
14 though fully set forth herein. PLAINTIFF is informed or believes, and based on such information  
15 or belief alleges as follows:

16 44. DEFENDANTS have violated and continue to violate the CWA as evidenced by the  
17 discharges of pollutants from a point source without a NPDES permit in violation of CWA § 301,  
18 33 U.S.C. § 1311.

19 45. The violations of DEFENDANTS are ongoing and will continue after the filing of  
20 this First Amended Complaint. PLAINTIFF alleges herein all violations of the CWA which may  
21 have occurred or will occur prior to trial, but for which data may not have been available or  
22 submitted or apparent from the face of the reports or data submitted by DEFENDANTS to the  
23 RWQCB or to PLAINTIFF prior to the filing of this First Amended Complaint. PLAINTIFF will  
24 file additional amended complaints if necessary to address DEFENDANTS' State and Federal  
25 violations which may occur after the filing of this First Amended Complaint. Each of  
26 DEFENDANTS' violations is a separate violation of the CWA.



1 c. Aquifer Profile Study, to include identification of all water bearing strata and  
2 whether subsurface groundwater at the Site is in communication with the other aquifers; and,  
3 testing of all aquifers determined to be in communication with the contaminated soil and  
4 groundwater zones for all known pollutants;

5 d. Conduit/Preferential Pathway Study, to include identification of all conduits  
6 or preferential pathways such as sand and gravel lenses, utility lines, underground pipes, storm  
7 drains, roads, services and other potential pathways for contaminant migration. Such conduits and  
8 preferential pathways found to have intersected the plume should be tested for the presence of  
9 petroleum contaminants;

10 e. Identification and Testing of Water Supply Wells, to include a door-to-door  
11 survey of potentially affected properties to determine the presence and location of any water  
12 supply wells (whether permitted or not). Any water supply wells within the potential range of the  
13 contaminant plumes to be tested for the presence of petroleum contamination;

14 f. Surface Water Survey, to include a determination as to whether any surface  
15 waters have been or have the potential of being contaminated from the Site. All surface waters  
16 and drainage within 1,500 feet of the outer extent of the plume to be tested; and,

17 h. Determination of Mass of Plume Constituents, to include mass of the plume  
18 and masses of the various pollutants at the Site, whether or not part of the plume.

19 5. Order DEFENDANTS to fully remediate the Site reducing all contaminants of  
20 concern in the groundwater to below Water Quality Objectives within 5 years;

21 6. Order DEFENDANTS to pay civil penalties to the United States on a per  
22 violation/per day basis for the violations of RCRA alleged herein;

23 7. Declare DEFENDANTS to have violated or to be in violation of the CWA;

24 8. Enjoin DEFENDANTS from continued violations of the CWA;

25 9. Order DEFENDANTS to fully remediate all damages caused by their violations of  
26 the CWA;

1           10.    Order DEFENDANTS to pay civil penalties on a per violation/per day basis for their  
2 violations of the CWA;

3           11.    Order DEFENDANTS to pay PLAINTIFF'S reasonable attorneys' fees and costs  
4 (including expert witness fees), as provided by law; and,

5           12.    Grant such other or further relief as may be just or proper.  
6

7 DATED: April 19, 2011

LAW OFFICE OF JACK SILVER

8  
9           By:           /s/ Jack Silver            
10           JACK SILVER  
11           Attorney for Plaintiff  
12           NORTHERN CALIFORNIA RIVER WATCH  
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# EXHIBIT A

# Law Office of Jack Silver

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



May 3, 2010

***Via Registered Mail - Return Receipt Requested***

Avendt Group, Inc.  
Raymond J. Avendt - Registered Agent  
11149 Pine Needle Drive  
Brighton, MI 48114

The Marmon Group LLC  
Illinois Corporation Service Co. - Registered Agent  
801 Adlai Stevenson Drive  
Springfield, IL 62703

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

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

Fluor Daniel Environmental Services  
3333 Michelson Dr.  
Irvine, CA 92730

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 Resource Conservation and Recovery Act ("RCRA")***



Dear Polluters, Owner, Site Manager, Managing Agent, Head of Agency:

On behalf of Northern California River Watch ("River Watch"), I am providing statutory notification ("Notice") to Avendt Group, Inc., Ecodyne Corporation, Fluor Corporation, and The Shiloh Group, LLC, (collectively "Polluters"), of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA,") 42 U.S.C. § 6901 et seq. in conjunction with the continuing pollution at the Sites described below in the BACKGROUND section of this Notice.

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 (see also 40 CFR §§ 254.2 and 254.3) . 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.). Certain violations of California Title 22 may also be violations of RCRA Subtitle C.

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 in this Notice, Polluters operate non-permitted, hazardous waste treatment, storage and disposal sites. Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Sites, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing wastes off-site without compliance with either the various requirements under RCRA, or with the State of California's hazardous waste requirements authorized under RCRA. Polluters' mishandling of wastes in violation of Subchapter C of 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 (including California Title 22), as well as violations creating imminent and substantial endangerment to human health or the environment.

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

1. Polluters' use and storage of solid and hazardous wastes described in the BACKGROUND section of this Notice have violated and continue to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to RCRA regarding storage of pollutants. [42 U.S.C. § 6972(a)(1)(A)];
2. Polluters' operations at the Sites as identified in the BACKGROUND section of this Notice have caused 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)].

Under 42 U.S.C. § 6972(a)(1)(A), Notice 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 to identify the specific 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, and the full name, address, and telephone number of the person giving notice. River Watch therefore provides the following information:

1. *Specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated:*

RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k, the goals of which 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, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations (see California Title 22).

Polluters have no solid or hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste at the Sites identified in this Notice. Polluters' use, handling, disposal and storage of waste at said Sites has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to RCRA regarding solid or hazardous waste. [42 U.S.C. § 6972(a)(1)(A)].

Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Sites identified in this Notice, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing wastes off-site without compliance with either the various requirements under RCRA, or with the State of California's solid or hazardous waste requirements authorized under RCRA. Polluters' mishandling of wastes in violation of Subchapter C of RCRA has created and is creating an imminent and substantial endangerment to human health or the environment.

2. *The Activity(ies) 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, RCRA requires that the environment and public be protected from solid or hazardous wastes, such as those generated by Polluters. The pollutants found at the Sites identified in this Notice constitute solid or hazardous waste under RCRA, and are required to be managed such that potential and actual harm to the environment and public is eliminated. RCRA specifically protects groundwater.

The liability of Polluters stems from either their ownership of the Sites, or from activities conducted on the Sites by the entities which violated the RCRA and which have contributed to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also alleges Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA. Polluters are guilty of open dumping as that term is used in RCRA by discharging the pollutants described in the BACKGROUND section of this Notice and allowing these pollutants to discharge to soils and ground as well as threatening waters. The Sites do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as permitted facilities for the disposal of hazardous waste. Polluters have no RCRA-authorized permits for disposal, storage or treatment of solid or hazardous waste of the type currently and historically being discharged at the Sites.

Polluters also have liability due to their ownership or operation of man-made conduits which have acted or currently act as preferential pathways which have caused pollutants to be discharged to aquifers, surface and groundwaters via Polluters' conduits, thereby facilitating pollutant migration, threatening a discharge to waters of the United States and contributing to the past or present handling, storage, treatment, transportation, or disposal of any hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have caused contamination of soil, surface and groundwaters in or around residential areas. The groundwater in the area of the Sites identified in this Notice is hydrologically connected to adjacent wetlands and surface waters, all waters of the United States. These waters of the United States are already affected or are at imminent risk of contamination from the pollutants at said Sites, which contamination presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972(a)(1)(B)].

3. *The person(s) responsible for the alleged violation*

The persons responsible for the alleged violations are the entities identified herein and collectively referred to as "Polluters" throughout this Notice.

4. *The range of dates during which the alleged activities occurred.*

Polluters have been in operation prior to the passage of RCRA and have been violating RCRA ever since it was passed. Disposition, discharge and release of pollutants from the Sites identified in this Notice can be traced as far back as 1953. RCRA is a strict liability statute. The range of dates covered by this Notice is May 1, 2005 through May 1, 2010. The majority of the violations identified in this Notice such as discharging pollutants to groundwater and surface waters, failure to obtain RCRA-authorized permits, failure to implement the requirements of RCRA, failure to meet water quality objectives, etc., 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 violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Quality Control Board ("RWQCB"), California Department of Toxic Substances Control ("DTSC"), GeoTracker, County Health and local police and fire departments.

5. *The full name, address, and telephone number of the person giving 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 500 Main Street, Suite 110, Sebastopol, CA, 95472; telephone 707-824-4372.

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 affected areas. The members of River Watch use the affected areas for recreation, hiking, photography, nature walks, sports, water, fishing, swimming, boating and the like. Said members' use and enjoyment of this natural resource are specifically impaired by these violations of RCRA.

## **BACKGROUND**

The “Sites” which are the subject of this Notice consist of three areas of concern:

Wood Treatment Facility (LEA RWQCB global ID T0609700026);  
Waste Pond (LEA DTSC global ID 49240001); and  
Cooling Tower Site (LEA RWQCB, global ID 49420002).

The Sites are 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 Sites.

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 Sites. 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. Further investigation is necessary in that regard.

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 Corporation (“Ecodyne”) demolished the facility buildings used in the wood and metal treatment operations on the Sites 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.

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 Sites.

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 the 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.

In 1989 pursuant to findings that Polluters had created an imminent and substantial endangerment to health or the environment, Polluters began a groundwater extraction, treatment, and disposal system to help remediate groundwater contaminated with hexavalent chromium. The remediation effort was implemented pursuant to Cleanup and Abatement Order No. 89-61 adopted April 14, 1989 and Waste Discharge Requirements Order No 92-39 adopted on May 3, 1993. This system operated from March of 1992 to September of 1994.

In 1997 Polluters started direct injection of calcium polysulfide using a direct-push drilling rig. Injection of calcium polysulfide was conducted during three events from 1997 to 2002. These treatments were unsuccessful in lowering concentrations of chromium in the shallow groundwater near the source area, and did not appear to be capable of achieving remedial goals. In April 2007 additional injections of calcium polysulfide were performed in areas where hexavalent chromium was still persistent. During all these remedial processes nothing was done to prevent air laden with hexavalent chromium from contaminating the nearby businesses and exposing workers to toxic levels of hexavalent chromium as defined by the proposed California Public Health Goal (PHG) of inhalation of hexavalent chromium. In September and October of 2004 highly impacted soil was treated by mixing calcium polysulfide with the soil using a hydraulic backhoe. Currently the property is in verification monitoring to assess the impacts of remediation. More investigations need to be done before an effective remedial action plan can be designed and executed.

The former waste pond site is located within the Shiloh Road Industrial Park, and is currently fenced and posted as a hazardous waste site. This portion of the former Ecodyne site is currently vacant. Directly adjacent to the Ecodyne pond site to the northwest is another hazardous waste site currently undergoing remediation. The adjacent site is known as the Ecodyne (Cooling) Towers Site. The Ecodyne Towers Site is being cleaned up with the oversight of the RWQCB.

Potential contaminants of concern include dioxin, polynuclear aromatic hydrocarbons (PAHs), pentachlorophenol (PCP), hexavalent chromium, lead, copper and arsenic.

As of the most recent sampling, groundwater contamination for hexavalent chromium far exceeded the Maximum Contaminant Levels for total chromium of  $50\mu/l$  and proposed PHG for hexavalent chromium of  $0.6\mu/l$ . Recent storm water analysis also revealed discharges to surface waters at levels exceed proposed PHG for hexavalent chromium.

The RWQCB has determined the pollution at the Sites impairs and threatens beneficial uses of both the surface and groundwaters at or near the Sites. The RWQCB issued numerous enforcement orders to Polluters which have determined that the current pollution at the Sites constitutes imminent and substantial endangerment to health or the environment. A portion of the Sites is so contaminated with hazardous chemicals that it is being managed by the DTSC.

The RWQCB identifies water quality objectives ("WQOs") that are more stringent than the WQOs identified by Polluters in their current remedial action plan ("RAP"). The WQOs identified by the RWQCB are based on the PHG, established by Cal/EPA and OEHHA. PHGs represent levels of contaminants in drinking water that would pose no significant health risk to individuals consuming the water on a daily basis over a lifetime. For carcinogens, PHGs are based on  $10^{-6}$  incremental cancer risk estimates. The OEHHA and the California Department of Health Services consider the  $10^{-6}$  risk level to represent a de minimis level of cancer risk for involuntary exposure to contaminants in drinking water. For other contaminants, PHGs are based on threshold toxicity limits, with a margin of safety. The MCLs listed in the RWQCB's Basin Plan and cited in the draft RAP as appropriate remedial goals were established based on considerations other than human health risk, including economic considerations for water purveyors. Alternatively, health risk-based WQOs for groundwater, such as PHGs, were established for the protection of sources of domestic water supply, and are set at levels that would be protective of human health for users of untreated domestic water-supply wells.

State Water Resources Control Board ("SWRCB") Resolution No. 92-49 requires that a RAP must provide a rationale for the finding that cleanup to background levels at the Sites is not feasible. The RAP should address restoration of the impacted water supplies to background levels, if feasible. If remedial goals for groundwater are to be established at levels greater than background, the alternative cleanup levels must not unreasonably affect present and anticipated beneficial uses of such water. In consideration of the State Anti-degradation Policy (SWRCB Resolution No. 68-16) and SWRCB Resolution No. 92-49, the alternative cleanup levels must also be consistent with the maximum benefit to the people of the State, and must not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards. Therefore, the remedial

goals established in the RAP, and the post remedial monitoring program must ensure that the health of current and future domestic water-supply well users is protected.

Polluters propose Enhanced Reductive Dechlorination ("ERD") but fail to disclose that ERD has the potential to generate additional toxic volatile compounds and to mobilize these compounds through soil gas. Polluters need to address HVOCs in soil gas, and install soil gas monitoring points that would be suitable to assess HVOC vapor concentrations beneath the on-site buildings before, during, and after ERD may be implemented beneath the Sites. Prior to issuance of a Waste Discharge Requirements Permit for the project to implement the RAP, the RWQCB would require a baseline survey of volatile organic compounds in soil gas at the Sites be included in the Report of Waste Discharge application for the Waste Discharge Requirements Permit. Today the Sites remain polluted and there seems to be little remediation work being done.

Conduits such as sewer, utilities, waters, roads, storm water system, and other services act as preferential pathways and contribute to the transport, storage or treatment of hazardous waste. These conduits are either owned or operated by Polluters. River Watch believes these preferential pathways have allowed pollutants to be carried offsite to residences and adjacent property as well as waters of the United States.

Despite all of the monitoring done at the Sites, records found and reviewed at the RWQCB do not indicate whether a current sensitive receptor survey (within last two years) has been completed. Adjacent businesses do not appear to have been identified or characterized with sufficient particularity as sensitive receptors, nor have they been tested. There has been no mass inventory analysis, making full characterization impossible. Some of the preferential pathways such as roads have been identified, but sewer lines (including a lateral that runs through the plume to the main), utility trenches, waterways, ditches and the like have not been comprehensively examined, nor has there been any attempt to determine if these conduits are acting as preferential pathways. The geomorphology of the area indicates the numerous gravel lenses which are known to be conduits and can cause significant offsite migration of pollutants. Polluters have made no attempt to determine the mass of any pollutants making mass balance clean-up impossible to determine.

For more than 30 years pollutants at the Sites have been migrating, contaminating new sources of drinking water, new aquifers, private property, waters of the United States, groundwaters and the like. Inadequate studies of aquifer have been done. River Watch is concerned that Pruitt Creek has already been compromised by Polluters' contaminants due to its proximity to the Sites. River Watch takes the position that adequate monitoring should be conducted along surface waters. Remediation must be conducted much more proactively to remove existing threats both to the environment and to individuals who live in the area.



As required by RCRA and California's implementation of RCRA, Polluters have: failed to prevent a release; failed to properly detect and monitor releases; failed to properly report and keep records of the release; and, failed to take proper corrective action. These violations are all ongoing.

Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Sites, and have failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Polluters appear to be disposing wastes offsite without compliance with either the various requirements under the RCRA, or with the State of California's hazardous waste requirements authorized under the RCRA. Polluters' 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. These violations are all continuing.

## **LIABILITY**

MCLs, WQOs and PHGs exist to ensure protection of the beneficial uses of water including human health. 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.

The RWQCB has adopted a Water Quality Control Plan or "Basin Plan", which designates all surface and groundwater at or near the Sites as capable of supporting domestic water supply.

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

River Watch allege Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA.

River Watch allege Polluters to be past or present generators, past or present transporters, or past or present owners or operators of a treatment, storage, or disposal facility. River Watch alleges Polluters have contributed or are contributing to the past or present handling, storage,

treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have: failed to prevent a release; failed to properly detect and monitor releases; failed to properly report and keep records of the release; and, failed to take proper corrective action.

Polluters are guilty of open dumping as that term is used in RCRA by discharging pollutants to the open ground allowing these pollutants to discharge to both groundwaters and surface waters. The Sites identified in this Notice do not qualify as landfills under 42 U.S.C. § 6944, and do not qualify as facilities for the disposal of hazardous waste or solid waste. Polluters have no RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Sites.

Between May 1, 2005 and May 1, 2010, ongoing violations of RCRA as described in this Notice have occurred. Polluters have caused or permitted, cause or permit, or threaten to cause or permit solid or hazardous waste to be discharged or deposited at the Sites where it is, or probably will be, discharged into waters of the State and now creates, or threatens to create, a condition of pollution or nuisance. The discharge and threatened discharge of such waste is deleterious to the beneficial uses of water, and is creating and threatens to create a condition of pollution and nuisance which will continue unless the discharge and threatened discharge is permanently abated.

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

Polluters' use and storage of wastes at the Sites between May 1, 2005 and May 1, 2010 has allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California solid or hazardous waste regulatory programs.

Contaminant levels of HVOCs in the soil and groundwater at the Sites are significantly greater than the allowable MCL WQO or PHGs for said constituents. The HVOCs found at the Sites are known carcinogens and toxins. All are known to harm both plants and animals. In their concentrations at the Sites and in proximity to sensitive receptors such as groundwater, surface water, plants, insects, animals and humans, these pollutants are creating an imminent and substantial endangerment to public health and the environment.

Polluters have known of the contamination at the Sites since at least the 1966, 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 to continually contaminate and re-contaminate soil, groundwaters and 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 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 become available to River Watch after the date of this Notice, and seeks all penalties and other enforcement provisions related to such violations. Polluters are required to pay civil penalties on a per violation per day for their violations of RCRA.

### **REQUESTED RELIEF**

Polluters must fully investigate the Site including:

- a. Comprehensive Sensitive Receptor Survey - A comprehensive sensitive receptor survey which will include an aquifer profile, surface water study, water supply survey, and building survey.
- b. Aquifer Profile Study - Aquifer profiles identifying all water bearing strata and communication with the other aquifers. Testing shall include all aquifers determined to be in communication with the surface unconfined aquifer and contaminated zones for all known pollutants at the Sites identified in this Notice.
- c. Conduit/preferential Pathway Study - A conduit/preferential pathway study identifying all conduits or preferential pathways such as sand and gravel lenses, utilities, roads, services and other potential pathways for pollution migration. Testing to include all conduits and preferential pathways found to have intersected the plume for all pollutants at the Sites identified in this Notice.
- d. Identification and Testing of Water Supply Wells - A door to door survey of potentially affected properties to determine the presence and location of any water supply wells (permitted or not). Also, testing for any water supply wells found to contain pollutants.

e. Surface Water Survey - A water survey study determining if any surface waters have been or have the potential of being contaminated by the pollutants at the Sites, to include testing of all surface waters and drainage within 1,500 feet of the outer extent of the plume.

f. Vapor Intrusion Study - A vapor intrusion study of the buildings at the Sites and buildings located on or offsite within the contaminated zone.

g. Determination of Mass of Plume Constituents - Determine mass of the plume and masses of the various pollutants at the Sites whether or not part of the "plume", such as lead.

h. Toxic Metal Reasonable Potential Analysis - A toxic metals study which will include all metals with a reasonable potential of being contaminants at the Sites, such as lead.

i. Full Remediation - Fully remediate the Sites reducing all contaminants of concern in the groundwater to below WQOs within five years.

## CONTACT INFORMATION

River Watch has retained legal counsel to represent River Watch and its members with respect to the issues of violations raised in this Notice. All communications should be addressed to:


Jack Silver  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402  
Office 707-528-8175  
Fax 707-528-8675  
Email [lhm28843@sbcglobal.net](mailto:lhm28843@sbcglobal.net)

## CONCLUSION

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

During the notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Polluters wish to pursue such discussions in the absence of litigation, they are encouraged to initiate such discussions immediately so that the parties might be on track to resolving the issues set forth in this Notice before the end of the notice period. River Watch will not delay the filing of a lawsuit if discussions have not commenced by the time the notice period ends.

Very truly yours,



Jack Silver

JS:lh

cc:

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

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

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

California Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

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

Calif. Environmental Protection Agency  
P.O. Box 2815  
Sacramento, CA 95812-2815

California Attorney General's Office  
California Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

# EXHIBIT B

# Law Office of Jack Silver

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



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  $\mu\text{g/L}$ . 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  $\mu\text{l}$ . 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  
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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:

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