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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 NORTHERN CALIFORNIA RIVER  
WATCH, a non-profit Corporation,

12  
13 Plaintiff,

14 v.

15 PACIFIC LUMBER COMPANY, INC.,  
and DOES 1-10, Inclusive,

16 Defendants.  
17 \_\_\_\_\_ / \_\_\_\_\_  
18

CASE NO.:

**COMPLAINT FOR INJUNCTIVE RELIEF,  
CIVIL PENALTIES, RESTITUTION  
AND REMEDIATION**

[Resource Conservation & Recovery Act  
(RCRA) 42 U.S.C. § 6901 et seq.]

19 NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter, "RIVER  
20 WATCH") by and through its attorneys, and for its complaint against defendants, PACIFIC LUMBER  
21 COMPANY, INC., and DOES 1-10, inclusive (hereafter, "PACIFIC LUMBER COMPANY"), states  
22 as follows:

23 **I. INTRODUCTION**

24 1. This is a civil suit brought against PACIFIC LUMBER COMPANY under the citizen suit  
25 enforcement provisions of the Resource Conservation and Recovery Act (hereafter, "RCRA"), 42  
26 U.S.C. § 6901 et seq., and California law governing the Underground Storage of Hazardous Substances:  
27 California Health & Safety Code § 25280 et seq.  
28

1 This complaint seeks relief for PACIFIC LUMBER COMPANY's discharge of pollution from  
2 their current or former retail gasoline station facilities located at 121 Main Street, Scotia, California  
3 (hereafter collectively, "the Facilities"), into the waters of the State of California and the United States  
4 in violation of the above-enumerated statutes and laws.

5 2. By this Complaint RIVER WATCH seeks:

- 6 a. To enjoin PACIFIC LUMBER COMPANY from discharging pollutants from the  
7 Facilities into the ground and surface waters surrounding and downstream of the  
8 Facilities;
- 9 b. A court order directing PACIFIC LUMBER COMPANY to comply with the substantive  
10 and procedural requirements of the above enumerated statutes and laws;
- 11 c. A court order directing PACIFIC LUMBER COMPANY to pay civil penalties, or  
12 establish remediation projects in lieu of penalties, for violations of the above enumerated  
13 statutes and laws; and,
- 14 d. A court order directing PACIFIC LUMBER COMPANY to reimburse RIVER WATCH  
15 for its reasonable costs of suit, including attorney's fees, as allowed under § 7002(e) of  
16 RCRA, 42 U.S.C. § 6972(e).

## 17 II. JURISDICTION

18 3. This Court has subject matter jurisdiction over all Federal causes of action in this Complaint  
19 pursuant to RCRA § 7002(a)&(b), 42 U.S.C. § 6972 (a)&(b) and 28 U.S.C. § 1221 (an action for  
20 declaratory and injunctive relief arising under the Constitution and laws of the United States). This Court  
21 has supplemental jurisdiction over all State-based causes of action in this Complaint pursuant to 28  
22 U.S.C. § 1367, as those claims form part of the same case or controversy as the Federal causes of action.

23 4. On or about February 1, 2006, RIVER WATCH provided written notice of PACIFIC LUMBER  
24 COMPANY's violations of RCRA, and of its intent to file suit against PACIFIC LUMBER COMPANY  
25 (hereafter, "RCRA Notice") to the Administrator of the United States Environmental Protection Agency  
26 (hereafter, "EPA"), the Administrator of the Environmental Protection Agency - Region IX, the  
27 Executive Director of the State Water Resources Control Board, the Executive Director of the California  
28

1 Integrated Waste Management Board, and to PACIFIC LUMBER COMPANY, as required by RCRA.  
2 A true and correct copy of the RCRA Notice is attached hereto as Exhibit A and fully incorporated into  
3 this Complaint.

4 5. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods from,  
5 own property near, and/or recreate on, in or near, and/or otherwise use, enjoy and benefit from the  
6 affected watershed area and associated natural resources into which the PACIFIC LUMBER  
7 COMPANY discharges, or by which PACIFIC LUMBER COMPANY's operations adversely affect  
8 members' interests, in violation of the above-enumerated laws or statutes. The health, economic,  
9 recreational, aesthetic and environmental interests of RIVER WATCH's members may be, have been,  
10 are being, and will continue to be adversely affected by PACIFIC LUMBER COMPANY's unlawful  
11 violations of the above-enumerated laws or statutes. RIVER WATCH contends there exists an injury  
12 in fact to its members, causation of that injury by the conduct of PACIFIC LUMBER COMPANY  
13 complained of herein, and a likelihood that the requested relief will specifically redress that injury.  
14 RIVER WATCH, through its members, has standing to bring this action. A copy of this Complaint shall  
15 be provided to the United States Attorney General and the Administrator of the United States EPA, and  
16 the Attorney General of California.

### 17 **III. INTRADISTRICT ASSIGNMENT**

18 6. The basis for assignment of this case to the Northern District of California, pursuant to RCRA  
19 § 7002(a)&(b), 42 U.S.C. § 6972 (a)&(b), is the Facilities and operations of PACIFIC LUMBER  
20 COMPANY are located in this District, as is the site of pollution at issue.

### 21 **IV. PARTIES**

22 7. RIVER WATCH is a 501(c)(3) non-profit public benefit corporation duly organized under the  
23 laws of the State of California. Its headquarters are located in Sebastopol, California. RIVER WATCH  
24 is dedicated to protecting, enhancing and helping to restore the waters of Northern California, including  
25 its drinking water sources, ground water, rivers, creeks and tributaries. Many of RIVER WATCH's  
26 members live in areas affected by PACIFIC LUMBER COMPANY's pollution. Said members have an  
27 interest which is or may be adversely affected by PACIFIC LUMBER COMPANY's violations as set  
28

1 forth in this Complaint. Said members use the affected watershed for domestic water supply,  
2 agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and  
3 the like. Furthermore, the relief sought will specifically redress the injuries in fact, and the likelihood  
4 of future injuries and interference with the interests of RIVER WATCH's members.

5 8. RIVER WATCH is informed and believes and on said information and belief alleges that  
6 defendant PACIFIC LUMBER COMPANY is a corporation which is registered with the State of  
7 California, doing business in and having a registered office in Scotia, California.

8 9. Defendants DOES 1-10, inclusive, respectively, are persons, partnerships, corporations and  
9 entities, who are, or were, responsible for, or in some way contributed to, the violations which are the  
10 subject of this Complaint, or are, or were, responsible for the maintenance, supervision, management,  
11 operations, or insurance coverage of PACIFIC LUMBER COMPANY's operations and the Facilities.  
12 The names, identities, capacities, and functions of DOES 1-10, inclusive, are presently unknown to  
13 RIVER WATCH. RIVER WATCH shall seek leave of court to amend this Complaint to insert the true  
14 names of said DOES when the same have been ascertained.

#### 15 **V. STATEMENT OF FACTS**

16 10. PACIFIC LUMBER COMPANY has owned, operated and/or leased the Facilities at least since  
17 the 1970's according to information available to RIVER WATCH.

18 11. PACIFIC LUMBER COMPANY has stored large quantities of petroleum products in  
19 underground storage tanks (hereafter, "USTs") at the Facilities. In approximately 1989 petroleum  
20 contamination was detected in soil and groundwater beneath the Facilities. Subsequent investigation  
21 indicates the contamination is attributable to leakage from USTs and piping systems, surface spills  
22 and/or poor maintenance or operational practices.

23 12. Regulatory Agencies have ordered PACIFIC LUMBER COMPANY to investigate and remediate  
24 petroleum contamination at the Facilities following discovery of petroleum releases. PACIFIC  
25 LUMBER COMPANY has conducted some investigative work at the Facilities in response to Agencies'  
26 directives; however, significant levels of petroleum contamination remain in soil and groundwater  
27 beneath and adjacent to the Facilities.

1 13. Regulatory Agencies have designated surface and ground waters in this area of California as  
2 capable of supporting domestic supply, and have established maximum contaminant levels for petroleum  
3 constituents in surface and ground waters.

4 14. Benzene and toluene are known carcinogens and/or reproductive toxins, and have been listed  
5 chemicals under Proposition 65 since at least 1991. Surface and groundwater at the Facilities are  
6 potential sources of drinking water under applicable Regional Water Quality Control Board, Water  
7 Quality Control Plans (aka Basin Plans). In the course of doing business PACIFIC LUMBER  
8 COMPANY has discharged benzene and toluene to surface and groundwater at the Facilities on a daily  
9 basis since at least the late 1980's.

10 15. PACIFIC LUMBER COMPANY has used and/or stored petroleum at the Facilities in a manner  
11 which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and  
12 groundwater beneath the Facilities and beneath adjacent properties.

13 16. PACIFIC LUMBER COMPANY has conducted some site investigations and monitoring work  
14 at the Facilities, but no remediation. The contamination at the Facilities remains unabated. To date, the  
15 levels of TPHg, benzene, toluene, ethylbenzene, and xylenes remain high above the allowable Maximum  
16 Contaminant Levels (hereafter, "MCLs") and/or Water Quality Objectives (hereafter, "WQOs") for said  
17 constituents, creating an imminent and substantial endangerment to public health and the environment.

18 17. The discharges by PACIFIC LUMBER COMPANY as alleged in the RCRA Notice (Exhibit A)  
19 have been both knowing and intentional. While PACIFIC LUMBER COMPANY no longer uses, stores  
20 and sells petroleum products at the Facilities, in the past it has used, stored and sold these products,  
21 which are known to contain benzene, toluene, TPHg, ethylbenzene and xylenes, and has intended that  
22 such products be sold to and used by the public, or used in its own operations. PACIFIC LUMBER  
23 COMPANY has known of the contamination at the Facilities since at least the late 1980's, and is also  
24 aware that failing to remediate the pollution allows the contamination to migrate through soil and  
25 groundwater at and adjacent to the Facilities, and to continually contaminate and re-contaminate actual  
26 and potential sources of drinking water.

1 18. Violations of this and other statutes alleged in this Complaint are a major cause of the  
2 continuing decline in water quality, and a continuing threat to existing and future drinking water  
3 supplies in Northern California. With every discharge, groundwater supplies are contaminated. These  
4 discharges can and must be controlled in order for the groundwater supply to be returned as a safe  
5 source of drinking water.

## 6 **VI. FIRST CLAIM FOR RELIEF**

### 7 **Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(A)**

8 19. RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 18 and  
9 Exhibit A as though fully set forth herein. RIVER WATCH is informed and believes, and based on such  
10 information and belief alleges:

11 20. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A), provides that any person may commence  
12 a civil action against any person or governmental entity alleged to be in violation of any permit,  
13 standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant  
14 to RCRA. Civil penalties may be assessed against any person or entity in violation of such permits, etc.  
15 pursuant to RCRA under the provisions of RCRA, 42 U.S.C. § 6928 (a) and 42 U.S.C. § 6928(g).

16 21. The Facilities, are regulated by appropriate Regional Water Quality Control Boards and/or the  
17 Humboldt County Department of Health.

18 22. The Regional Water Quality Control Board and/or the Humboldt County Department of Health  
19 has imposed remediation and monitoring requirements to ensure compliance with the RCRA UST  
20 program.

21 23. RIVER WATCH is informed and believes, and thereon alleges, that PACIFIC LUMBER  
22 COMPANY has failed to comply with the statutory and regulatory leak prevention, leak detection,  
23 monitoring, and remediation requirements imposed under RCRA and described in the RCRA Notice  
24 attached as Exhibit A.

25 24. The continuing failure by PACIFIC LUMBER COMPANY to effectively remediate the on-  
26 going contamination at the Facilities will irreparably harm RIVER WATCH and its members, for which  
27 harm RIVER WATCH and its members have no plain, speedy or adequate remedy at law.

1 25. Wherefore, RIVER WATCH prays judgment against PACIFIC LUMBER COMPANY as set  
2 forth hereafter.

3 **VII. SECOND CLAIM FOR RELIEF**

4 **Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(B)**

5 26. RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 25 and  
6 Exhibit A as though fully set forth herein. RIVER WATCH is informed and believes, and based on such  
7 information and belief alleges:

8 27. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), provides that any person may commence  
9 a civil action against any person or governmental entity including a past or present generator,  
10 transporter, owner or operator of a treatment, storage or disposal facility who has contributed to the past  
11 or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste  
12 which may present an imminent and substantial endangerment to health or to the environment. Civil  
13 penalties may be assessed against any person or entity in violation of this section, under the provisions  
14 of RCRA, 42 U.S.C. § 6928(a) and 42 U.S.C. § 6928(g). The RCRA UST regulatory program is  
15 adopted and implemented in California under the provisions governing the Underground Storage of  
16 Hazardous Substances (California Health & Safety Code § 25280 et seq.).

17 28. PACIFIC LUMBER COMPANY owns and has operated the Facilities at which it has stored,  
18 and has transferred, gasoline, diesel, fuel oil and mixed oils.

19 29. USTs have been in place at the Facilities which have leaked petroleum chemicals including  
20 benzene, toluene, TPHg, ethylbenzene and xylenes into groundwater; and/or petroleum products have  
21 been washed off the Facilities into nearby surface waters.

22 30. Petroleum products are known to be hazardous to the environment, and if released into the  
23 environment in sufficient quantity pose an imminent and substantial risk of harm.

24 31. Chemicals within these petroleum products such as benzene and toluene are known carcinogens  
25 and/or reproductive toxins, and if released into the environment in sufficient quantity pose an imminent  
26 and substantial risk to public health and to the environment in general.

1 32. For purposes of RCRA, petroleum products and their constituents: TPHg, benzene, toluene,  
2 ethylbenzene and xylenes are "solid wastes" and "hazardous wastes" within the meaning of the statute.

3 33. RIVER WATCH is informed and believes, and thereon alleges, that amounts of petroleum  
4 products and their constituents, TPHg, benzene, toluene, ethylbenzene and xylenes released by  
5 PACIFIC LUMBER COMPANY at the Facilities are in sufficient quantity to pose an imminent and  
6 substantial risk to both the environment and to human health.

7 34. Continuing acts or failure to act by PACIFIC LUMBER COMPANY to address these violations  
8 will irreparably harm RIVER WATCH and its members, for which harm they have no plain, speedy or  
9 adequate remedy at law.

10 35. Wherefore, RIVER WATCH prays judgment against PACIFIC LUMBER COMPANY as set forth  
11 hereafter.

#### 12 **VIII. RELIEF REQUESTED**

13 NORTHERN CALIFORNIA RIVER WATCH, respectfully requests this Court grant the  
14 following relief:

15 36. Declare PACIFIC LUMBER COMPANY to have violated and to be in violation of RCRA for  
16 discharging petroleum products and constituents at the Facilities which are known carcinogens and/or  
17 reproductive toxins in sufficient quantity to pose an imminent and substantial risk to health and to the  
18 environment;

19 37. Enjoin PACIFIC LUMBER COMPANY from discharging petroleum products and constituents  
20 from the Facilities, which petroleum products and constituents pose an imminent and substantial risk  
21 to health and the environment;

22 38. Order PACIFIC LUMBER COMPANY to comply with the substantive and procedural  
23 requirements of RCRA;

24 39. Order PACIFIC LUMBER COMPANY to pay civil penalties, pursuant to RCRA provisions,  
25 including 42 U.S.C. § 6928 (a) and 42 U.S.C. § 6928 (g), and/or pay for remediation projects to redress  
26 harm caused by PACIFIC LUMBER's violations of RCRA. Each of the above-described violations of  
27 RCRA subjects the violator to a civil penalties on a per day per violation basis. Civil penalties may be  
28



1 assessed for violations occurring within five (5) years prior to the initiation of a citizen enforcement  
2 action;

3 40. Enter a judgment that PACIFIC LUMBER COMPANY is required to pay civil penalties and  
4 exemplary damages according to proof.

5 41. Enter such preliminary injunctions, permanent injunctions or other orders pursuant to RCRA  
6 requiring PACIFIC LUMBER COMPANY to enjoin and abate the nuisance resulting from the  
7 discharge and release of petroleum products and constituents at the Facilities, and the migration of  
8 petroleum products and constituents into soil and groundwater surrounding the Facilities.


9 42. Impose injunctive relief requiring PACIFIC LUMBER COMPANY to immediately investigate,  
10 access and categorize the extent of pollution and implement the best available technology to remediate  
11 pollution at the Facilities;

12 43. Impose injunctive relief requiring PACIFIC LUMBER COMPANY to immediately commence  
13 complete remediation of the contamination at and adjacent to the Facilities once the contaminant  
14 plumes have been adequately characterized.

15 44. Award costs (including reasonable attorney, expert, witness, and consultant fees) to RIVER  
16 WATCH as authorized by RCRA; and,

17 45. Award such other relief as this Court may deem appropriate.

18  
19 DATED: June 1, 2006

  
\_\_\_\_\_  
JACK SILVER  
Attorney for Plaintiff  
NORTHERN CALIFORNIA RIVER WATCH

# **Exhibit A**

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
warrioreco@yahoo.com



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

February 1, 2006

Robert Manne, President and CEO  
The Pacific Lumber Company  
125 Main Street  
Scotia, CA 95565

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

Dear Mr. Manne:

On behalf of Northern California River Watch ("River Watch") I am providing statutory notification to The Pacific Lumber Company ("PALCO") 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 remediation operations at the Northern California garage and service station site identified in this **Notice**.

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

1. PALCO's use and storage of petroleum products at its garage and gasoline station site as identified in this **Notice** has and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding storage of petroleum in underground storage tanks ("USTs") [42 U.S.C. § 6972(a)(1)(A)];

2. PALCO's operations at the garage and gasoline station site as identified in this **Notice** has 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)].

## **PALCO COMPANY GARAGE - SCOTIA, CALIFORNIA**

This former Ademar's Chevron service station site is located at 121 Main Street at the intersection of Main and Bridge Streets in Scotia. The existing Company Garage which took over the facility, has historically been utilized for vehicle and equipment service and repair. A number of USTs were located at the facility and installed between 1959 and 1975. One of these was a 12,000 gallon diesel tank; the rest were smaller tanks ranging up to 1,000 gallons in volume.

On the basis of contamination investigations conducted in August of 1989, groundwater and soil contamination was found adjacent to then existing fuel storage tanks at various locations throughout the PALCO Scotia Mill site. Following these findings PALCO requested Humboldt County's approval to close as many as 13 USTs at the facility. By August of 1990, 3 of the tanks had been removed. Eight others were being operated without permits and were not in compliance with monitoring requirements. Reports from consulting engineers at the time indicated "soil and groundwater contamination at some locations is significant." PALCO's initial Unauthorized Release Report was filed on or about May 17, 1990. In June of 1999 a second Unauthorized Release Report was filed which specified releases discovered on or about June 27, 1998, and included gasoline contamination discovered during earlier tank closure activities occurring in the early 1990's.

In June of 1991 a 1,000 gallon tank was removed. The remaining tanks were removed by at least October of 1998. Based upon site histories, minimal over-excavation occurred following the tank removals, followed by back-filling of the excavations. The excavation site was then paved over with asphalt and/or concrete.

Current engineering consultant reports for this site indicate the extent of the contaminant plume is still being evaluated to determine the lateral and vertical extent of contamination. As of the first quarter monitoring report for 2005, TPHg contaminant levels were as high as 13,000 ug/l; TPHd levels were as high as 900 ug/l; benzene levels were as high as 1,100 ug/l; toluene was as high as 73 ug/l; ethylbenzene was as high as 150 ug/l; and xylenes were as high as 73 ug/l. Each of these levels is far in excess of California's Maximum Contaminant Levels for these constituents.

At this late date, over 16 years following the initial discovery of contamination in soil and groundwater at this site, PALCO's engineers have failed to do anything more than monitor the extent of plume migration and pollution levels. No remediation has commenced, although the consultants have recommended the injection of hydrogen peroxide at various locations to neutralize the many petroleum constituents found in the plume. Such

attempt at chemical remediation is scheduled to commence sometime in 2006. At this point, however, there is no guarantee this method of remediation will prove effective, given the tight clay composition of the areas surrounding the former UST sites. If this method does prove effective in some areas, to date there is no provision to remediate the soil and groundwater beneath the cement slabs that were constructed over the excavation sites.

Despite all of the monitoring done at this site, records found at the Regional Water Quality Control Board do not indicate whether a current sensitive receptor survey (within last 2 years) has been completed. Preferential pathways have been identified, but one report concludes that such pathways do not represent potential conduits for the contamination because the utility lines are less than 5 feet below ground surface. Other reports by the engineering consultants, however, note that groundwater levels can be as high as 3 feet below ground surface. Because site monitoring has been deficient over the last 16 years, no one knows how far petroleum constituents may have traveled from the site.

Existing records also do not determine whether any aquifer contamination is present or threatened by the plume. No studies of aquifer dimensions seem to have been done. River Watch is concerned the proximity of the Eel River at a distance of approximately 1,000 feet to the west (but which wraps around the site to the south, west, north and northeast), may mean the Eel River has already been compromised by PALCO contaminants. River Watch takes the position that adequate monitoring should be conducted along the River itself to insure that contaminants from the site have not reached its banks. In general, River Watch believes much more proactive remediation must be conducted to remove existing threats both to the environment and to individuals who use and enjoy the Eel River.

## **REGULATORY STANDARDS**

Water Quality Objectives exist in California to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply.

The Regional Water Quality Control Board has adopted a Water Quality Control Plan ("Basin Plan") which designates all surface and groundwater within the North Coast and San Francisco Bay regions as capable of supporting domestic water supply. The Regional Water

Quality Control Board has adopted Maximum Contaminant Levels (“MCLs”) and/or Water Quality Objectives (“WQOs”) for petroleum constituents in surface and groundwater within the region of 50 ug/l for TPHg, 1 ug/l for benzene, 150 ug/l for toluene and 5 ug/l for MTBE.

Petroleum and petroleum constituents have been characterized as “hazardous waste” and “solid waste” within the meaning of RCRA provisions. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of petroleum and petroleum constituents and products.

### **VIOLATIONS OF PERMITS, STANDARDS AND REGULATIONS** **42 U.S.C. § 6972(a)(1)(A)**

Between January of 2001 and January 2006 , as well as earlier during PALCO’s operations in the 1990’s, ongoing violations of RCRA as described herein have occurred. PALCO has caused or permitted, causes or permits, or threatens to cause or permit, petroleum contaminants, petroleum constituents and other hazardous waste to be discharged or deposited at the Company Garage site 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 petroleum 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.

Provisions of 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.).

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 - as River Watch has alleged in this **Notice** with respect to PALCO’s facility. Accordingly, under these provisions persons or entities violating RCRA are subject to substantial liability to the United States on a per day basis.

Between January of 2001 and January 2006, as well as during PALCO’s operations in the 1990’s, ongoing violations of RCRA as described herein have occurred. PALCO’s use and storage of petroleum at the Company Garage site have 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 this site, PALCO 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).
4. Failure to take proper corrective action, in violation of 40 CFR §§ 280.53, 280.60 - 280.66 and California Health & Safety Code § 25295(a)(1).

**IMMINENT AND SUBSTANTIAL ENDANGERMENT**  
**42 U.S.C. § 6972 (a)(1)(B)**

Between January of 2001 and January 2006, as well as earlier in the 1990's, ongoing violations of RCRA as described herein have occurred. PALCO used and stored, and may continue to use and store, petroleum products at the Company Garage site in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath both the site and adjacent properties.

Contaminant levels of TPHg, benzene, toluene, and other petroleum constituents in groundwater at the site are significantly greater than the allowable MCL and/or WQO for said constituents. Benzene, MTBE, TAME, 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 this site these pollutants

are creating an imminent and substantial endangerment to public health and the environment.

The violations alleged in this **Notice** are knowing and intentional in that PALCO in the past has used, stored and may have sold petroleum products at the Company Garage site which are known to contain hazardous substances, and in that PALCO has intended that such products be sold to and used by employees or by the public. PALCO has known of the contamination at the site since at least January of 2001, 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 in addition to 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 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.

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 6741 Sebastopol Avenue, Suite 140, in Sebastopol, California, telephone (707) 874-4372.

The violations of PALCO as set forth in this **Notice** affect the health and enjoyment of members of River Watch who reside and recreate in the effected 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 these violations of RCRA.

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



Notice of Violations and Intent to File Suit - RCRA  
The Pacific Lumber Company  
February 1, 2006  
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Jack Silver, Esquire  
Law Office of Jack Silver  
P.O. Box 5469  
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Tel. (707) 528-8175  
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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 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 (42 U.S.C. § 6972(b)(1)(A)). 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 for an imminent and substantial endangerment to human health or the environment. (42 U.S.C. § 6972(b)(2)(A)).

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

During the 90-day notice period, however, River Watch is willing to discuss effective remedies for the violations referenced in this **Notice**. If PALCO wishes to pursue such discussions in the absence of litigation, we would encourage you to initiate such discussions immediately so that we might be on track to resolving our issues 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 90-day notice period ends.

Very truly yours,



Jack Silver

JS:lhbm

Notice of Violations and Intent to File Suit - RCRA  
The Pacific Lumber Company  
February 1, 2006  
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cc:

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