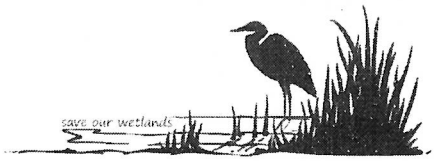
Law Office of Jack Silver

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



VIA REGISTERED MAIL
RETURN RECEIPT REQUESTED

September 9, 2014

Richard W. Pomrehn, President, CEO,
Registered Agent
Big Oil & Tire Company, Inc.
5670 West End Road, Suite 1
Arcata, California 95521

Operator/Site Manager
Arcada 76 Station and Mini-Mart
2205 Alliance Road
Arcata, CA 95521

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

Dear Mr. Pomrehn, Operator and Site Manager:

NOTICE

On behalf of California River Watch ("River Watch"), this letter provides statutory notification ("Notice") to Big Oil & Tire Company, Inc. of continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6901 *et seq.* in conjunction with former and/or continuing operations gasoline station facility located at 2205 Alliance Road in Arcada, California.

The RCRA requires that sixty (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 ("EPA") and the State in which the violation is alleged to have occurred.

RCRA also requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the EPA 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.

River Watch hereby notifies Big Oil & Tire Company, Inc., that at the expiration of the appropriate notice period under the RCRA, River Watch intends to commence a civil action against Big Oil & Tire Company, Inc., hereafter referred to as "Big Oil & Tire," on the following grounds:

1. Handling, transportation and unauthorized releases of various petroleum products at the facility located at 2205 Alliance Road in Arcada (the "Facility") have violated and continue to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding the past and/or present handling, storage, treatment, transportation and/or disposal of these hazardous products [42 U.S.C. § 6972 (a)(1)(A)];

2. Past and/or current operations at the Facility have caused petroleum and other contamination in soils, groundwater and surface waters which contamination presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972 (a)(1)(B)].

3. Past and/or current operations at the Facility violate the provisions of RCRA subchapter III (Subtitle C) which govern the handling of hazardous wastes. River Watch contends that Big Oil & Tire has inadequately maintained records of the manner in which hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning wastes; inadequately provided storage or transportation facilities for wastes; and in the past has not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which presented and continues to present a substantial endangerment to human health and to the environment.

Under RCRA, 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 the RCRA, shall include sufficient information to permit the recipient to identify the following specific information:

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

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

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

River Watch contends the tracking, manifesting, labeling, use, disposal, treatment, and storage of wastes by Big Oil & Tire at the Facility, and the disposal of those wastes, has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to the RCRA regarding hazardous waste. 42 U.S.C. § 6972(a)(1)(A).

River Watch contends operations at the Facility have caused contamination of soil, groundwater, surface waters and air, which contamination presents an imminent and substantial endangerment to human health and the environment. Further, that Big Oil & Tire owns or operates on-site dumps, discrete conveyances, conduits, preferential pathways and/or wells which have contributed to the transport, partial treatment, storage, or disposal of the wastes at the Facility. 42 U.S.C. § 6972(a)(1)(B).

2. The Activities Alleged to Constitute Violations

Narratives have been set forth below describing with particularity the activities leading to the violations alleged in this Notice. In summary, RCRA requires that the environment and public be protected from the hazardous wastes generated by Big Oil & Tire. Pollutants described herein found at the Facility constitute hazardous waste under the RCRA, and are required to be managed so as to not cause endangerment to the public or the environment. The RCRA specifically protects groundwater.

The liability of Big Oil & Tire stems from either its ownership or operation of the Facility, or activities conducted at the Facility by Big Oil & Tire which violate RCRA and 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 further alleges Big Oil & Tire to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA; that Big Oil & Tire is guilty of open dumping, as that term is used in the RCRA, by discharging pollutants to the open ground, allowing these pollutants to discharge to both groundwater and surface waters.

The Facility does not qualify as a landfill under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of hazardous waste. Big Oil & Tire is not in possession of a RCRA-authorized permit for disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Facility.

The liability of Big Oil & Tire also stems from its ownership or operation of discrete conveyances, conduits, preferential pathways or wells which have caused pollutants to be discharged to surface and ground waters via conduits such as pipes and piping, sewer lines, storm drains, utilities and the like, facilitating pollutant migration and discharge to waters of the State of California and 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.

Big Oil & Tire's past and current operations at the Facility violates the provisions of RCRA Subtitle C governing the handling of hazardous wastes. River Watch contends that Big Oil & Tire has inadequately maintained records of the manner in which hazardous wastes have been treated, stored and/or disposed of; inadequately monitored, reported and/or complied with existing regulations concerning wastes; inadequately provided storage for wastes; and has not developed adequate contingency plans for effective action to minimize damage from the unauthorized releases of hazardous contaminants – all of which presented a substantial endangerment to human health and to the environment. River Watch contends that Big Oil & Tire does not possess the requisite RCRA authorized permits for the handling of hazardous materials at the Facility.

3. The discharger responsible for the alleged violation.

The discharger responsible for the alleged violations are the addressees of this Notice and the entities identified herein, referred to as Big Oil & Tire.

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

The RCRA is a strict liability statute with a 5-year statute of limitations; therefore, the range of dates covered by this Notice is September 4, 2009 through September 4, 2014. River Watch will from time to time 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 into soils and groundwater and/or surface waters; failure to obtain RCRA-authorized permits; failure to implement the requirements of RCRA; failure to properly label, track or report the type, quantity or disposition of waste; failure to use a manifest system to ensure waste generated is properly handled, stored, treated or disposed of; and, failure to meet water quality objectives, are continuous. Therefore each day is a violation.

River Watch believes all violations set forth in this Notice are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of the other violations are evidenced in Big Oil & Tire's own records (or lack thereof) or files and records of other agencies including, but not limited to the Regional Water Quality Control Board and GeoTracker data files.

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

The entity giving this Notice is California River Watch, a non-profit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface waters environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorney. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be addressed to:

Jack Silver, Esquire
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402
Tel. (707) 528-8175
Email: lhm28843@sbcglobal.net

The violations of Big Oil & Tire as set forth in this Notice affect the economic stability, physical health and aesthetic enjoyment of members of River Watch who reside and recreate in the affected watershed area. 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.

THE FACILITY - "Arcata 76" - 2205 Alliance Road, Arcata, CA

The Facility on Alliance Road is an active retail fuel dispensing station located at the northwest corner of the intersection of Alliance Road and Westwood Court, in a predominantly residential section of Arcata, adjacent to an apartment complex which borders the station property to the west and the north. The underlying real property is owned by Big Oil & Tire.

The Facility lies at an approximate elevation of 26 ft. above mean sea level, and is approximately 1.5 miles north of Humboldt Bay. Jane's Creek, which runs from east to southwest, is less than 300 ft. south of the Facility. Some of the steel grate drainages on the Facility drain directly into Jane's Creek. Groundwater underlying the Facility flows generally to the north and west, and has been found to vary at between 7 and 18 feet bgs. Beneficial uses of surface water in this area include domestic supply, municipal use, industrial process and industrial service water supply.

An unauthorized hydrocarbon release was discovered in October of 1992. Analytical assessments of the extent of contamination in and around the Facility were initiated in early 1995, following the removal of 1 underground storage tank ("UST").

In 2004, the then-existing UST system (4 tanks and dispensers) were removed, and replacement USTs were installed. Over the years since the initial release, 7 monitoring wells have been installed along with 1 remediation well. Soil borings have been conducted at and around the Facility for the purpose of plume delineation.

A sensitive receptor survey was conducted in 2006 to determine the existence of public and/or private water wells and other sensitive receptors other than Jane's Creek. It is not clear whether any receptors deemed sensitive as a result of this study were ever tested. Some limited over-excavation has occurred consistent with continued retail operations; but no extraction efforts (other than pilot testing) have been reported and none appear to be planned. What has been planned, but not scheduled as of yet, is the introduction of ISCO bioremediation.

On the basis of the last uploaded analytical data from monitoring wells as last reported in November of 2012, TPHg levels were as high as 22,000 ug/l, MTBE was found at 2,200 ug/l, benzene was found to be as high as 1,600 ug/l xylenes were as high as 790 ug/l, and

ethylbenzene was found at 740 ug/l. Due to delays from the consultant in meeting scheduling requirements, several Notices of Violation have issued to Big Oil & Tire. A hiatus in monitoring and reporting has apparently resulted from Big Oil & Tire's request that oversight for the Facility be transferred from Humboldt County to the Regional Water Quality Control Board.

At the present time, there is no proactive remediation occurring. Groundwater is still being monitored on a quarterly basis, but no other remediation strategies have been implemented. Petroleum hydrocarbon impacted groundwater has, despite prevailing groundwater flow directions, migrated to the south and offsite, beneath Westwood Court and towards Jane's Creek.

On the basis of the current condition of this site, River Watch believes the following investigatory and remediation work must be implemented immediately in order to more effectively and comprehensively manage the levels of hydrocarbon contamination:

1. Complete delineation (including vertical contaminant delineation) for the purpose of enabling a comprehensive evaluation of the extent of underlying contamination so that adequate remediation work may proceed.

2. A more effective remediation strategy (designed to eliminate or significantly reduce the current threat to the environment and human health) should be developed, either to include further over-excavation, or by means of other methods, such as HVDPE or SVE located offsite for the purpose of remediating the migrated contamination. Any selected remediation strategy should have a strong likelihood of achieving state mandated MCLs or pre-existing background levels within a reasonable time frame. Increased contamination levels have been found on the basis of the most recent analytical monitoring in comparison with monitoring conducted one year earlier (Q4 2011).

3. Vapor intrusion testing should be initiated for any buildings or work areas above the plume (including offsite locations) to determine whether nearby employees and/or third parties (at the commercial and adjacent residential units) are being exposed to injurious levels of hydrocarbons, benzene or other toxic vapors.

4. Preferential pathway studies to determine whether there are as yet undiscovered conduits, sewer lines, storm drains, gravel lenses or other avenues by which hydrocarbons and petroleum constituents may be migrating offsite, given the shallow water table. Jane's Creek should be specifically monitored for contamination. River Watch is also concerned that McDaniel Slough, also downgradient, may be a sensitive receptor of contamination.

5. Ongoing residual mass calculations for the hydrocarbons underlying the Facility will allow the measurement of remediation progress once remediation processes are initiated.

REGULATORY STANDARDS

The Resource Conservation and Recovery Act of 1976 is a federal environmental law of the United States, the goals of which are the protection of the public and the environment from harm caused by waste storage and disposal, and to mandate the proper remediation of soil and groundwater contaminated by hazardous waste and hazardous products, including petroleum hydrocarbons and gasoline formula constituents. RCRA establishes a national policy that, wherever feasible, the generation of hazardous waste must be reduced or eliminated as expeditiously as possible. Pursuant to RCRA provisions, California has enacted laws and regulations that must be observed in conjunction with RCRA regulations.

California's "Water Quality Objectives" exist 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 that evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

The Regional Water Quality Control Board has adopted a Water Quality Control Plan ("Basin Plan") which designates surface and groundwater within the region of the Facility as capable of supporting domestic water supply unless specifically designated as having lesser uses such as industrial or agricultural. The Regional Board has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives for petroleum constituents in surface and groundwater within the region of 100 ppb for TPHg (CA cleanup standard), 1 ppb for benzene, 150 ppb for toluene and 13 ppb for MTBE.

VIOLATIONS

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

Big Oil & Tire's use, storage, handling and transportation of petroleum products at the Facility as identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements and/or prohibitions effective pursuant to RCRA regarding storage of petroleum in underground storage tanks. 42 U.S.C. § 6972(a)(1)(A).

River Watch alleges that from September 4, 2009 through September 4, 2014, Big Oil & Tire 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 where it is, or probably will be, discharged into waters of the State and now create, or threaten 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.

Mishandling of Hazardous Waste
RCRA § 3004, 42 U.S.C. § 6924 et seq.

Big Oil & Tire has used, handled, stored and transported petroleum products at the Facility in a manner which has allowed significant quantities of hazardous petroleum constituents and other toxic chemicals to be discharged to soil and groundwater beneath the Facility and beneath adjacent properties. The contaminant levels of TPHg, benzene, and other toxic contaminants in groundwater at the Facility are significantly greater than the allowable MCLs and/or WQOs for said constituents.

River Watch alleges that from September 4, 2009 through September 4, 2014, Big Oil & Tire has engaged in the following activities or omissions in violation of RCRA waste handling provisions:

1. Failure to adequately maintain records of hazardous wastes which were used, handled, treated, stored or otherwise disposed of on or offsite [42 U.S.C. §6924(a)(1)];

2. Failure to satisfactorily monitor, inspect, and report in accordance with RCRA provisions [42 U.S.C. §6924(a)(2)];

3. Failure to adequately use, handle, treat, store or properly dispose of hazardous waste found at the Facility [42 U.S.C. §6924(a)(3)];

4. Failure to adequately locate, design and construct a hazardous waste treatment, storage or disposal facility [42 U.S.C. §6924(a)(4)];

5. Failure to properly implement contingency plans for effective action to minimize unanticipated damage from the handling, transportation, treatment, storage or disposal of hazardous waste found at the Facility.[42 U.S.C. §6924(a)(5)].

Unpermitted Handling, Treatment, Storage, Transportation and/or Disposal of Hazardous Waste
RCRA § 3005, 42 U.S.C. § 6925 et. seq.

River Watch alleges that from September 4, 2009 through September 4, 2014, Big Oil & Tire has engaged in the following activities or omissions in violation of RCRA waste handling provisions:

1. Deposition and maintenance of hazardous waste as described herein causing the generation and discharge of hazardous waste at the Facility to the environment.

2. Installation and maintenance of a system of conveyances to dispose of hazardous generated and released from the Facility.

3. Failure to possess specific permits for the handling, storage, treatment, transportation, and/or disposal of hazardous or solid waste at the Facility.

4. Unpermitted handling, storage, treatment, transportation and/or disposal of hazardous waste at the Facility.

Prohibition Against Open Dumping
RCRA § 4005, 42 U.S.C. § 6945 et. seq.

River Watch alleges that from September 4, 2009 through September 4, 2014, Big Oil & Tire has engaged in the following activities or omissions in violation of RCRA provisions:

1. Engaging in open dumping by way of the discharge of hazardous waste to open ground where it will contaminate and has contaminated the soils, ground and surface waters at and surrounding the Facility, as described herein.

2. The Facility does not qualify as a landfill under 42 U.S.C. § 6944, and does not qualify as a facility for the disposal of hazardous waste.

3. Failure to possess a RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Facility.

RCRA UST Regulations
RCRA § 9001, 42 U.S.C. § 6991

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.*), and above ground tanks used for the same purposes. 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.).

River Watch alleges that from September 4, 2009 through September 4, 2014, Big Oil & Tire's use and storage of petroleum and other chemicals at the Facility has allowed significant quantities of hazardous chemical 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, River Watch alleges that Big Oil & Tire 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
RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972 (a)(1)(B)

River Watch alleges that from September 4, 2009 through September 4, 2014, Big Oil & Tire has used, handled, transported and/or stored petroleum products and other chemicals at the Facility in a manner which has allowed significant quantities of hazardous petroleum and chemical constituents to be discharged to soil and groundwater beneath the Facility and beneath adjacent properties. The contaminant levels of TPHg, benzene, and other toxic

compounds in groundwater at and surrounding the Facility are significantly greater than the allowable MCL and/or WQO for said constituents. Benzene and TPHg are known or suspected carcinogens. These substances are known to harm both plants and animals. In their concentrations at this location, these pollutants now create an imminent and substantial endangerment to public health and the environment.

The violations alleged in this Notice are knowing and intentional in that Big Oil & Tire has used and stored chemical substances and products at the Facility which are known to contain hazardous substances. River Watch alleges Big Oil & Tire has known of the contamination at the Facility at least since the past five years prior to the date of this Notice, 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 Facility, and to continually contaminate and re-contaminate actual and potential sources of drinking water.

Information currently available to River Watch indicates that Big Oil & Tire's violations of the RCRA as itemized above have occurred every day over the past five years prior to the date of this Notice, and/or on numerous separate occasions, and that those violations are continuing.

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 becomes available to River Watch after the date of this Notice.

CONCLUSION

River Watch believes this Notice sufficiently states grounds for filing suit under the statutory and regulatory provisions of RCRA as to Facility. At the close of the notice periods, River Watch has cause to file a suit against Big Oil & Tire under RCRA provisions for each of the violations as alleged herein, and with respect to the existing conditions at the Facility. River Watch is willing to discuss effective remedies for the violations referenced in this Notice. If Big Oil & Tire wishes to pursue such discussions in the absence of litigation, it is encouraged to initiate such discussions immediately so that the parties might be on tract to resolving the issues raised in this Notice before these RCRA claims are filed. River Watch will not delay the filing of a lawsuit if discussions have not commenced within a reasonable time following the receipt of this Notice.