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CERTIFICATE OF SERVICE OF FOURTH AMENDED COMPLAINT

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NORTHERN CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

FLUOR CORPORATION,

Defendant.

CASE NO. 3:10-cv-05105 MEJ

CERTIFICATE OF SERVICE OF FOURTH AMENDED COMPLAINT

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
10 JUN 27 P3:37

Plea 90-1-24-177-02972

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CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 100 E Street, Suite 318, Santa Rosa, CA 95404. On June 24, 2013, I served the following described document(s):

Fourth Amended Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation (Environmental - RCRA - 42 U.S.C. § 6901 *et seq.*, CWA - 33 U.S.C. § 1251 *et seq.)*

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

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

[X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

[ ] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on June 24, 2013 at Santa Rosa, California.

/s/
Kayla Brown

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NORTHERN CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA RIVER WATCH, a 501(c)(3) non-profit Public Benefit Corporation, Plaintiff, v. FLUOR CORPORATION, Defendant. _____/	CASE NO.: 3:10-cv-05105 MEJ **FOURTH AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES, RESTITUTION AND REMEDIATION (Environmental - RCRA - 42 U.S.C. § 6901 *et seq.*; CWA - 33 U.S.C. § 1251 *et seq.*)**

NOW COMES Plaintiff, NORTHERN CALIFORNIA RIVER WATCH a 501(c)(3) non-profit Public Benefit Corporation ("PLAINTIFF") by and through its attorneys, and for its Fourth Amended Complaint against Defendant, FLUOR CORPORATION ("DEFENDANT") states as follows:

I. NATURE OF THE CASE

1. This is a citizen's suit brought against DEFENDANT under the citizen suit enforcement provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, ("RCRA"), specifically RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) and RCRA § 4005; 42 U.S.C. § 6945, to stop DEFENDANT from repeated and ongoing violations of the RCRA.

2. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), permits citizen suits to enjoin the effects of pollution which creates or may create an imminent and substantial endangerment to human health or the environment. The statute provides that any person may commence a civil

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action against any person including a past generator, or transporter of hazardous or solid waste, or owner or operator of a treatment, storage or disposal facility who has contributed to the past storage, or treatment, or transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or to the environment.

3. As described herein, PLAINTIFF alleges DEFENDANT to be a past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, which has contributed or which is contributing to the past or present handling, storage, treatment, transportation, or disposal of a solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. (42 U.S.C. § 6972(a)(1)(B); 42 U.S.C. § 6945.)

4. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for DEFENDANT's violations of the RCRA's standards and regulations applicable to the handling, disposal, transportation, treatment, use or storage of solid or hazardous waste and for DEFENDANT's violation of the RCRA's prohibition against creating an imminent and substantial endangerment to human health or the environment.

5. This is also a citizen's suit for relief brought against DEFENDANT under the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, specifically 33 U.S.C. § 1311, 33 U.S.C. § 1342, and 33 U.S.C. § 1365 to stop DEFENDANT from repeated and ongoing violations of the CWA as detailed in this Fourth Amended Complaint. PLAINTIFF contends DEFENDANT is discharging pollutants from a point source without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of 33 U.S.C. § 1311(a).

6. CWA § 402, 33 U.S.C. § 1342, requires dischargers to obtain a NPDES permit to discharge any pollutant into waters of the United States.

7. CWA § 301(a), 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant unless in compliance with various enumerated sections of the CWA, including CWA § 402, 33 U.S.C. § 1342, and provides for injunctive relief pursuant to CWA §§309(a) and 505(d), 33 U.S.C. §§ 1319(a) and 1365(d).

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8. PLAINTIFF seeks declaratory relief, injunctive relief to prohibit future violations, the imposition of civil penalties, and other relief for DEFENDANT's violations of the CWA as alleged herein.

9. CWA §§505(a)(1) and 505(f), 33 U.S.C. §§1365(a)(1) and (f), and §1362(5) provide for citizen enforcement actions against any "person" including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365, violators are also subject to an assessment of civil penalties of up to $32,500.00 per day/per violation for all violations occurring through January 12, 2009, and $37,500.00 per day/ per violation for all violations occurring after January 12, 2009. *See also* 40 C.F.R. §§ 19.1-19.4.

10. The Regional Water Quality Control Board, North Coast Region ("RWQCB") has established water quality standards, and a water quality control plan, generally referred to as the "Basin Plan". The Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard, and provides that waters shall not contain materials in concentrations that cause nuisance or adversely affect beneficial uses. The Basin Plan also establishes limits on metals, solvents, pesticides and other hydrocarbons.

II. PARTIES

11. Plaintiff NORTHERN CALIFORNIA RIVER WATCH is a 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California with headquarters located in Sebastopol, California. PLAINTIFF is dedicated to protecting, enhancing and helping to restore the water environs of California including its drinking water sources, groundwater, rivers, creeks and tributaries.

12. PLAINTIFF is informed and believes, and on such information and belief alleges that Defendant, FLUOR CORPORATION is now, and at all times herein mentioned was, a Delaware corporation headquartered in Irvine, Texas, registered with the State of California and doing business within the State of California.

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III. JURISDICTIONAL ALLEGATIONS

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

> ". . . any person may commence a civil action on his own behalf (A) against any person . . . who is alleged to be in violation of any permit, standard, regulation, condition requirement, prohibition or order which has become effective pursuant to this chapter, or (B) against any person . . . who has contributed or who is 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."

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

15. Pursuant to RCRA § 7002(2)(A), 42 U.S.C. § 6972(2)(A), PLAINTIFF gave statutory notice of the RCRA violations alleged in this Fourth Amended Complaint prior to the commencement of this lawsuit to: (a) DEFENDANT, (b) the United States Environmental Protection Agency, both Federal and Regional, (c) the State of California Water Resources Control Board, and (d) the State of California Integrated Waste Management Board. The RCRA Notice of Violations is attached to this Fourth Amended Complaint as **EXHIBIT A** and fully incorporated herein.

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

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

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> "any citizen may commence a civil action on his own behalf against any person . . . .who is alleged to be in violation of (A) an effluent standard or limitation . . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation." For purposes of CWA § 505, "the term 'citizen' means a person or persons having an interest which is or may be adversely affected."

18. PLAINTIFF's members reside in the vicinity of, derive livelihoods from, own property near, or recreate on, in or near or otherwise use, enjoy and benefit from the watersheds, land, rivers, and associated natural resources into which DEFENDANT pollutes, or by which DEFENDANT's operations adversely affect those members' interests, in violation of CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), and CWA § 402, 33 U.S.C. § 1342. The health, economic, recreational, aesthetic and environmental interests of PLAINTIFF's members may be, have been, are being, and will continue to be adversely affected by DEFENDANT's unlawful violations of the CWA as alleged herein. PLAINTIFF contends there exists an injury in fact, causation of that injury by DEFENDANT's complained of conduct, and a likelihood that the requested relief will redress that injury.

19. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), PLAINTIFF gave statutory notice of the CWA violations alleged in this Fourth Amended Complaint to: (a) DEFENDANT, (b) the United States Environmental Protection Agency (Federal and Regional), and (c) the State of California Water Resources Control Board. The CWA Notice of Violations is attached to this Fourth Amended Complaint as **EXHIBIT B** and fully incorporated herein.

20. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Fourth Amended Complaint has been served on the United States Attorney General and the Administrator of the Federal EPA.

21. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the property site and operations under DEFENDANT's control and where illegal discharges occurred, which are the source of the violations complained of in this action, is located within this District.

IV. STATEMENT OF FACTS

22. PLAINTIFF is informed and believes, and on said information and belief alleges that DEFENDANT is a past generator, or past transporter of solid or hazardous waste, or past owner or operator of a solid or hazardous waste treatment or storage or disposal facility, comprised of

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approximately 28 acres, located in the Shiloh Industrial Park in Windsor, California, ("the Site") and has contributed or is contributing to the past handling, or storage, or treatment, or transportation, or disposal of solid or hazardous waste which may present an imminent or substantial endangerment to human health or the environment. Further, that DEFENDANT's handling, or use, or transport, or treatment, or storage or disposal of waste at the Site may present an imminent and substantial endangerment to health or the environment. [42 U.S.C. §6972(a)(1)(B)].

23. PLAINTIFF is informed and believes, and on said information and belief alleges that from 1955 to 1972 DEFENDANT was the owner and operator of the Site. During that time period DEFENDANT engaged in the business of manufacturing processing tanks, cooling towers, cross-arms, treating wood, and other wood products. The cross-arms, as well as some pipes and tanks, were treated with pentachlorophenal ("PCP") and creosote. Lead was used to coat hardware for piping and tanks in order to prevent corrosion. Records indicate other toxic metals such as arsenic and copper were used in these processes. Operations by DEFENDANT using PCP, creosote and lead occurred within a dip treatment shed and an adjacent kiln building with a dirt floor lacking any kind of drainage system. The treatment shed contained two (2) PCP tanks, two (2) creosote tanks and four (4) lead tanks. Wood or metal platforms were built around these treatment tanks. A concrete slab, which did not extend the full length of the dip treatment shed, existed about two (2) feet below the wood decking and just below the bottoms of the tanks. The concrete slab was bermed around the perimeter and had openings facing southwest. The slab also tilted slightly in the same direction. Consequently, spilled liquids collected on the concrete slab before draining onto the adjacent dirt floor area.

24. The surplus chemical solutions from DEFENDANT's dip treatment operations were pumped to unlined evaporation and settling ponds which illegally discharged to soils and surface drainage. The surface drainage discharged to wetlands, and to Pruitt Creek, a water of the United States. Ponds, equipment, tanks and a drying tower on the Waste Pond portion of the Site were sources of the original discharges of hazardous wastes. These pollutants contaminated the soils on the Site, turning these soils into solid and hazardous waste. These solid and hazardous wastes

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are point sources that continue to discharge via discrete conveyances on the Site to waters of the United States. For more than thirty (30) years, pollutants at the Site have been migrating, and in turn contaminating sources of drinking water, aquifers, private property, waters of the United States and ground waters.

25. PLAINTIFF is informed and believes, and on said information and belief alleges that from approximately 1962 to 1970, DEFENDANT operated a paint shop on the Site. During this time, toxic metals such as lead , cadmium, mercury, tin, copper, and arsenic and materials such as asbestos, PCBs and even DDT were at one time or another used in various paint formulations. The paint shop was located outside of the Waste Pond area of the Site.

26. The only area of the Site which DEFENDANT has remediated, or ever has attempted to remediate, is the Waste Pond area also known as the Ecodyne Pond Site. Historical pictures and diagrams of the Site show that areas other than the Waste Pond Site were used for the purpose of storage, manufacturing and disposal. Several wood waste burners, commonly termed "teepee" burners, were used on the Site to burn wood and debris. Diagrams of the Site indicate the teepee burners were located outside of the Waste Pond area. Numerous solid and hazardous wastes emit from the teepee burner areas of the Site. Residual materials from DEFENDANT's operations remain in soil and groundwater. These areas have not been investigated or remediated. Product was moved, dried and stored throughout the Site, causing preservative chemicals to be deposited on the ground throughout the entire Site. Recent samplings of the canal connecting to Pruitt Creek demonstrate the presence of lead, copper, zinc and polynuclear aromatic hydrocarbons ("PAHs").

27. PLAINTIFF is informed and believes, and on said information and belief alleges that DEFENDANT, in the course of doing business on the Site, has discharged and continues to discharge, by virtue of ongoing discharges from previously discharged waste deposits, pollutants to surface and ground water at and around the Site. On November 17, 2011, a review of RWQCB files concerning the Site revealed that sometime in November of 2011, the RWQCB informed the current owners of the Site, The Shiloh Group, that hazardous levels of lead and copper were found in the canal downstream from the former Waste Pond Site, which leads to Pruitt Creek. A February 27, 2012 Trans Tech report, *Summary Report of Findings*, by Trans Tech Consultants

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prepared for The Shiloh Group, strongly implied DEFENDANT's prior operations as the source of the lead.

28. PLAINTIFF is informed and believes, and on said information and belief alleges that DEFENDANT's handling, or use, or transport, or treatment, or storage or disposal of pollutants at the Site has occurred in a manner which has allowed significant quantities of hazardous constituents to be discharged to soil, ground and surface waters beneath and around the Site and beneath and around adjacent properties off site.

29. At present, the levels of pollutants in the groundwater at the Site remain high above the allowable Maximum Contamination Levels ("MCLs"), Water Quality Objectives ("WQOs") and Public Health Goals ("PHGs") for said constituents and by definition may be creating an imminent and substantial endangerment to public health or the environment. The pollutants in the soils remain above the applicable Environmental Screening Levels ("ESLs") and by definition may be creating an imminent and substantial endangerment to public health or the environment.

30. PLAINTIFF is informed and believes and on information and belief alleges, that DEFENDANT has discharged or is continuing to discharge hazardous waste on the Site in violation of the RCRA. Further, that DEFENDANT has known of the contamination at the Site for more than thirty (30) or more years, and is also aware that continuing discharges or failure to remediate the pollution allows the contamination to migrate through the soils and ground water at or adjacent to the Site, or to continually contaminate actual or potential sources of drinking water as well as ground or surface waters. The RCRA is a strict liability statute. The range of dates covered by the allegations is the period between August 1, 2007 and August 1, 2012 as designated in EXHIBIT A. The violations are continuing to this day.

31. The CWA regulates the discharge of pollutants into waters of the United States and 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. Without a NPDES permit **all surface and subsurface** discharges from a point source to waters of the United States are illegal.

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32. PLAINTIFF is informed and believes and on such belief alleges that DEFENDANT is not in possession of any NPDES permit allowing the discharge of pollutants from the Site to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b).

33. PLAINTIFF is informed and believes and on such belief alleges that DEFENDANT is discharging pollutants, including lead, copper, zinc and PAHs from the Site and various point sources within the Site to waters of the United States. The originating point sources were tanks, teepee burners, equipment, and ponds as described above. Soils contaminated by solid or hazardous waste are considered by law to be solid and hazardous waste. The Waste Pond site is directly adjacent to the canal on the Site and to wetlands adjacent to the canal. Materials have moved from the Waste Pond to the canal. The canal is directly connected to a water of the United States. These point sources continue to discharge to discrete conveyances connected to waters of the United States. The point sources also include roads, sewer lines (including a lateral that runs through the plume) and drainage ditches on the Site which discharge directly to the culvert adjacent to the Site which in turn discharges to Pruitt Creek, a water of the United States. These point sources also continue to discharge from the Site to surface waters adjacent to the Site. The CWA is a strict liability statute. The range of dates covered by the allegations is the period between August 1, 2007 and August 1, 2012 as designated in EXHIBIT B. These violations are continuing to this day. Each and every discharge is a separate violation of the CWA.

34. PLAINTIFF is informed and believes and on such belief alleges that DEFENDANT's violations identified herein, 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, and failure to meet water quality objectives, are continuous and therefore each day is a violation. PLAINTIFF alleges that all said violations are continuing in nature or will likely continue after the filing of this Fourth Amended Complaint.

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V. FIRST CLAIM FOR RELIEF

Imminent and Substantial Endangerment to Health or to the Environment

(42 U.S.C. § 6972(a)(1)(B))

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

35. The pollutants identified in the preceding paragraphs of this Fourth Amended Complaint are known carcinogens or reproductive toxins, and when released into the environment in sufficient quantity pose an imminent or substantial risk to public health or to the environment in general. The amount of said pollutants used, handled, stored, transported, disposed of or treated by DEFENDANT at the Site is in sufficient quantity to pose an imminent or substantial risk to environment or to human health.

36. DEFENDANT is of the class of entities covered by RCRA § 7002(a)(1)(B) and qualifies as a past generator, past transporter of hazardous or solid waste, or a past owner or operator of a treatment, or storage, or disposal facility which has contributed or is contributing to the past or present storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment, by virtue of the activities and endangerment as alleged in the preceding paragraphs of this Fourth Amended Complaint, and by reason of the following:

a. Use of chemicals such as PCP, copper, arsenic and lead in wood treatment operations on the Site which were sources of hazardous and solid wastes;

b. Transporting pollutants to the Site;

c. Mixing and using chemicals on the Site in such a manner as to create hazardous and solid waste;

d. Generating solid or hazardous waste; and,

e. Being a past owner or operator of the Site on which said chemicals were transported, used, stored in tanks and ponds and from which such solid or hazardous wastes were disposed of.

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37. The levels of pollutants at the Site remain high above the allowable MCLs, WQOs, PHGs and ESLs for said constituents, creating an imminent and substantial endangerment to public health or the environment. Toxic chemicals have been discharging from the Site from the solid and hazardous waste deposits through discrete conveyances to waters of the United States.

38. Continuing acts or failure to act by DEFENDANT to address these violations will irreparably harm PLAINTIFF and its members for which harm they have no plain, speedy or adequate remedy at law.

Wherefore, PLAINTIFF prays judgment against DEFENDANT as set forth hereafter.

VI. SECOND CLAIM FOR RELIEF

Creating Imminent and Substantial Endangerment to Health or to the Environment

(42 U.S.C. § 6972(a)(1)(B) specifically - Prohibition Against Open Dumping - 42 U.S.C. § 6945)

PLAINTIFF incorporates the allegations set forth above in paragraphs 1 through 38 above as though fully set forth herein. PLAINTIFF is informed or believes, and based on such information or belief alleges as follows:

39. Under 42 U.S.C. § 6944 a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse affects on health or to the environment from the disposal of solid waste at such facility.

40. As alleged herein, DEFENDANT used chemicals containing copper, arsenic, PCP and lead at the Site in such a manner that said chemicals illegally discharged to permeable surfaces and surface drainage at the Site, thereby discharging pollutants to the open ground and allowing these pollutants to discharge to both ground and surface waters. As such DEFENDANT is guilty of open dumping as that term is defined in the RCRA.

41. The Site 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 or solid waste. DEFENDANT is not in possession of a RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically discharged at the Site.

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42. As the information currently available to PLAINTIFF indicates that solid and hazardous wastes remain at the Site and that DEFENDANT has failed to remove them, PLAINTIFF alleges DEFENDANT has been guilty of open dumping in violation of RCRA § 4005 on numerous separate occasions, and continues to be in violation of RCRA § 4005.

43. Continuing activities by DEFENDANT as alleged herein irreparably harm PLAINTIFF and its members, for which harm PLAINTIFF has no plain, speedy or adequate remedy at law.

Wherefore, PLAINTIFF prays judgment against DEFENDANT as set forth hereafter.

VII. THIRD CLAIM FOR RELIEF

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

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

44. DEFENDANT has violated and continues to violate the CWA as evidenced by the discharges of pollutants from a point source to waters of the United States without a NPDES permit in violation of CWA § 301, 33 U.S.C. § 1311.

45. As alleged in the preceding paragraphs, DEFENDANT has discharged pollutants and continues to discharge pollutants from both past and currently existing point sources within the Site, to waters of the United States. The currently existing point sources include the solid and hazardous waste discharged from formerly existing structures at the Site including ponds, equipment, vessels, above ground and below grade storage tanks, roads, and sewer lines as well as drainage ditches on the Site which discharge directly or indirectly to the culvert adjacent to the Site, all of which discharge above ground or subsurface to waters of the United States including Pruitt Creek. These point sources continue to discharge pollutants to the surface waters adjacent to the Site.

46. The California Department of Toxic Substances Control has determined that DEFENDANT has responsibility for the Waste Pond area of the Site and has ordered DEFENDANT to investigate and remediate this pollution which includes dioxin, lead and PAHs. Via permits and the directives

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of governmental entities such as the Department of Toxic Substances Control and the Sonoma County Department of Public Health, as well as via agreements with the current land owner to investigate and remediate the pollutants identified in this Fourth Amended Complaint, DEFENDANT has operational control over the above-referenced areas of the Site that are the source of these illegal discharges.

47. PLAINTIFF alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief DEFENDANT will continue to violate the CWA as well as State and Federal standards with respect to the enumerated discharges identified herein. PLAINTIFF further alleges that the relief requested herein will redress the injury to PLAINTIFF and its members, prevent future injury, and protect the interests of PLAINTIFF and its members which interests are or may be adversely affected by DEFENDANT's violations of the CWA as alleged herein.

Wherefore, PLAINTIFF prays judgment against DEFENDANT as set forth hereafter.

VIII. PRAYER FOR RELIEF

PLAINTIFF prays this Court grant the following relief:

48. Declare DEFENDANT to have violated and to be in violation of the RCRA for discharging chemicals and constituents from the Site which are known carcinogens and/or reproductive toxins in sufficient quantities to pose an imminent and substantial risk to human health and the environment.

49. Enjoin DEFENDANT from discharging chemicals and chemical constituents from the Site which pose an imminent and substantial risk to health and the environment;

50. Enjoin DEFENDANT from continued violations of the RCRA;

51. Order DEFENDANT to fully investigate the Site, which investigation shall include:

a. Completion of Site Delineation, to include the characterization of the nature and extent of all underground contaminant plume(s) and the nature and extent of any commingled plumes which may be entering the Site from offsite locations;

b. Comprehensive Sensitive Receptor Survey, to include an adjacent surface water study, water supply survey, and building conduit survey;

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

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

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

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

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

52. Order DEFENDANT to fully remediate the Site reducing all contaminants of concern in the groundwater to below WQOs within 5 years;

53. Order DEFENDANT to pay civil penalties to the United States on a per violation/per day basis for the violations of the RCRA alleged herein;

54. Declare DEFENDANT to have violated or to be in violation of the CWA;

55. Enjoin DEFENDANT from continued violations of the CWA;

56. Order DEFENDANT to fully remediate all damages caused by its violations of the CWA;

//

57. Order DEFENDANT to pay civil penalties on a per violation/per day basis for its violations of the CWA;

58. Order DEFENDANT to pay PLAINTIFF's reasonable attorneys' fees and costs (including expert witness fees), as provided by law; and,

59. Grant such other or further relief as may be just or proper.

DATED: June 24, 2013

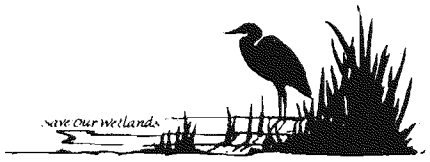
/s/ Jack Silver
JACK SILVER
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

ED_001083_00000345-00018

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



VIA REGISTERED MAIL -
RETURN RECEIPT REQUESTED

August 1, 2012

Owner/Managing Agent
Ecodyne Corporation/The Marmon Group
181 West Madison St. 26th Floor
Chicago, IL 60602

Owner /Managing Agent
Fluor Corporation
6700 Las Colinas Blvd.
Irvine, TX, 75039

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

To Owners and Managing Agents of Ecodyne Corporation and Fluor Corporation:

NOTICE

On behalf of Northern California River Watch ("River Watch"), this letter provides statutory notification ("Notice") to Ecodyne Corporation and Fluor Corporation (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 continuing pollution on property located in a portion of the Shiloh Industrial Park at 930 Shiloh Road in Windsor, California, (the "Site"), further described 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 ("EPA") and the State in which the

violation is alleged to have occurred. 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.*)

RCRA also requires that a private party provide 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.

As discussed herein, Polluters operate a non-permitted, hazardous waste treatment, storage and disposal site. Fifty-five gallon drums of hazardous waste are stored on the Site. Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Site, 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 the RCRA, or with the State of California's hazardous waste requirements authorized under the RCRA. River Watch contends that Polluters' mishandling of wastes in violation of Subchapter C of the RCRA violates a permit, standard, regulation, condition, requirement, prohibition or order effective under the RCRA, as well creates an 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 to civil action against Polluters or amend the complaint filed in the U.S. District Court, Northern District of California, in the case entitled, *Northern California River Watch vs. Ecodyne Corporation, et al,* Case No.: 3:10-cv-05105MEJ on the following grounds:

1. Polluters' use and storage of solid and hazardous wastes described in the BACKGROUND section of this Notice 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 Site 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 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 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. In compliance with the statute, River Watch 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. RCRA's 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. RCRA specifically protects groundwater.

The EPA's 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 RCRA, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations.

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

2. *The Activity Alleged to Constitute a Violation*

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 hazardous wastes including those generated by Polluters. The pollutants found at the Site as identified in this Notice constitute hazardous waste under RCRA, and

are required to be managed such that potential and actual harm to the environment and public is eliminated.

The liability of Polluters stems from either their ownership of the Site or activities conducted on the Site by them which violated RCRA and have contributed to the past or present handling, storage, treatment, transportation, or disposal of a hazardous waste which may present an imminent and substantial endangerment to health or the environment. River Watch also allege 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 defined in RCRA by discharging pollutants as described in the BACKGROUND section of this Notice and allowing these pollutants to discharge to soils and ground water as well as threatening waters of the United States. The Site 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. Polluters have no RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically found at the Site.

Polluters have operational control over the Site with regard to characterization and remedition. Polluters caused pollutants to be discharged to aquifers, surface and groundwaters via Polluters' conduits 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 a hazardous waste which may present an imminent and substantial endangerment to health or the environment.

Polluters have caused contamination of soil, surface and ground waters, and residential areas. Polluters are past or present generators, past or present transporters, or past or present owners or operators of a treatment, storage, or disposal facility, who have contributed or who are contributing to the past or present handling, storage, treatment, transportation, or disposal of solid or hazardous waste which presents an imminent and substantial endangerment to health or the environment. Due to the contamination of soils, ground and surface waters, beneficial uses of the affected waters have been impaired. The groundwater in the area of the Site is hydrologically connected to adjacent wetlands and to tributaries of Pruitt Creek. These waters of the United States are already affected or are at imminent risk of contamination from the hazardous and solid waste at the Site.

3. *The person or persons responsible for the alleged violation*

The person or persons responsible for the alleged violations are Ecodyne Corporation and Fluor Corporation, collectively referred to as "Polluters" throughout this Notice.

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

The entity giving this Notice is Northern California River Watch, 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. River Watch can be contacted via email at 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 95402-5469
Tel. 707-528-8175
Fax 707-528-8675.

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 area. Members of River Watch use the affected area for recreation, hiking, photography, nature walks sports, water, fishing, swimming, boating and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by the violations of RCRA identified in this Notice.

BACKGROUND

The Site is located in the Shiloh Road Industrial Park located at 930 Shiloh Road, in Windsor, California. The Site is comprised of approximately 28 acres, and is subdivided into numerous parcels, separated by chain link fencing. Many of the subdivided parcels are leased to small commercial and industrial businesses. Certain portions of the Site have been partially characterized including the former Wood Treatment Facility (LEA RWQCB global ID T0609700026); Waste Pond Site (LEA DTSC global ID 49240001); and Tower Site (LEA RWQCB, global ID 49420002)

In 1951, Industrial Manufacturers, Ltd. conveyed the Site property by grant deed to Industrial Manufacturers, Inc. which was incorporated in California for the purpose of "initially engage in the primary business of processing tanks, cooling towers, cross-arms, and other wood products." In 1953, the name "Industrial Manufacturers, Inc." was changed to Santa Fe Tank & Tower Co., Inc. In 1955 Santa Fe Tank & Tower Co., Inc. became a

wholly-owned subsidiary of Fluor Corporation, Ltd. Fluor Corporation, Ltd. continued the operations at the Site.

From 1953 to 1956 the Site was used for manufacturing cross-arms, pipes, air scrubbers, press plates, tanks, and cooling towers out of douglas fir and redwood. The cross-arms, as well as some pipes and tanks were treated with wood preservatives, including pentachlorophenol (PCP) and creosote. It is quite likely that other toxic metals and possible solvents were used in these processes such as chromium, arsenic and copper. In addition, lead was used to coat hardware for piping and tanks in order to prevent corrosion. Operations using PCP, creosote, and lead occurred within a dip treatment shed and an adjacent kiln building located in the northwestern quadrant of the Site. The dip treatment shed construction included a wall which was shared with the kiln building, a corrugated steel roof supported by steel posts, and a dirt floor which lacked any kind of drainage system.

Wood treatment operations inside the dip treatment shed were conducted with a non-pressure, hot and cold dipping process. The shed contained two PCP tanks, two creosote tanks, and four lead tanks. One PCP tank and one creosote tank were used to hold hot solutions while the other two tanks were used to hold cold solutions. Wood or metal platforms were built around these treatment tanks. A concrete slab, which did not extend the full length of the dip treatment shed, existed about two feet below the wood decking and just below the bottoms of the hot and cold tanks. The concrete slab was bermed around the perimeter and had openings facing southwest; the slab also tilted slightly in the same direction. Consequently, spilled liquids collected on the concrete slab before draining onto the adjacent dirt floor area.

A creosote storage tank was located over the ditch near the southwest end of the dip treatment shed. Creosote was delivered to this storage tank via tank car and was gravity-fed into the hot creosote dip tank located inside the dip treatment shed. Fifty-five-gallon drums filled with PCP were stored outside near the southern end of the dip treatment shed. PCP was poured from the 55-gallon drums directly into the PCP tanks, often spilling onto the ground.

The lead dipping tanks were located at the north end of the dip treatment shed. All of the tanks, with the exception of the tank containing the molten lead, were made of wood with metal lining. All leaked. Below the molten lead tank was a set of two gas burner jets set up on bricks. Both hot tanks, containing PCP and creosote, were heated to temperatures above 100°F. Lumber was lowered into the hot preservatives, using an overhead crane trolley, and left to soak for a minimum of two hours. Next, the lumber was transferred to a tank containing cold preservative to soak for an additional two hours. After the lumber was removed from the cold tanks, it was placed on a tray which drained back into the cold tank.

The lumber was then stacked directly on the dirt outside, generally between the dip treatment shed and the ditch which runs alongside the railroad tracks, and left to dry thoroughly before it was shipped off site.

Santa Fe Tank & Tower Co., Inc used lead to coat the hardware for tanks and piping prior to fabricating these items. The hardware was first immersed into a tank containing a high alkaline substance, then into a clear wash. Next it was immersed into tanks containing flux and molten lead, respectively. The lead was heated to about 650°F. Finally, the hardware was immersed into a tank containing seal coater. The hardware was raised out of the seal coater and placed on a tray which drained back into the tank. In interviews with former yard employees of the Santa Fe Tank & Tower Co., it was indicated that spillage of PCP, creosote and lead was associated with their storage, the filling of tanks, and the treatment of wood and other products. Former employees also indicated that changes in temperature caused the drum plugs and threading to expand and contract in such a way that water entered the drums and periodically flushed out the substances stored in them. Several PCP drums had been completely flushed out by rain water in this manner. According to these interviews, workers often removed the wood around the PCP and creosote tanks in order to flush out contents which had accumulated on the concrete below the tanks. Contents were flushed with water onto the dirt area just outside the PCP and creosote dipping area.

From 1956 to 1957, Fluor Corporation, Ltd. moved its cooling tower manufacturing operations from Los Angeles to the Site. The process of treating lumber with PCP in the dip treatment shed continued until about 1960/1961. Based on interviews with former Fluor Corporation employees, the dip treatment shed was converted into a paint shop prior to 1963. From approximately 1962 to 1970, Fluor Corporation and its subsidiaries operated the paint shop. During this time, toxic metals such as lead, chromium, cadmium, mercury, tin, copper, arsenic and materials such as asbestos, PCBs and even DDT were at one time or another used in various paint formulations. Epoxy-lead based paint was applied to hardware either by a spray or dip process, and subsequently was hand painted. Although former employees recall examining the tanks in the dip treatment shed and finding them to be empty in 1968, there are no records indicating any means or methods of disposal of excess PCP, creosote, and lead after Fluor Corporation discontinued dip treating wood and hardware on the Site.

In 1968, Fluor Corporation, Ltd. conveyed the Site property to Fluor Products Co., Ltd., which assumed ownership and control of the manufacturing operations at the Site. Fluor Products Co., Ltd. was incorporated in August 1962 and engaged primarily in the specific business of manufacturing and sales of cooling towers and wood products. In 1969, Fluor Products Co, Inc. became a wholly-owned subsidiary of Ecodyne Corporation which continued to own and operate the property until 1970, at which time the company's name changed to Fluor Cooling Products Company. In 1972, the name of the company again

underwent a change to Ecodyne Cooling Products Company which merged into Ecodyne Corporation. Ecodyne Corporation remained the owner of the Site until 1984.

Once acquiring the Site, Ecodyne Corporation demolished the kiln building and the paint shop. Prior to demolition, the remaining dip tanks and salvageable materials, such as corrugated steel siding and roofing, were placed in the "backyard" of the Site, located south of the kiln building, beyond the railroad spur. In 1971, Ecodyne Corporation 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.

Ecodyne Corporation operated the wood treatment facility from July 1965 to January 1984, at the current Shiloh Industrial Park. Chromic acid, sodium dichromate, and copper sulfate were used, among other chemicals, in the wood treatment process. The Waste Pond area of the site was used as a drip treatment facility for wood and metal products until the early 1970's. Chemicals used in those operations were stored in both above ground and below grade storage tanks. It is 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.

Several teepee burners are seen on site maps and historical photographs of the Site. The photographs show these burners as operational. Many of the areas where manufacturing, storage and disposal took place are outside the "Waste Pond" and Tower" areas of the Site, identified as the only current sites for remediation. Residues from chemical spills in the soils and ground water were first discovered in November 1985 in connection with cleanup efforts at the Tower site. In 1986, a backhoe operator hit concrete flooring and walls (which may have been the foundation structure of the kiln building) contaminated with creosote at about six feet below grade. The creosote odor was strong. Some creosote-contaminated soil was dragged about 50 feet away from the main excavation area. In addition, a smaller excavation area located adjacent to the drainage ditch contained ponded water with a slight oily sheen.

Residual materials from the operations of Fluor Corporation and Ecodyne Corporation remain in soils and groundwater, including dioxin, lead, copper, PCP, hexavalent chromium, polynuclear aromatic hydrocarbons (PAHs) and arsenic. The Regional Water Quality Control Board ("RWQCB") requested that Ecodyne Corporation, as previous owner and operator of the Site, submit a workplan for conducting an investigation to determine the extent of contamination present in soil and groundwater. Soil samples from the affected areas taken in 1985 indicated the presence of PCP, PAHs, arsenic, hexavalent chromium, copper, lead,

and dioxins. Total PAH concentrations were generally highest at the same locations as they were for PCP. These locations include the dip treatment shed (as high as 654 ppm) and below the drainage ditch (176 ppm). Lead in soilwas found in concentrations of 587 ppm and within the ditch, 752 ppm. Zinc was detected at various concentrations within the Site. The highest concentrations found were within the dip treatment shed (1350 ppm) and beneath the drainage ditch (1510 ppm).

Between 1984 and 1987, the Site 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 became the owner of the Site.

The Waste Pond area of the Site is currently fenced and posted as a hazardous waste area. This portion of Site is currently vacant. Directly adjacent to the Waste Pond area to the northwest is another hazardous waste area of the Site currently undergoing remediation, known as the Towers Site. The Towers Site is being cleaned up with the oversight of the RWQCB. Other than these small areas, the remainder of the Site has not been fully characterized and no remediation has been commenced. Contaminants of concern include dioxin, PAHs, PCP, hexavalent chromium, lead, copper and arsenic.

The RWQCB has determined that the pollution at the Site impairs and threatens beneficial uses of both the surface and ground waters at or near the Site. The RWQCB has issued numerous enforcement orders determining that the current pollution constitutes imminent and substantial endangerment to health or the environment. Part of the Site is so contaminated with hazardous chemicals that it is being managed by the Department of Toxic Substances Control.

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 California PHG, established by Cal/EPA and the California Office of Environmental Health Hazard Assessment. 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 Office of Environmental Health Hazard Assessment 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 maximum contaminant levels ("MCLs") listed in the RWQCB's Water Quality Control Plan or "Basin Plan" and cited in Polluters' 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 Site is not feasible. The RAP addresses 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 Basin Plans and policies adopted by the State and Regional Water Quality Control 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.

In 1989 Polluters started a groundwater extraction, treatment, and disposal system to remediate groundwater contaminated with hexavalent chromium on a small protion of the Site. 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 1992 to September 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 the concentrations of chromium in the shallow groundwater near the source area, and did not appear to be capable of achieving remedial goals. In September and October 2004 highly impacted soil on the Site was treated by mixing calcium polysulfide with the soil using a hydraulic backhoe. In April 2007, additional injections of calcium polysulfide was performed in areas where hexavalent chromium persisted.

Despite claims by Polluters that the Site has been fully characterized, and despite decades of work on the Site, new areas of hexavalent chromium and lead contamination have recently been discovered. Today, the Site remains highly polluted. As stated previously, only a small area of the site has been investigated. Numerous areas previously used for manufacturing, production, transportation, storage and disposal of product and waste have never been adequately investigated. There is no reference in any of the consultant reports

concerning the teepee burners. There is little and inadequate characterization in the consultant reports concerning the specific areas of manufacturing, production, transportation, storage and disposal of product and waste.

Conduits such as sewers, 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 off site to waters of the United States and possibly to residences of members of River Watch.

Despite all of the monitoring, records on file with the RWQCB relating to the Site do not indicate whether a current (within the last two years) sensitive receptor survey 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. 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 and ditches 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 numerous gravel lenses which are known to be conduits and can cause significant off site migration of pollutants. River Watch does not believe Polluters have made any attempt to determine the mass of any pollutants, making a determination as to mass balance clean-up impossible.

Pollutants at the Site have been migrating for more than thirty years, contaminating new sources of drinking water, new aquifers, private property, waters of the United States and ground waters. Aquifer studies have been inadequate. River Watch is concerned that due to its proximity to the Site, Pruitt Creek has already been compromised by contaminants. River Watch takes the position that adequate monitoring should be conducted along surface waters, and that remediation must be conducted much more proactively to remove existing threats both to the environment and to individuals who reside in the area.

As required by RCRA and California's implementation of RCRA, River Watch alleges that 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. Fifty-gallon drums containing hazardous waste are illegally stored at the Site. Polluters appear to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Site, 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 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 continuing.

LIABILITY

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

The RWQCB has adopted a Basin Plan which designates all surface and groundwater at or near the Site as capable of supporting domestic water supply.

The pollutants at the Site have been characterized as "hazardous waste" and "solid waste" within the meaning 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 alleges Polluters to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA.

River Watch alleges 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 a solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

River Watch alleges 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.

River Watch alleges Polluters are guilty of open dumping as that term is defined in RCRA, by discharging pollutants to the open ground allowing these pollutants to discharge to both ground and surface waters. The Site 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. Polluters have no RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically found at the Site.

Between August 1, 2007 and August 1, 2012 ongoing violations of RCRA as described herein have occurred. Polluters have caused or permitted, cause or permit, or threaten to cause or permit hazardous waste to be discharged or deposited at the 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 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. Polluters have known of the contamination at the Site since at least 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 Site, and to continually contaminate and re-contaminate soil, ground and surface waters.

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. 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 Site between August 1, 2007 and August 1, 2012 have allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California hazardous waste regulatory programs. Contaminant levels of toxic metals such as hexavalent chromium, lead as well as PAHs and dioxin in soil and groundwater at the Site are significantly greater than the allowable MCLs, WQOs or PHGs for said constituents. These pollutants are known carcinogens and toxins. All are known to harm both plants, animals and aquatic organisms. In their concentrations at the Site and proximity to sensitive receptors such as ground water, surface water, plants, insects, animals, aquatic organisms and humans, these pollutants create an imminent and substantial endangerment to public health and the environment.

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, and seeks all penalties and other enforcement provisions related to such violations.

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. These members use this watershed for domestic water supply, agricultural water supply, recreation, sports, residing, 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 RCRA.

REQUESTED RELIEF

River Watch requests full investigation of the Site including the following:

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 of all aquifers determined to be in communication with the surface unconfined aquifer and contaminated zones for all known pollutants at the Site;

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 of all conduits and preferential pathways found to have intersected the plume for all pollutants at the Site;

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). Testing for any water supply wells found to contain pollutants;

e. Surface Water Survey - A study determining if any surface waters have been or have the potential of being contaminated by pollutants at the Site. Testing of all surface waters and drainage within 1,500 feet of the outer extent of the plume;

f. Comprehensive Study of Entire Site - A comprehensive investigation of the entire site especially those areas outside the "Waste Pond" and "Tower" sites. Testing of soils and ground water in areas where known activities may have contaminated the area including places of former teepee burners, storage areas, disposal sites, product storage, and operations;

g. Determination of Mass of Plume Constituents - Mass of the plume and masses of the various pollutants at the Site, such as lead, to be determined, whether or not part of the "plume"; and,

h. Toxic Metals Study - A toxic metals study to include all metals, such as lead, with a reasonable potential of being contaminants.

Very truly yours,

Jack Silver

JS:lhm

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

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

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

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

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

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

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

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

Fluor Corporation
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Lowenstein Sandler, PC
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EXHIBIT B

Law Office of Jack Silver

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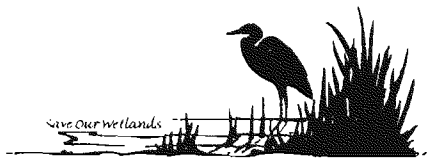

VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

August 1, 2012

Owner/Managing Agent
Ecodyne Corporation/The Marmon Group
181 West Madison St. 26th Floor
Chicago, IL 60602

Owner /Managing Agent
Fluor Corporation
6700 Las Colinas Blvd.
Irvine, TX, 75039

Re: Notice of Violations Under the Clean Water Act And Intent to File Suit

To: Owners and/or Managing Agents of Ecodyne Corporation and Fluor Corporation:

NOTICE

This Notice is provided on behalf of Northern California River Watch ("River Watch") with regard to the discharges of pollutants from facilities formerly owned by Ecodyne Corporation and Fluor Corporation (collectively, "Dischargers") located on a portion of the Shiloh Industrial Park at 930 Shiloh Road in Windsor, California, (the "Site") into waters of the United States, in violation of the Clean Water Act ("CWA").

By this Notice, River Watch is providing statutory notification to Dischargers as former owners, site managers, or managing agents of the Site, 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 Regional Water Quality Control Board, North Coast Region's Water Quality Control Plan ("Basin Plan") as exemplified by Dischargers' 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 Dischargers' ongoing violations of the substantive and procedural requirements of CWA §§ 301(a) and 402(a),(b) and (p). The CWA prohibits the discharge of a pollutant from a point source to a water of the United States without a NPDES permit.

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 ("EPA"), the State in which the violations occur, and the registered agent of the alleged violator. River Watch believes this Notice provides proper notice of Dischargers' violations as required by the CWA. Upon the end of the notice period, River Watch intends to commence to civil action against Dischargers' by reason of the CWA violations set forth in this notice, or amend the complaint filed in the U.S. District Court, Northern District of California, in the case entitled *Northern California River Watch vs. Ecodyne Corporation, et al,* Case No.: 3:10-cv-05105MEJ.

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 Dischargers that they are not in possession of a NPDES permit allowing the discharge of pollutants from the Site and numerous point sources within the Site including hazardous and solid waste, former teepee burners, ponds and storage tanks as 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 EPA's federal implementing regulations under the CWA address the possibility that a facility could "close its doors" yet leave behind a toxic mess and a contaminated, designated industrial facility. Thus, to avoid this scenario which would thwart the entire purpose behind the

CWA's regulation of industrial storm water pollution, the EPA specifically requires that the term "designated industrial activities" encompasses a closed facility that fails to properly address its industrial contamination. Specifically, the regulations require NPDES permit coverage for the following:

- storm water discharges from industrial plant yards including manufactured products, waste material or by-products used or created by the facility;
- material handling sites;
- sites used for the storage and maintenance of material handling equipment; and,
- areas where industrial activity has taken place in the past, and significant materials remain and are exposed to storm water. 40 C.F.R. 122.26(14)(b).

California's Storm Water Permit adopts this same terminology and requires permit coverage for facilities which have closed leaving a contaminated site behind.

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.

River Watch hereby notices Dischargers that they have no NPDES permit allowing the discharge of pollutants from the Site and numerous point sources within the Site including the solid and hazardous waste, 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.

In compliance 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 Dischargers 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 and structures including towers, teepee burners and ponds, 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 pollutants from the Site to surface waters adjacent to the Site.

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

3. The discharger responsible for the alleged violation.

The dischargers responsible for the alleged violations are Flour Corporation and Ecodyne Corporation as former owners, site managers, or managing agents of the Site, identified throughout this Notice as "Dischargers".

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 Dischargers with regard to the Site which relate to Dischargers' activities on the Site as described in this Notice.

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

Disposition, discharge and release of pollutants from the Site 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 August 1, 2007 through August 1, 2012. 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, and failure to meet water quality objectives are continuous, and therefore each day is a violation.

River Watch believes all violations set forth in this Notice are continuing in nature. Specific dates of violations are evidenced in Dischargers' own records (or lack thereof) or files and records of other agencies including the Regional Quality Control Board ("RWQCB"), the State Water Resources Control Board GeoTracker, and Sonoma County Department of Health Services related to the Site.

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

The entity giving this Notice is Northern California River Watch, 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. River Watch can be contacted via email at 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 95402-5469
Tel. 707-528-8175
Fax 707-528-8675.

BACKGROUND

The Site, located in the Shiloh Industrial Park at 930 Shiloh Road, Windsor, California is comprised of approximately 28 acres and is subdivided into numerous parcels, separated by chain link fencing. Many of the subdivided parcels are leased to small commercial and industrial businesses.

In 1951, Industrial Manufacturers, Ltd. conveyed the Site property by grant deed to Industrial Manufacturers, Inc. which was incorporated in California with the purpose to "initially engage in the primary business of processing tanks, cooling towers, cross-arms, and other wood products." In 1953, the name "Industrial Manufacturers, Inc." was changed to Santa Fe Tank & Tower Co., Inc. In 1955 Santa Fe Tank & Tower Co., Inc. became a wholly-owned subsidiary of Fluor Corporation, Ltd. Fluor Corporation, Ltd. continued the operations at the Site.

In 1968, Fluor Corporation, Ltd. conveyed the Site property to Fluor Products Co., Ltd., which assumed ownership and control of the manufacturing operations at the Shiloh Road property. Fluor Products Co., Ltd. was incorporated in August 1962 and engaged primarily in the specific business of manufacturing and sales of cooling towers and wood products. In 1969, Fluor Products Co, Inc. became a wholly-owned subsidiary of Ecodyne Corporation which continued to own and operate the property until 1970, at which time the company's name changed to Fluor Cooling Products Company. In 1972, the name of the company again underwent a change to Ecodyne Cooling Products Company which merged into Ecodyne Corporation. Ecodyne Corporation remained the owner of the Site until 1984.

From 1953 to 1956 the Site was used for manufacturing cross-arms, pipes, air scrubbers, press plates, tanks, and cooling towers out of douglas fir and redwood. The cross-arms, as well as some pipes and tanks were treated with wood preservatives, including pentachlorophenol (PCP) and creosote. It is quite likely that other toxic metals and possible solvents were used in these processes such as chromium, arsenic and copper. In addition, lead was used to coat hardware for piping and tanks in order to prevent corrosion. Operations using PCP, creosote, and lead occurred

within a dip treatment shed and an adjacent kiln building, located in the northwestern quadrant of the Site. The dip treatment shed construction included a wall which was shared with the kiln building, a corrugated steel roof supported by steel posts, and a dirt floor lacking any kind of drainage system.

Wood treatment operations inside the dip treatment shed were conducted with a non-pressure, hot and cold dipping process. The shed contained two PCP tanks, two creosote tanks, and four lead tanks. One PCP tank and one creosote tank were used to hold hot solutions while the other two tanks were used to hold cold solutions. Wood or metal platforms were built around these treatment tanks. A concrete slab, which did not extend the full length of the dip treatment shed, existed about two feet below the wood decking and just below the bottoms of the hot and cold tanks. The concrete slab was bermed around the perimeter and had openings facing southwest; the slab also tilted slightly in the same direction. Consequently, spilled liquids collected on the concrete slab before draining onto the adjacent dirt floor area. A creosote storage tank was located over the ditch near the southwest end of the dip treatment shed. Creosote was delivered to this storage tank via tank car and was gravity-fed into the hot creosote dip tank located inside the dip treatment shed. Fifty-five-gallon drums filled with PCP were stored outside near the southern end of the dip treatment shed. PCP was poured from the 55-gallon drums directly into the PCP tanks, often spilling onto the ground.

The lead dipping tanks were located at the northern end of the dip treatment shed. All of the tanks, with the exception of the tank containing the molten lead, were made of wood with metal lining. All were known to leak. Below the molten lead tank was a set of two gas burner jets set up on bricks. Both hot tanks, containing PCP and creosote, were heated to temperatures above 100°F. Lumber was lowered into the hot preservatives, using an overhead crane trolley, and left to soak for a minimum of two hours. Next, the lumber was transferred to a tank containing cold preservative to soak for an additional two hours. After the lumber was removed from the cold tanks, it was placed on a tray which drained back into the cold tank. The lumber was then stacked directly on the dirt outside, generally between the dip treatment shed and the ditch which runs alongside the railroad tracks, and left to dry thoroughly before it was shipped off site.

Santa Fe Tank & Tower Co., Inc used lead to coat the hardware for tanks and piping prior to fabricating these items. The hardware was first immersed into a tank containing a high alkaline substance, then into a clear wash. Next it was immersed into tanks containing flux and molten lead, respectively. The lead was heated to about 650°F. Finally, the hardware was immersed into a tank containing seal coater. The hardware was raised out of the seal coater and placed on a tray which drained back into the tank. In interviews with former yard employees of Santa Fe Tank & Tower Co., it was indicated that spillage of PCP, creosote and lead was associated with their storage, the filling of tanks, and the treatment of wood and other products. The former employees also indicated that changes in temperature caused the drum plugs and threading to expand and contract in such a way that water entered the drums and periodically flushed out the substances stored in them. Several PCP drums had been completely flushed out by rain water in this manner.

According to these interviews, workers often removed the wood around the PCP and creosote tanks in order to flush out contents which had accumulated on the concrete below the tanks. Contents were flushed with water onto the dirt area just outside the PCP and creosote dipping area.

From 1956 to 1957, Fluor Corporation, Ltd. moved its cooling tower manufacturing operations from Los Angeles to the Shiloh Road site. The process of treating lumber with PCP in the dip treatment shed continued until about 1960/1961. Based on interviews with former Fluor Corporation employees, the dip treatment shed was converted into a paint shop prior to 1963. From approximately 1962 to 1970, Fluor Corporation and its subsidiaries operated the paint shop. During this time, toxic metals such as lead, chromium, cadmium, mercury, tin, copper, arsenic and materials such as asbestos, PCBs and even DDT were at one time or another used in various paint formulations. Epoxy-lead based paint was applied to hardware either by a spray or dip process, and subsequently was hand painted. Although former employees recall examining the tanks in the dip treatment shed and finding them to be empty in 1968, there are no records indicating any means or methods of disposal of excess PCP, creosote, and lead after Fluor Corporation discontinued dip treating wood and hardware on the Site.

Once acquiring the Site, Ecodyne Corporation demolished the kiln building and the paint shop. Prior to demolition, the remaining dip tanks and salvageable materials, such as corrugated steel siding and roofing, were placed in the "backyard" of the Site, located south of the kiln building, beyond the railroad spur. In 1971, Ecodyne Corporation 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.

Ecodyne Corporation operated the wood treatment facility from July 1965 to January 1984, at the current Shiloh Industrial Park. Chromic acid, sodium dichromate, and copper sulfate were used, among other chemicals, in the wood treatment process. The pond site area was used as a drip treatment facility for wood and metal products until the early 1970's. Chemicals used in those operations were stored in both above ground and below grade storage tanks. It is 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.

Several teepee burners are seen on site maps and historical photographs of the Site. The photographs show these burners as operational. Many of the areas where manufacturing, storage and disposal took place are outside the "Pond" and Tower" areas of the Site, which are identified as the only current areas for remediation. Residues from chemical spills in the soils and ground water were first discovered in November 1985 in connection with cleanup efforts at the adjacent Tower area. In 1986, a backhoe operator hit concrete flooring and walls (which may have been the foundation structure of the kiln building) contaminated with creosote at about six feet below

grade. The creosote odor was strong. Some creosote-contaminated soil was dragged about 50 feet away from the main excavation area. In addition, a smaller excavation area located adjacent to the drainage ditch contained ponded water with a slight oily sheen.

Residual materials from the operations of Fluor Corporation and Ecodyne Corporation remain in soils and groundwater on the Site including dioxin, lead, copper, PCP, hexavalent chromium, polynuclear aromatic hydrocarbons (PAHs) and arsenic. The RWQCB requested that Ecodyne Corporation, as previous owner and operator of the Site, submit a workplan for conducting an investigation to determine the extent of contamination present in soil and groundwater. Soil samples from the affected areas taken in 1985 indicated the presence of PCP, PAHs, arsenic, hexavalent chromium, copper, lead, and dioxins. Total PAH concentrations were generally highest at the same locations as they were for PCP. These locations include the dip treatment shed (as high as 654 ppm) and below the drainage ditch (176 ppm). Lead in soil was found in concentrations of 587 ppm and within the ditch, 752 ppm. Zinc was detected at various concentrations within the Site. The highest concentrations found were within the dip treatment shed (1350 ppm) and beneath the drainage ditch (1510 ppm).

Between 1984 and 1987, the Site 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 became the owner of the Site.

VIOLATIONS

Discharge of Contaminated Stormwater

Polluted stormwater containing PCP, lead, hexavalent chromium, PAHs, copper, zinc as well and other materials from the Site is discharged, untreated, directly to the culvert adjacent to the Site. This culvert drains into Pruitt Creek which in turn 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 stormwater on the Site in excess of the water quality objectives ("WQOs") of 1ì g/l and the California Public Health Goal ("PHG") of 0.02ì g/l. Hexavalent chromium and lead are recognized as human carcinogens. Both are known to cause skin rashes, stomach ulcers, respiratory problems, kidney and liver damage and death. Hexavalent chromium and lead are also toxic to fish and can cause severe gill damage.

Pruitt Creek is the receiving water of the contaminated drainage and stormwater from the Site. The CWA is intended to protect against this type of runoff pollution. Runoff including 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 regarding the Site indicate pollutants continue to be discharged from the Site to waters of the United States via surface drainage and direct discharge as well as via subsurface, hydrologically connected, contaminated ground waters. Hazardous and solid waste, former tanks, ponds and structures 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 of 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 Dischargers such as those 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 Dischargers' 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 August 1, 2007 through August 1, 2012, Dischargers 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 RWQCB and State Water Resources Control Board Geotracker files for the Site. In addition to the above violations, this Notice covers any and all violations evidenced by records and monitoring data for the Site which Dischargers have submitted (or have failed to submit) to the RWQCB and/or other regulatory agencies during the period August 1, 2007 through August 1, 2012. 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 Dischargers to the RWQCB, State Water Resources Control Board Geotracker or other regulatory 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 per day/per violation penalty 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. CWA § 505(d), 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

The violations of Dischargers 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 Dischargers' violations of the CWA as alleged in this Notice.

Very truly yours,

Jack Silver

JS:lhm

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

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U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
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Ben Franklin Station
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