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CALIFORNIA RIVER WATCH

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

NOW COMES Plaintiff, CALIFORNIA RIVER WATCH [1] a 501(c)(3) non-profit Public Benefit Corporation ("RIVER WATCH") by and through its attorneys, and for its Fifth Amended Complaint against Defendant, FLUOR CORPORATION ("FLUOR") [2] states as follows:

I. NATURE OF THE CASE

1. This is a citizen's suit brought against FLUOR 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. §

[1] In August 2013 Northern California River Watch changed its name to California River Watch.

[2] This case began as a suit against Fluor's successor in interest Ecodyne Corporation. Fluor was added as a defendant as part of the Third Amended Complaint. Soon after adding Fluor, River Watch resolved its dispute with Ecodyne Corporation. The Fourth Amended Complaint was filed eliminating all references to Ecodyne Corporation. Fluor filed a motion to dismiss River Watch's Fourth Amended Complaint. This Fifth Amended Complaint is filed after Magistrate Judge James' July 9, 2014 order (Dkt. # 138).

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6945, to prevent FLUOR 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 create or may create an "imminent and substantial endangerment" to human health or the environment. The statute provides that any person may commence a civil 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, RIVER WATCH alleges FLUOR to be a past 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. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations and other relief for FLUOR's violations of the standards and regulations set forth in the RCRA which are applicable to the handling, disposal, transportation, treatment, use or storage of solid or hazardous waste; and, for FLUOR's violation of the prohibition against creating an imminent and substantial endangerment to human health or the environment as set forth in the RCRA.

II. PARTIES

5. Plaintiff 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. RIVER WATCH is dedicated to protecting, enhancing and helping to restore the water environs of California including its drinking water sources, groundwater, rivers, creeks, streams, wetlands, vernal pools and tributaries.

6. RIVER WATCH 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

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business within the State of California.

III. JURISDICTIONAL ALLEGATIONS

7. 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."

8. Members of RIVER WATCH 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 it is alleged FLUOR pollutes, or by which FLUOR'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 RIVER WATCH's members have been, are being, and will continue to be adversely affected by FLUOR's unlawful violations of the RCRA as alleged herein. RIVER WATCH contends there exists an injury in fact, causation of that injury by FLUOR's complained of conduct, and a likelihood that the requested relief will redress that injury.

9. Pursuant to RCRA § 7002(2)(A), 42 U.S.C. § 6972(2)(A), RIVER WATCH gave statutory notice of the RCRA violations alleged in this Fifth Amended Complaint prior to the commencement of this lawsuit to: (a) FLUOR, (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 Fifth Amended Complaint as **EXHIBIT A** and fully incorporated herein.

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

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IV. STATEMENT OF FACTS

11. RIVER WATCH is informed and believes, and on said information and belief alleges that FLUOR 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 approximately 53 acres, located at 930 Shiloh Road and 590 Caletti Avenue in Windsor, California, referred to herein as the Former Fluor Site.

12. RIVER WATCH alleges FLUOR has contributed or is contributing to the past handling, or storage, or treatment, or transportation, or disposal of solid or hazardous waste on the Former Fluor Site which may present an imminent or substantial endangerment to human health or the environment. (42 U.S.C. §6972(a)(1)(B)).

13. The Former Fluor Site is subject to various federal and state regulatory orders including ongoing monitoring and remediation under oversight of the California Regional Water Quality Control Board, North Coast Region ("RWQCB-R1") and the California Department of Toxic Substances Control ("DTSC"). Under a 1989 Consent Order issued by the DTSC, FLUOR maintains primary responsibility for the remedial investigation and clean up of a small portion of the Former Fluor Site referred to as either the Ecodyne Pond Site or the Waste Pond Site (hereafter referred to as the "Waste Pond Area"). The Former Fluor Site is subdivided into numerous parcels, separated by chain link fencing. Many of the subdivided parcels are leased to small commercial and industrial businesses. The Waste Pond Area consists of approximately two-thirds (b) of an acre and represents less than 1.3% of the Former Fluor Site.

14. RIVER WATCH is informed and believes, and on said information and belief alleges that from approximately 1955 to 1972, while owning and operating the Former Fluor Site, FLUOR engaged in the business of manufacturing processing tanks, cooling towers, cross-arms and other wood products. The wood products including cross-arms, and 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. Other toxic metals such as arsenic and copper were used in these processes. According to the DTSC 1989 Consent Order, these processes occurred within a dip treatment shed and an adjacent kiln building located outside of the Waste Pond Area. The dip

treatment shed contained two PCP tanks, two creosote tanks and four lead tanks. The dirt floor of the kiln building lacked any drainage system. 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 bottom 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. The surplus chemical solutions from the dip treatment operations were pumped to unlined evaporation and settling ponds which discharged to soils and surface drainage. The surface drainage discharged to wetlands, and to Pruitt Creek, a water of the United States. 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 discontinued dip treating wood and hardware on the Former Fluor Site. These pollutants contaminated the soils on the Former Fluor Site, turning these soils into solid and hazardous waste. Pollutants at the Former Fluor Site have been migrating for more than thirty years, and in turn contaminating sources of drinking water, aquifers, private property, waters of the United States and ground waters.

15. According to the DTSC 1989 Consent Order, from approximately 1962 to 1970, FLUOR operated a paint shop on the Former Fluor Site, located outside of the Waste Pond Area. During this time, toxic metals including lead, cadmium, mercury, tin, copper, arsenic and materials such as asbestos, PCBs and pesticides including 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 hand painted.

16. The only area of the Former Fluor Site which FLUOR has remediated, or ever has attempted to remediate, is the Waste Pond Area. Historical pictures and diagrams of the Former Fluor Site show that areas other than the Waste Pond Area were used for the purpose of storage, manufacturing and disposal. Several wood waste burners, commonly termed “teepee” burners, were used on the Former Fluor Site to burn wood and debris. Diagrams of the Former Fluor Site demonstrate the teepee burners were located outside of the Waste Pond Area. Numerous solid

and hazardous wastes emitted from the teepee burner areas of the Former Fluor Site. Residual materials from FLUOR's operations remain in soil and groundwater. These areas have not been investigated or remediated. Product was moved, dried and stored throughout the Former Fluor Site causing preservative chemicals to be deposited on the ground throughout the entire Former Fluor Site. Testing in 2001 of the canal connecting to Pruitt Creek demonstrated the presence of lead, copper, zinc and polynuclear aromatic hydrocarbons ("PAHs").

17. RIVER WATCH is informed and believes, and on said information and belief alleges that FLUOR, in the course of doing business on the Former Fluor Site, discharged pollutants which are still present and continue to contaminate soil, surface water and ground water at and around the Former Fluor Site. On November 17, 2011, a review of RWQCB-R1 files concerning the Former Fluor Site revealed that sometime in November of 2011, the RWQCB-R1 informed the current owners of the Former Fluor Site (The Shiloh Group,) that hazardous levels of lead and copper were found in the canal downstream from the former Waste Pond Area which leads to Pruitt Creek. A February 27, 2012 *Summary Report of Findings* , by Trans Tech Consultants prepared for The Shiloh Group, strongly implied FLUOR's prior operations as the source of the lead.

18. Despite claims by FLUOR that the Former Fluor Site has been fully characterized, and despite decades of work on the Former Fluor Site, new areas of lead and other pollutants have recently been discovered. Today, the Former Fluor Site remains highly polluted. As alleged previously, only a small area of the Former Fluor 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.

19. Conduits within the Former Fluor Site 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 FLUOR. RIVER

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WATCH believes these preferential pathways have allowed pollutants to be carried offsite to waters of the United States.

20. There is no record on file with the RWQCB-R1 indicating whether a current (within the last two years) sensitive receptor survey has been completed for the Former Fluor Site. There is no mention in files available to the public as to whether on-site businesses have been identified, characterized or tested. There is no record as to whether or not preferential pathways such as roads, sewer lines (including a lateral that runs through the plume to the main), utility trenches, waterways and ditches have been identified, examined or sampled. The geomorphology of the area indicates numerous gravel lenses which are known to be conduits and can cause significant offsite migration of pollutants. RIVER WATCH alleges FLUOR has made no attempt to determine the mass of any pollutants, making a determination as to mass balance clean-up impossible.

21. Current pollutants at the Former Fluor Site pose an imminent threat to the health of persons working at or visiting the Former Fluor Site. Pollutants at the Former Fluor Site have been migrating for more than forty years, contaminating aquifers, private property and surface waters. 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 of the Former Fluor Site.

22. RIVER WATCH is informed and believes, and on said information and belief alleges that the continued presence of pollutants at the Former Fluor Site resulting from FLUOR's handling, or use, or transport, or treatment, or storage or disposal of hazardous constituents thereon, poses an imminent and substantial threat to health and the environment.

23. RIVER WATCH is informed and believes, and on said information and belief alleges that FLUOR's planned remediation of the Waste Pond Area, as detailed in FLUOR's Remedial Action Plan For Ecodyne Pond Site Soil Remediation, ("RAP") is inadequate to abate the imminent and substantial threat to health and the environment posed by the continued presence of pollutants in soil and groundwater at the Waste Pond Area.

24. At present, the levels of pollutants in the groundwater at the Waste Pond Area 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.

25. The remedial alternative adopted in FLUOR'S RAP is in-situ ozonation of soils containing PAHs, excavation and offsite disposal of soils containing lead and dioxin, coupled with an institutional control limiting future use of the property to industrial and limited commercial activities. (RAP at ES-3). Based on the assumption of primarily industrial future use at the Former Fluor Site, the remedial action objectives for constituents of primary concern in the soil are: 1.8 mg/kg for PAHs; 1,000 mg/kg for lead; and 1 microgram per kilogram (g/kg) for total dioxins, (RAP at ES-1). The remedial action objectives in the RAP exceed the ESLs for these constituents.

26. FLUOR'S RAP limits remedial measures at the Waste Pond Area to soil treatment and soil excavation. There is no provision for treatment or extraction of contaminated groundwater. There is no provision for testing of nearby surface waters. Soil treatment and excavation is limited to the unsaturated zone closest to the surface, based on the unverified assumption that contaminated groundwater has not migrated to deeper levels of soil and groundwater. RIVER WATCH believes that aquifer profiles are necessary to identify all water-bearing strata and communication with 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 Former Fluor Site is required to determine whether in fact pollutants have migrated to contaminate deeper aquifers over the thirty years during which the Waste Pond Area, as well as the entire Former Fluor Site, remained unremediated.

27. Some of the preferential pathways within the Waste Pond Area 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. RIVER WATCH believes these

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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 the claim as set forth in the RAP that "...fate and transport modeling indicates that any resultant COPC concentrations in groundwater at the property boundary would be below drinking water limits. As such, the potential for a complete groundwater exposure pathway to current off-Site residents is minimal.", (RAP at ES-2,) the report from the RWQCB-R1 and subsequent Trans Tech study referenced above, showing that hazardous levels of lead and copper were found in the canal downstream from the former Waste Pond Area, presents a clear threat to persons residing offsite. The canal discharges directly to Pruitt Creek. The hazardous levels of lead and copper found in the canal calls into question the statement in the RAP that because "no COPCs were detected above potential residential or potable use cleanup goals in the most recent groundwater samples collected from the Site, groundwater remediation is not necessary." (RAP at ES-2).

28. RIVER WATCH is informed and believes and on information and belief alleges, that FLUOR has discharged or is continuing to discharge hazardous waste on the Former Fluor Site in violation of the RCRA. Further, that FLUOR has known of the contamination at the Former Fluor Site for more than thirty 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 Former Fluor 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 July 5, 2008 and July 5, 2013 as designated in **EXHIBIT A** . The violations are continuing to this day.

V. CLAIM FOR RELIEF

Imminent and Substantial Endangerment to Health or to the Environment

(42 U.S.C. § 6972(a)(1)(B))

RIVER WATCH incorporates the allegations set forth above in paragraphs 1 through 28 above as though fully set forth herein. RIVER WATCH is informed or believes, and based on such information or belief alleges as follows:

29. The pollutants identified in the preceding paragraphs of this Fifth Amended Complaint are

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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 FLUOR at the Former Fluor Site is in sufficient quantity to pose an imminent or substantial risk to environment or to human health.

30. FLUOR 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 Fifth 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 Former Fluor Site which were sources of hazardous and solid wastes;

b. Transporting pollutants to the Former Fluor Site;

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

d. Generating solid or hazardous waste; and,

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

31. The levels of pollutants at the Former Fluor 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 Former Fluor Site from the solid and hazardous waste deposits through discrete conveyances to waters of the United States.

32. Continuing acts or failure to act by FLUOR to address the violations alleged herein will

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irreparably harm RIVER WATCH and its members for which harm they have no plain, speedy or adequate remedy at law.

Wherefore, RIVER WATCH prays judgment against FLUOR as set forth hereafter.

VI. PRAYER FOR RELIEF

RIVER WATCH prays this Court grant the following relief [3]:

33. Declare FLUOR to have violated and to be in violation of the RCRA for discharging chemicals and constituents from the Former Fluor 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.

34. Enjoin FLUOR from discharging chemicals and chemical constituents from the Former Fluor Site which pose an imminent and substantial risk to health and the environment;

35. Enjoin FLUOR from continued violations of the RCRA;

36. Order FLUOR to fully investigate the Former Fluor Site, which investigation shall include completion of the following:

a. 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 Former Fluor Site from offsite locations:

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

c. Aquifer Profile Study – to include identification of all water-bearing strata and whether subsurface groundwater at the Former Fluor Site is in communication with 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

[3] FLUOR is currently under no regulatory orders requiring the relief sought by RIVER WATCH in this Fifth Amended Complaint.

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migration. Such conduits and preferential pathways found to have intersected the plume should be tested for the presence of known pollutants;

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 known pollutants;

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 Former Fluor 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 Former Fluor Site, whether or not part of the plume.

37. Order FLUOR to fully remediate the Former Fluor Site thereby reducing all contaminants of concern in the groundwater to below WQOs within five years;

38. Order FLUOR to pay RIVER WATCH's reasonable attorneys' fees and costs (including expert witness fees), as provided by law; and,

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

DATED: July 29, 2014

LAW OFFICE OF JACK SILVER

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

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EXHIBIT A

Law Office of Jack Silver

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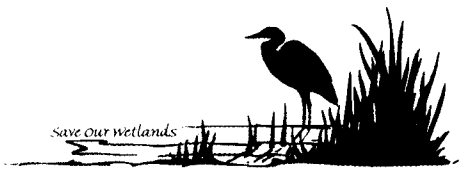

VIA REGISTERED MAIL -
RETURN RECEIPT REQUESTED

July 8, 2013

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 Owner and Managing Agent of Fluor Corporation:

NOTICE

On behalf of California River Watch ("River Watch"), this letter provides statutory notification ("Notice") to Fluor Corporation ("Fluor,") 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 at 590 Caletti Avenue and 930 Shiloh Road, in Windsor, California, (the "Former Fluor Site"), further described in the BACKGROUND section of this Notice.

The 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.

River Watch alleges that Fluor appears to have failed to properly label, track and/or report the type, quantity or disposition of waste from the Former Fluor Site, and has failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Fluor appears to be disposing of 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 Fluor's 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 Fluor that at the expiration of the appropriate notice periods under the RCRA, River Watch intends to commence a civil action against Fluor or to amend the Complaint filed in the U.S. District Court, Northern District of California, in the case entitled *Northern California River Watch vs. Fluor Corporation,,* Case No.: 3:10-cv-05105 MEJ on the following grounds:

1. Fluor's use and storage of solid and hazardous wastes as described in the BACKGROUND section of this Notice violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to the RCRA regarding storage of pollutants. [42 U.S.C. § 6972(a)(1)(A)];

2. Fluor's operations at the Former Fluor 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 the RCRA, shall include sufficient information to permit the recipient to identify the following:

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

The RCRA, enacted in 1976, is a Federal law of the United States contained in 42 U.S.C. §§ 6901-6992k, the goals of which are: to protect the public from harm caused by waste disposal; to encourage reuse, reduction, and recycling; and, to clean up spilled or improperly stored wastes. The 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 the RCRA, California has enacted laws and promulgated regulations that are at least as stringent as the federal regulations.

River Watch contends that Fluor has no hazardous waste permit for the storage, treatment or disposal of hazardous or solid waste at the Former Fluor Site; that Fluor's use, handling, disposal and storage of waste at the Former Fluor Site as identified in this Notice has violated and continues to violate permits, standards, regulations, conditions, requirements or prohibitions effective pursuant to the 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, the RCRA requires that the environment and public be protected from hazardous wastes including those generated by Fluor. The pollutants found at the Former Fluor Site as identified in this Notice constitute hazardous waste under the RCRA, and are required to be managed such that potential and actual harm to the environment and public is eliminated.

The liability of Fluor stems from either its ownership of the Former Fluor Site or activities conducted on the Former Fluor Site by Fluor which violated the RCRA and contributed to the past 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 alleges Fluor to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant

to the RCRA. Fluor is guilty of open dumping as that term is defined in the 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 Former Fluor 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. Fluor has no RCRA-authorized permit for the disposal, storage or treatment of solid or hazardous waste of the type currently and historically found at the Former Fluor Site.

River Watch contends Fluor caused pollutants to be discharged to aquifers, surface and ground waters via Fluor's 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.

River Watch contends Fluor has caused contamination of soil, surface and ground waters, and residential areas; that Fluor is a past generator, transporter, 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 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 Former Fluor 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 Former Fluor Site.

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

The entity responsible for the alleged violations is Fluor Corporation, referred to as "Fluor" throughout this Notice.

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

The entity giving notice is California River Watch, 290 S. Main Street,, #817, Sebastopol, CA 95472 – a non-profit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorney.

River Watch has retained legal counsel with respect to the issues set forth 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 Fluor 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 the RCRA identified in this Notice.

BACKGROUND

Fluor previously owned a portion of the property located at 930 Shiloh Road and 590 Caletti Avenue in Windsor, California, referred to herein as the Former Fluor Site. The Former Fluor Site was approximately 53 acres in total area. A very small portion of the Former Fluor Site is subject to various federal and state regulatory orders, including ongoing monitoring and remediation under oversight of the Regional Water Quality Control Board, North Coast Region ("RWQCB-R1") and the California Department of Toxic Substances Control ("DTSC"). Under a 1989 Consent Order issued by the DTSC, Fluor maintains primary responsibility for the remedial investigation and clean up of only a small portion of the Former Fluor Site commonly known as either the Ecodyne Pond Site or the Waste Pond Site (hereafter, referred to as the "Waste Pond Area"). The Waste Pond Area is less than two-thirds (b) of an acre and therefore only represents about 1.25% of the Former Fluor Site. Currently the Former Fluor Site is subdivided into numerous parcels separated by chain link fencing, many of which are leased to small commercial and industrial businesses.

From approximately 1955 to 1972, while owning and operating the Former Fluor Site, Fluor engaged in the business of manufacturing processing tanks, cooling towers, cross-arms and other wood products. The wood, including cross-arms and 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. Other toxic metals such as arsenic and copper were used in these processes. According to the DTSC 1989 Consent Order, these processes occurred within a dip treatment shed and an adjacent kiln building located outside of the Waste Pond Area. The dip treatment shed contained two PCP tanks, two creosote tanks and

four lead tanks. The kiln building had a dirt floor lacking any drainage system. 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 bottom 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. Surplus chemical solutions from the dip treatment operations were pumped to unlined evaporation and settling ponds which discharged to soils and surface drainage. The surface drainage discharged to wetlands, and to Pruitt Creek, a water of the United States. 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 discontinued dip treating wood and hardware on the Former Fluor Site.

According to the DTSC 1989 Consent Order, from approximately 1962 to 1970, Fluor operated a paint shop on the Former Fluor Site, located outside of the Waste Pond Area. During this period of time, toxic metals including lead, cadmium, mercury, tin, copper, and arsenic, as well as asbestos, PCBs and pesticides including DDT were used in various paint formulations. Also during this time, toxic metals such as lead, 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 by way of hand painting.

Areas of the Former Fluor Site outside of the Waste Pond Area were also utilized by Fluor for storage, manufacturing and disposal. Several wood waste burners, commonly termed “teepee” burners, also located outside of the Waste Pond Area, were used to burn wood and debris (see Historical Site Map attached as Exhibit A). Historically, teepee burners were used widely to burn lumber and wood waste until the 1970's when air quality regulations became more protective of human health. Numerous solid and hazardous wastes remain from the teepee burner areas of the Former Fluor Site. These areas have not been fully investigated or remediated. Recent sampling at one of the former teepee burner areas indicated residual pollutants from Fluor’s prior operations.

In addition to known areas of pollution, intense activities product was moved, dried and stored throughout the Former Fluor Site, causing preservative chemicals to be deposited on the ground throughout the entire Former Fluor Site.

In November 2011, the RWQCB-R1 informed the current owners of 930 Shiloh Road, The Shiloh Group, LLC, that hazardous levels of lead and copper were found in the canal downstream from the Waste Pond Area, which leads to Pruitt Creek. A February 27, 2012

Summary Report of Findings , prepared by Trans Tech Consultants for The Shiloh Group, LLC strongly implied Fluor's prior operations on the Former Fluor Site as the source of the lead. Recent testing has confirmed that lead is emitting into the canal from the surface of the Waste Pond Area.

Despite claims by Fluor that the Former Fluor Site has been fully characterized, and despite decades of work on the Former Fluor Site, new areas of lead and other pollutants have recently been discovered. Today, the Former Fluor Site remains highly polluted. As stated previously, only a small area of the Former Fluor 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 Fluor. 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.

There is no record on file with the RWQCB-R1 indicating whether a current (within the last two years) sensitive receptor survey has been completed for the Former Fluor Site. There is no mention in the public files as to whether on-site businesses have been identified, characterized or tested. There is no record as to whether preferential pathways such as roads, sewer lines (including a lateral that runs through the plume to the main), utility trenches, waterways or ditches have been identified, examined or sampled.

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 Fluor has made any attempt to determine the mass of any pollutants, making a determination as to mass balance clean-up impossible.

Current pollutants at the Former Fluor Site pose an imminent threat to health of the persons working at or visiting the Former Fluor Site. Pollutants at the Former Fluor Site have been migrating for more than forty years, contaminating aquifers, private property and surface waters. 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.

River Watch further alleges Fluor has: 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; failed to properly label, track and/or report the type, quantity or disposition of waste; and, failed to use a manifest system to ensure the waste generated is properly handled, stored, treated or disposed of. Fluor appears to be disposing of 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. Fluor's 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. River Watch alleges these violations are continuing.

LIABILITY

Maximum Contaminant Levels ("MCLs") and Water Quality Objectives ("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 groundwater in the area of the Former Fluor Site include domestic, agricultural, industrial and municipal water supply.

The RWQCB-R1 has adopted a Basin Plan which designates all surface and groundwater at or near the Former Fluor Site as capable of supporting industrial and domestic water supply.

The pollutants at the Former Fluor Site have been characterized as "hazardous waste" and "solid waste" within the meaning of the 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 Fluor to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to the RCRA. River Watch alleges Fluor to be past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility. River Watch alleges Fluor has contributed or 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.

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

Between July 5, 2008 and July 5, 2013 ongoing violations of the RCRA by Fluor as described herein have occurred. Fluor has caused or permitted, causes or permits, or threatens to cause or permit hazardous waste to be discharged or deposited at the Former Fluor 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. Fluor has known of the contamination at the Former Fluor Site since at least 1966, and has also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Former Fluor Site, and to continually contaminate and re-contaminate soil, ground and surface waters.

Past or current violations of the 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 the RCRA are subject to a penalty of $37,500 per day per violation.

Fluor's use and storage of wastes at the Former Fluor Site between July 5, 2008 and July 5, 2013 has allowed significant quantities of hazardous constituents to be released or discharged into soil and groundwater in violation of provisions of the RCRA and California's hazardous waste regulatory programs.

Contaminant levels of toxic metals such as lead as well as PAHs and dioxin in soil and groundwater at the Former Fluor Site are significantly greater than the allowable MCLs, WQOs, Environmental Screening Levels, Public Health Goals or OSHA goals 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 Former Fluor 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 the RCRA of the type alleged herein are a major cause of the continuing decline in environmental 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 the RCRA by Fluor as 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.

REQUESTED RELIEF

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

a. Comprehensive Sensitive Receptor Survey - This survey will include an aquifer profile, surface water study, water supply survey, and building survey;

b. Aquifer Profile Study - This study shall identify all water bearing strata and communication with the other aquifers, and shall include testing of all aquifers determined to be in communication with the surface unconfined aquifer and contaminated zones for all known pollutants at the Former Fluor Site;

c. Conduit/preferential Pathway Study - This study shall identify all conduits or preferential pathways such as sand and gravel lenses, utilities, roads, services and other potential pathways for pollution migration and shall include testing of all conduits and preferential pathways found to have intersected the plume for all pollutants at the Former Fluor Site;

d. Surface Water Survey - This study shall determine if any surface waters have been or have the potential of being contaminated by pollutants at the Former Fluor Site and shall include testing of all surface waters and drainage within 1,500 feet of the outer extent of the plume;

e. Comprehensive Study of Entire Former Fluor Site - This comprehensive investigation shall especially include those areas outside the Waste Pond Area and the "Towers" area. Testing of soils and ground water shall take place in areas where known activities may have caused contamination including areas of former teepee burners, storage, disposal, and operations;

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

g. Toxic Metals Study - This study shall include all metals, such as lead, with a reasonable potential of being contaminants at the Former Fluor Site.

The violations of Fluor 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 Fluor's violations of the RCRA as alleged in this Notice.

Very truly yours,

Jack Silver

JS:lhm
Attachment - Map

cc: Administrator
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Washington, D.C. 20460

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Executive Director
Calif. Integrated Waste Mgmt. Board
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California Department of Toxic Substances Control
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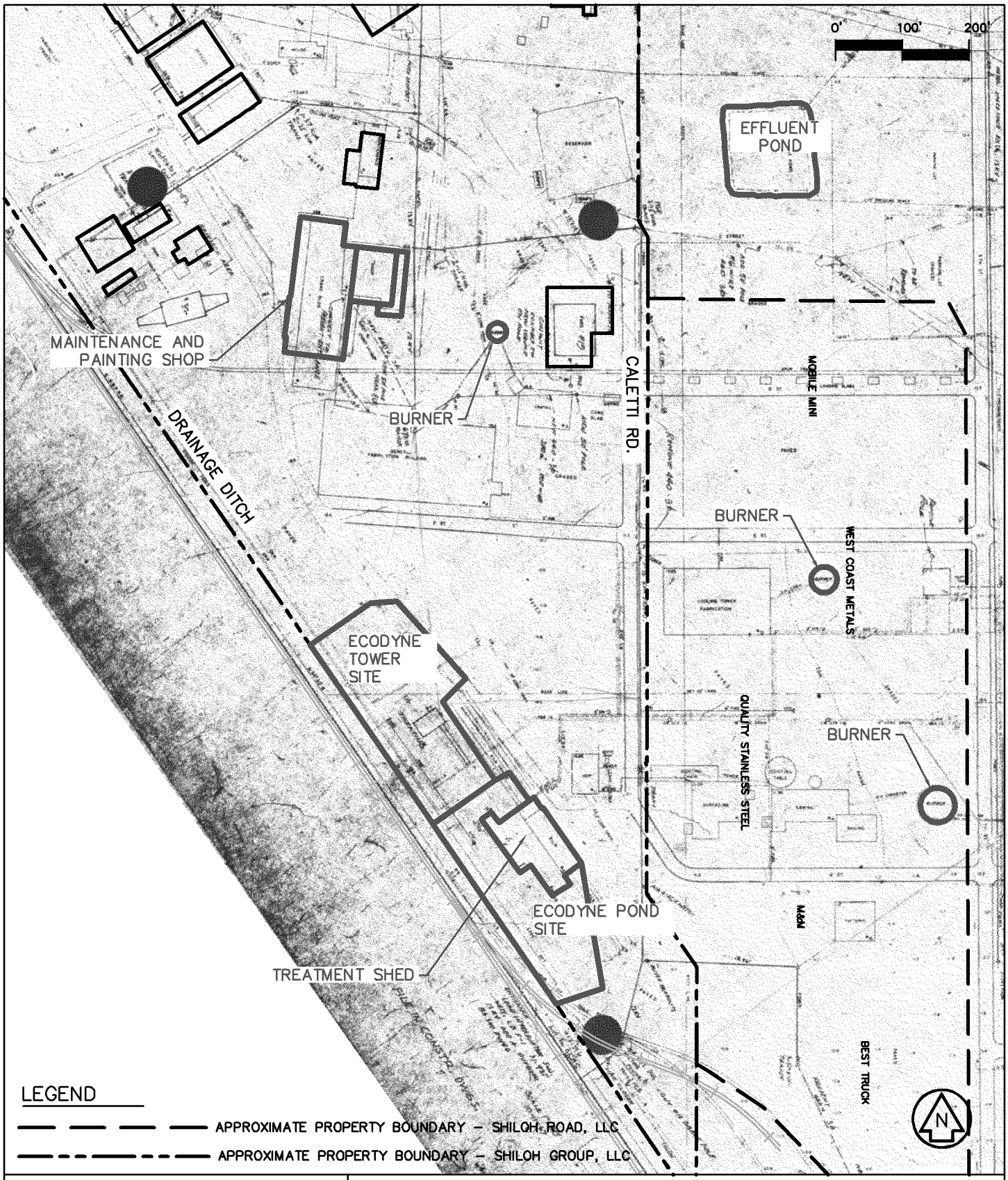

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SITE MAP WITH FLUOR 1967

930 SHILOH RD.
WINDSOR, CA

PLATE: 1

DRAWN BY:	DWG NAME:	APPR. BY:	JOB NUMBER:		DATE:
MED	SP AERIALS ONLY	BRH	2292.01		07/10/2013