Gregory D. Trimarche
Direct: 949.232.1210
gtrimarche@ringbenderlaw.com

RING BENDER LLLP
2 Park Plaza, Suite 550
Irvine, CA 92612
Tel: (949) 202.5810
www.ringbenderlaw.com

RING BENDER OFFICES

Orange County, CA
Miami, FL
Pittsburgh, PA
Portland, OR
Seattle, WA

September 3, 2014

Via Registered Mail

Jones Hamilton, Inc.
30354 Tracy Rd.
Walbridge, OH 43465

Jones Hamilton, Inc.
8400 Enterprise Drive
Newark, California 94560

Trumark Commercial, LLC
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506

Capitol Corporate Services, Inc.
Registered agent: Jones-Hamilton, Inc.
455 Capitol Mall Ste 217
Sacramento, CA 95814

Jared Blumenfeld
Region IX Administrator
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA, 94105

Bruce H. Wolfe
Executive Officer
San Francisco Bay
Regional Water Quality Control Board
1515 Clay St, Suite 1400
Oakland, CA 94612

Newmark Enterprise Joint Venture, LLC
4185 Blackhawk Plaza Circle, Suite 200
Danville, CA 94506

Attorney General Eric Holder
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Chief Administrative Officer
Department of Toxic Substances Control
1001 I Street
Sacramento, 95812-0806

Alan L. Nagy
Mayor
City of Newark
37101 Newark Boulevard
Newark, CA 94560

Re: Notice of Intention to File Citizen Suit for Imminent and Substantial Endangerment pursuant to RCRA Section 7002(a)(1)(B)

Dear Sirs and Mesdames:

On behalf of Gallade Chemical Company ("Gallade"), 8333 Enterprise Drive, Newark, California, this letter provides the 90-day notice required for "citizen suits" for "imminent and substantial endangerments" pursuant to RCRA Section 7002(a)(1)(B), 42 U.S.C. Section 6972(a)(1)(B), and 40 C.F.R. Sections 254.2 and 254.3. As set forth in detail below, the conditions and circumstances at and involving the Jones-Hamilton site located at 8400 Enterprise Drive, Newark, California (the

"Site"), may present an imminent and substantial endangerment to health or the environment. Specifically, the "Responsible Parties" (identified below) have contributed to and/or are contributing to the past or present disposal of solid and/or hazardous wastes, and conditions relating thereto, which may present an imminent and substantial endangerment to health or the environment, including but not limited to the following: (1) they have caused, and continue to cause, allow, and/or fail to prevent or mitigate significant releases of dioxins, furans and other hazardous substances from the Site to the adjacent Gallade property and other adjacent parcels; and (2) their plans for residential redevelopment of the Site – including but not limited to their efforts to establish cleanup standards and a remediation schedule for the Site that are not sufficiently protective of public health – have been and are creating further significant potential endangerment.

As such, protection of public health and the environment requires federal court intervention and additional regulatory oversight by the U.S. Environmental Protection Agency ("EPA") and/or California Department of Toxic Substances Control ("DTSC"). Thus, not less than ninety (90) days after the service of this notice letter, Gallade intends to file a citizen suit in United States District Court (N.D. Cal.) to address the imminent and substantial endangerment, pursuant to RCRA Section 7002(a)(1)(B), 42 U.S.C. Section 6972(a)(1)(B).

1. Site History and Environmental Conditions

According to documents on file with the San Francisco Bay Regional Water Quality Control Board ("Water Board"), Jones-Hamilton's operations at the Site from 1956 to 2001 involved the blending, distillation, packaging and warehousing of a variety of chemical products. Particularly important, those operations included the blending and packaging of a wood preservative containing pentachlorophenol ("PCP"), which is known to contain highly toxic dioxins and furans. Moreover, those operations included the discharge of process wastewaters into two evaporation ponds at the site, resulting in the release of PCP and other hazardous substances to soil and groundwater underlying the site. When those evaporation ponds were "closed in place" and "capped" in 1989, substantial quantities of hazardous wastes, including dioxins and furans, were left in place beneath the cap.

In light of these and related conditions, at the direction of the Water Board, in or about 2005, Jones-Hamilton filed a deed restriction that prohibits anything other than commercial or industrial use of the Site, and prohibits any development activity in the vicinity of the capped evaporation ponds. Dioxins, furans and other hazardous substances (including but not limited to vinyl chloride, 1,2-DCA, TCE, arsenic and chromium) continue to be found in high concentrations at and about the Jones-Hamilton site. In addition, hazardous substances are and have been migrating from the Site to the Gallade property, located across the street from the Site, as well as to the residential neighborhood located directly adjacent to the Gallade property. Nonetheless, as discussed below, Jones-Hamilton now is seeking to develop the Site for residential use, including extensive excavation of impacted soils and development on and around the capped evaporation ponds, in direct contravention of the above-mentioned deed restriction.

2. Current Development Plans for the Site

The Jones-Hamilton plant closed in November 2001 and was de-commissioned between 2002 and 2004. When demolition and removal of all buildings and structures on the Site were completed in 2007, Jones-Hamilton began pursuing plans to develop a commercial project on the Site, including submittal of a health risk-based cleanup plan for the project. In 2011, however, the City of Newark adopted its Dumbarton Transit Oriented Development Specific Plan, identifying the Site (and several other "ongoing cleanup sites" in the area) as sites for future residential use.

Shortly thereafter, Jones-Hamilton changed its redevelopment plan for the Site, and entered into a joint venture with Trumark Homes, LLC ("Trumark") to pursue residential development of the Site. The joint venture entity – Newmark Enterprise Joint Venture, LLC ("Newmark") – apparently is managed and operated by Trumark, and now holds title to the Site.

Jones-Hamilton, Newmark, and Trumark (collectively, the "Responsible Parties") have been pursuing their plans for the residential redevelopment project (the "Trumark Project"). More specifically, they have been seeking entitlements and regulatory approvals for the project, particularly from the City of Newark and the Water Board. Among other things, Trumark has negotiated a series of agreements with the City of Newark that would allow for the construction of over 200 residential units at the Site.

As discussed below, the Responsible Parties also have been advocating a cleanup plan and remediation schedule for the Site that would save money and otherwise "expedite" the Project, but would create or exacerbate health risks to nearby residents and other persons. Thus, not only have the Responsible Parties caused, allowed, and/or failed to prevent or mitigate significant releases of dioxins, furans and other hazardous substances at and from the Site, the Responsible Parties' plans for residential redevelopment of the Site – and, in particular, their efforts to establish "watered down" cleanup standards and a dilatory cleanup schedule – have been and are creating further significant risks to human health and the environment.

3. The Responsible Parties' Efforts to "Expedite" the Trumark Project at the Expense of Creating or Exacerbating Health and Environmental Risks

As the following discussion shows, in the interest of controlling costs and otherwise "expediting" the Trumark Project, the Responsible Parties have been pressuring the Water Board to approve "watered down" cleanup standards and a dilatory remediation schedule for the Site that are not sufficiently protective of public health. As mentioned earlier, notwithstanding the deed restriction that prohibits anything other than commercial or industrial use of the Site, and prohibits any development activity in the vicinity of the capped evaporation ponds, the Responsible Parties now are seeking to develop the Site for residential use, including excavation of and development on and around the capped evaporation ponds, in direct contravention of the deed restriction. More troubling, the Responsible Parties have been pressuring Water Board staff to approve cleanup standards, particularly for dioxins

and furans, that are inconsistent with existing guidelines and standards, and insufficiently protective of human health. Moreover, planned construction activities at the Site pose grave health risks to employees working at the adjacent Gallade property, and to residents living in the single family homes next door to the Gallade property (i.e., on Aleppo Drive).

Among other things, the Responsible Parties plan to excavate almost 100,000 cubic yards of soils impacted with solvents, dioxins, furans, and metals at the Site. Some of these soils will be hauled off-site for disposal, and the balance will be stockpiled onsite for additional testing and handling. These planned activities create a significant potential for the migration of dioxins, furans, and other hazardous substances in airborne dusts to the Gallade property and the residences on Aleppo Drive.

These significant human health risks have been well documented and continue to be a source of significant concern to the Water Board. In a February 7, 2014 letter to the City of Newark, the Water Board offered its comments on a draft supplemental environmental report that had been prepared for the Trumark Project. As that letter explained, the Water Board's comments pertained specifically to "the specific potential human health impacts posed by hazardous materials present in soil, soil gas, groundwater, airborne dusts and vapors in connection with this Project and the extensive volume of contaminated soil that has to be excavated from the site and transported offsite through the City to the appropriate disposal facility." Specifically, in that letter (in "Attachment A" thereto), the Water Board expressly recognized that "[d]ioxins are considered to be among the most toxic man-made chemicals" and "[t]he magnitude and extent of the dioxin contamination [at the Site] is not yet known." More specifically, the Water Board states: "The responsible party has proposed to remove the concrete-asphalt cap that covers the two surface impoundments and to conduct an extensive soil excavation across the 21-acre site. The excavation poses potential risks for workers and for nearby residents. In addition, there are some concerns about proper risk mitigation while moving such a large volume of contaminated soil containing highly toxic chemicals (dioxins, furans, PCP, etc.)."

Apparently not content with creating just these risks, the Responsible Parties go further – they have been actively "lobbying" Water Board staff to approve "watered down" cleanup standards for dioxins, the most toxic substances at the site. Water Board records show that, for at least the past ten months, the Responsible Parties have been pressuring the Water Board to approve cleanup standards ***more than ten times higher*** than existing EPA guidelines would allow for dioxins in soil. Specifically, in or about October 2013, the Responsible Parties began lobbying the Water Board to agree to a cleanup standard of 50 parts per trillion (ppt) in soil at the Site. As the Responsible Parties were aware at that time, the relevant EPA guidance (EPA Region 9, Regional Screening Levels (formerly PRGs), updated November 2012) sets a cleanup standard of 4.5 ppt for dioxins in soil. The Responsible Parties were aware of, and originally had agreed to comply with, that 4.5 ppt Region 9 standard. However, since then, they have undertaken an aggressive campaign to pressure the Water Board to approve a 50 ppt dioxin standard for the Trumark Project.

In addition to trying to save time and money by advocating insufficiently protective cleanup standards at the Site, the Responsible Parties also proposed a dilatory remedial action schedule that

exacerbates the risks posed by their project. As set forth in Water Board documents, the Responsible Parties proposed to delay their above-mentioned excavation, stockpiling and hauling of impacted soils until mid-2015, even though there are plans in place for the construction of additional new homes on a nearby parcel (the "Torian site") beginning in August 2014. Thus, as set forth in a February 14, 2014 email from the Water Board to the Responsible Parties, there is a risk that the new homes and occupants will be in close proximity to hazardous dusts and vapors and other nuisance conditions generated by the Trumark Project.

In sum, in light of the magnitude of the risks to health and the environment posed by the Trumark Project, and the considerable resources, sophistication and resolve demonstrated by the Responsible Parties in their efforts to ignore, sidestep, or otherwise inadequately address those risks, it is clear that the Site and the Trumark Project pose a significant risk of endangerment to health and the environment. Thus, protection of health and the environment require federal court intervention, as well as additional regulatory oversight by DTSC and/or EPA.

4. The Imminent and Substantial Endangerment and Relief Available Therefor

For all the reasons discussed herein, the existing conditions and circumstances described above may present an imminent and substantial endangerment to health or the environment, for purposes of RCRA Section 7002(a)(1)(B), 42 U.S.C. Section 6972(a)(1)(B). To summarize again, an imminent and substantial endangerment to health or the environment is presented by, among other things, the continuing migration of dioxins, furans and other hazardous substances from the Site onto adjacent parcels and, perhaps more significant, by Trumark's plan to excavate the former evaporation ponds at the Jones-Hamilton site – both of which could expose workers at the Gallade site, residents at the adjacent residential property, and possibly others, to significant levels of dioxins, furans and other hazardous substances (potentially in both indoor and outdoor air). Thus, a citizen suit is appropriate to address this imminent and substantial endangerment to health or the environment.

In addition, under the cost recovery and contribution provisions of CERCLA, as well as the state law principles of nuisance, trespass and negligence (among others), Jones-Hamilton (as the owner and operator of the Jones-Hamilton facility at the time of release of hazardous substances at and from the Site) and Newmark (as the current owner of the Site) are liable for any response costs and/or other losses or damages suffered by any adjacent property owners as a result of the presence of dioxins, furans and/or other hazardous substances at their properties that originated from releases at the Site. In addition, Trumark should be liable as the current "operator" of the site under CERCLA (as it appears to be exercising control over the management of hazardous substances at the site).

In sum, Jones-Hamilton, Newmark, and Trumark (collectively, the "Responsible Parties") have caused, and continue to cause, allow, and/or fail to prevent or mitigate significant releases of dioxins, furans and other hazardous substances from the Site to the Gallade property and other adjacent parcels. In addition, the Responsible Parties' plans for residential redevelopment of the Site – including but not limited to their efforts to establish a cleanup schedule and standards for the Site that are not sufficiently

protective of public health – have been and are creating further significant risks to health and the environment. As such, Gallade intends to file suit against the Responsible Parties, including claims under RCRA and CERCLA, as well as state law claims, not less than 90 days after this notice.

Sincerely,

Gregory D. Trimarche

cc: Rick Gallade, Gallade Chemical Company (via email)
Terrence Grindall, Assistant City Manager, City of Newark (via email)
Robert Doty, Cox Castle & Nicholson (via email)
David Lanferman, Rutan & Tucker (via email)
David Benoun, City Attorney, City of Newark (via email)
Veronica Vargas, Trumark Company (via email)
Alameda County Board of Supervisors, 1221 Oak Street, #536, Oakland, CA 94612
State Senator Ellen Corbett, State Capitol, Room 313, Sacramento, CA 95814
State Assemblyman Bob Wieckowski, P.O. Box 942849, Sacramento, CA 94249-0025
U.S. Congressman Mike Honda, 1713 Longworth HOB, Washington, DC 20515
Chris De Benedetti, The Argus, 37468 Fremont Blvd., Fremont, CA 94536