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**Paul S. Silver**  
Professional Corp.

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January 13, 2003

William J. Occhipinti  
Occhipinti's One Stop Service  
210 Fifth Street  
Santa Rosa, CA 95401

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER  
CALIFORNIA SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT (PROPOSITION 65)**

Dear Mr. Occhipinti:

We are writing on behalf of Northern California River Watch (hereafter, "River Watch") to notify Walter Properties, Inc., Occhipinti's One Stop Service, and Occhipinti's Incorporated (hereafter, "Occhipinti") of discharges of prohibited chemicals into actual or potential sources of drinking water in violation of the California Safe Drinking Water & Toxic Enforcement Act (California Health & Safety Code Section 25249.5 et seq, (hereafter, "Prop 65") at Occhipinti's One Stop Service located at 210 Fifth Street, Santa Rosa, CA.

River Watch hereby notifies Occhipinti that at the expiration of sixty (60) days from the date of this **Notice**, River Watch intends to bring suit against Occhipinti under Prop 65 for knowingly discharging or releasing chemicals known to the State of California to cause cancer or reproductive toxicity into water or onto or into land where such chemicals pass or probably will pass into a source of drinking water.

## **I. BACKGROUND**

Occhipinti owns and or operates a retail gasoline and diesel station in the City of Santa Rosa California (hereafter, the "Site"). The Regional Water Quality Control Board ("RWQCB") served Occhipinti with a Cleanup and Abatement Order Number R1-2002-0090 ("CAO") in 1992. That document is attached to this Notice and incorporated fully.

The Site has been poorly characterized. No sensitive receptor survey has been completed. The Site is located in a dense commercial area and near several seasonal creeks.

Occhipinti has caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and create, or threaten to create, a condition of pollution or nuisance. The discharge and threatened discharge of waste is deleterious to the beneficial uses of water and is creating and threatens to create a condition of pollution and nuisance which threatens to continue unless the discharge and threatened discharge is permanently abated.

## II. VIOLATIONS

The RWQCB has adopted a Water Quality Control Plan which designates all surface and ground water within the North Coast Region as capable of supporting domestic supply. The RWQCB has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and ground water within the region of 50 ppb for TPHg, 50 ppb for TPHd, 1 ppb for benzene, 42 ppb for toluene and 5 ppb for MtBE.

Occhipinti has contaminated ground and drinking water sources in and around the Site with benzene and toluene. Benzene (CAS Registry No. 71432, listed 2/27/87) is a known carcinogen. Toluene (CAS Registry No. 108883, listed 01/01/91) is known to cause reproductive toxicity. Surface and ground water at the Site are potential sources of drinking water under the RWQCB Water Quality Control Plan. In the course of doing business, Occhipinti has discharged benzene and toluene to surface and ground water at the Site on a daily basis since at least 1998. Under Prop 65, a violator is subject to a maximum civil penalty of \$2,500.00 per day per violation.

Occhipinti uses and stores petroleum products at its facility on the Site in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and ground water beneath the Site and adjacent properties.

The violations alleged in this **Notice** are knowing and intentional in that Occhipinti uses, stores and sells petroleum products at its facility on the Site which are known to contain hazardous substances, and intends that such products will be sold to and used by the public. Occhipinti has known of the contamination at its facility on the Site since at least January 1998 and has also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the facility on the Site and continually contaminate and re-contaminate actual and potential sources of drinking water.

Violations of Prop 65 of the type alleged herein are a major cause of the continuing decline in water quality and a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, ground water supplies are contaminated. These discharges can and must be controlled in order for the ground water 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 Prop 65 evidenced by information which becomes available to River Watch after the date of this **Notice**.

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465, telephone number is 707-874-2579.

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

Jack Silver, Esq.  
SILVER & SILVER  
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Santa Rosa, CA 95404  
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Prop 65 requires that sixty (60) days prior to the initiation of a civil action, a private party must give notice of the violation to the alleged violator, the California Attorney General and the district attorney (and any city attorney for cities with a population exceeding 750,000) in whose jurisdiction the violation is alleged to have occurred. River Watch believes this **Notice** sufficiently states the grounds for filing suit under Prop 65.

At the close of the 60-day notice period or shortly thereafter, River Watch intends to file a suit against Occhipinti under Prop 65 for the violations as alleged herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this **Notice**. If Occhipinti wishes to pursue such discussions in the absence of litigation, it is suggested that Occhipinti initiate the discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice

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Notice of Violations and Intent to File Suit (Prop 65)

period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

cc:

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