Tulane University

TULANE ENVIRONMENTAL LAW CLINIC

December 7, 2006 101-092

Via Registered Mail (Return Receipt Requested)
Mark Houser, President
EnerVest Operating, L.L.C.
1001 Fannin Street, Suite 800
Houston, Texas 77002

C T Corporation System
Louisiana Registered Agent for EnerVest Operating, L.L.C.
8550 United Plaza Building II Suite 305
Baton Rouge, Louisiana 70809

Re: Notice of Endangerment and Intent to File Suit Pursuant to Resource Conservation and Recovery Act § 7002 (b)(1)(A) and (b)(1)(B) and Notice of Intent to File Citizen Suit under the Louisiana Environmental Quality Act, La. Rev. Stat. § 30:2026.

To EnerVest Operating, L.L.C.:

Gulf Restoration Network ("GRN"), Louisiana Audubon Council ("LAC"), Louisiana Environmental Action Network ("LEAN"), and Sierra Club hereby provide EnerVest Operating L.L.C. ("EnerVest") and its Louisiana Registered Agent with this Notice of Endangerment and Intent to File Suit pursuant to the Resource Conservation and Recovery Act ("RCRA") §§ 7002 (a)(1)(A) and (a)(1)(B), 42 U.S.C. §§ 6972(a)(1)(A) and (a)(1)(B). RCRA § 7002(a)(1)(B) requires that a plaintiff give the defendant notice prior to filing a citizen suit. *See also* 40 C.F.R. § 254. In many cases, the party providing notice must wait at least ninety days before filing suit.[1] The purpose of this waiting period is to give the parties a reasonable time to resolve the matter cooperatively.

The alleged endangerment actions and statutory violations involve mercury contamination. Due to mercury's classification as a hazardous substance regulated under Subtitle C of RCRA,[2] plaintiffs are not required to wait the full ninety days before filing suit.[3] GRN, LAC, LEAN, and Sierra Club are providing EnerVest this Notice because, pursuant to

[1] Resource Conservation and Recovery Act, 42 U.S.C § 6972(b)(2)(A) (2003).
[2] Subchapter C of RCRA is also known as Subchapter III.
[3] Resource Conservation and Recovery Act, 42 U.S.C. § 6972(b)(1)(A)(iii) (2003).

RCRA § 7002(a), EnerVest is liable for the potential endangerment and violations described below.

In addition, GRN, LAC, LEAN, and Sierra Club provide EnerVest notice of a potential citizen suit in state court under Section 2026 of the Louisiana Environmental Quality Act (LEQA), La. Rev. Stat. § 30:2026, for violations of the LEQA and the Louisiana Administrative Code.

Section 2026 states that "any person having an interest, which is or may be adversely affected, may commence a civil action on his own behalf against any person whom he alleges to be in violation of this Subtitle or of the regulations promulgated hereunder."[4] GRN, LAC, LEAN, and Sierra Club allege that EnerVest's failure to clean up the mercury leaked from the manometers in the Monroe Natural Gas Field violates the LEQA. EnerVest has violated the Louisiana Administrative Code regarding its generation and disposal of mercury because it has not complied with the standards enumerated in the code. "Failure to comply with any of the provisions of these regulations or of the terms and conditions of any permit granted or order issued hereunder constitutes a violation of the Act."[5]

The LEQA requires that GRN, LAC, LEAN, and Sierra Club wait at least thirty days after giving this "notice of the violation to the secretary and to any alleged violator" before bringing an action in state court.[6] This waiting period gives the parties a reasonable time to resolve the matter cooperatively, without litigation.

Introduction

This Notice concerns solid and hazardous waste that may present an imminent and substantial endangerment to human health and the environment at and in the vicinity of the Monroe Natural Gas Field in Ouachita Parish. Specifically, EnerVest owns and operates natural gas wells in the Monroe Natural Gas Field. Many of these wells are equipped with mercury manometers that measure gas pressure in the pipelines. These manometers, which represent outdated technology, contain up to ten pounds of liquid mercury each.

The Monroe area is home to wetlands, bayous, marshes and swamps that hydraulically connect with Bayou DeSiard, the Black Bayou Lake, and the Ouachita River. The area is home to diverse plant and wild life, including many species of edible fish, making it an important area for the fishing industry of Louisiana. The wetlands around the area are prone to flooding, causing waters from the wetlands and the rivers to mix. Currently, the Louisiana Department of Health and Hospitals ("DHH"), the Louisiana Department of Wildlife and Fisheries ("DWF"), and the Louisiana Department of Environmental Quality ("DEQ") have issued health advisories for both the Bayou DeSiard, the Black Bayou Lake, and the Ouachita River due to the high levels of methylmercury in the fish caught in these rivers. The advisories warn pregnant women

[4] La. Rev. Stat. § 30:2026 (2005).
[5] La. Admin. Code tit. 33, § 107 (1990).
[6] La. Rev. Stat. § 30:2026 (2005).

and children under seven years old against eating more than 2 meals a month containing the contaminated fish.[7]

EnerVest has failed to maintain many of these manometers properly, which has caused mercury to leak and to accumulate in pools around the manometer sites. EnerVest has abandoned some manometers, after they plugged related gas wells, without properly disposing of the mercury in the manometers or cleaning up the surrounding area and has disposed of mercury on the ground. Other manometers are still in use despite the fact that better, more accurate, digital technology is available to measure gas pressure in the pipelines.

When elemental mercury or its compounds collect in the wetlands (areas that are flooded), bacteria often convert it into an organic mercury compound called methylmercury. Methylmercury is poisonous to humans and other biota. Methylmercury travels in fine-grained sediments which flowing waters distribute into bayous and backwater areas. The methylmercury enters the food chain when small aquatic plants and animals take up the methylmercury.[8] Then larger fish eat the plants and animals containing methylmercury.[9] The methylmercury binds to and remains attached to proteins in the fish's muscles.[10] The concentration of methylmercury is magnified as it travels up the food chain creating harmful levels in fish.[11]

The people most affected by methylmercury are women who may become pregnant, are pregnant, nursing mothers, and young children. People are exposed to harmful levels of methylmercury when they consume contaminated fish and shellfish and when mothers transfer the toxin to their unborn babies.[12] Many studies have documented the damage that high concentrations of mercury cause in people.[13] According to the federal Environmental Protection Agency ("EPA"), exposure to high levels of mercury in the womb is linked to increased risks of learning disabilities in newborns as well as other developmental problems.[14]

Due to the extensive and recognized harms associated with mercury, the pools of elemental mercury may pose a substantial endangerment to the environment and health of the

---

[7] http://www.oph.dhh.state.la.us/environmentalepidemiology/healthfish/docs/Bayou %20Desiard.pdf; http://www.oph.dhh.state.la.us/environmentalepidemiology/healthfish/docs/ Ouachita% 20River.pdf (last visited on Feb. 20, 2006). *See also* http://www.deq.louisiana.gov/ portal/Portals/0/assistance/Fish%20Consumption%20Advisory%20Table.pdf (last visited on Mar. 13, 2006).

[8] http://www.epa.gov/mercury/exposure.htm.

[9] *Id*.

[10] *Economic Valuation of Human Health Benefits from Controlling Mercury Emissions from U.S. Coal Fired Power Plants*, Feb. 2005, at 10, *available at* http://www.nescaum.org/topics/ stationary-sources (last visited on Nov. 20, 2006).

[11] http://www.epa.gov/mercury/exposure.htm.

[12] *Id*.

[13] *Id. See also* http://www.cdc.gov/exposurereport/pdf/factsheet_mercury.pdf (last visited on Nov. 20, 2006); *Economic Valuation of Human Health Benefits from Controlling Mercury Emissions from U.S. Coal Fired Power Plants*; Nancy Beckvar et al., *Contaminants in Aquatic Habitats at Hazardous Waste Sites: Mercury*, NOAA Technical Memorandum NOS ORCA 100 (1996).

[14] *Id*.

people living in the Monroe area. Therefore, GRN, LAC, LEAN, and Sierra Club's request to EnerVest includes the following, but is not limited to:

(1) giving a thorough and accurate account of all the gas wells in the Monroe Field under its control that are currently equipped or have been equipped with mercury manometers,

(2) analyzing soil and sediment samples to determine the extent and presence of mercury around each of the wells,

(3) taking appropriate measures to prevent any future contamination from mercury, for example, replacement of all mercury manometers with digital ones,

(4) conducting a proper cleanup of each affected site so each site is made completely free of any detectable levels of mercury, methylmercury, or any other mercury compounds,

(5) properly disposing of all mercury and mercury contaminated media,

(6) conducting health studies, as necessary, of people in the Monroe area exposed to mercury due to pollution from the manometers,

(7) paying civil penalties (RCRA provides for penalties against a violator in the amount of $25,000 per violation per day.[15] Regulations on March 15, 2004 increased the penalty to its current level of $32,500.[16]), and

(8) paying reasonable attorney fees and expert witness fees.[17]

Mercury Manometers in the Monroe Natural Gas Field

The natural gas industry uses mercury manometers to measure changes in pressure in the pipelines. The change in pressure in the pipelines is how operators keep track of the amount of gas that each well produces. The mercury manometer records the amount of gas for the well by using a pen, connected to the manometer, to mark on the paper disk. The disk records well pressure for a 30-day period. The operators remove the disks monthly in order to keep the records of gas production and calculate the applicable royalties.

EnerVest operates 3,951 gas wells in the Monroe gas field, 3941 of these are active wells, making it the largest single natural gas producer in the Monroe area.[18] EnerVest has full authority over the handling, managing, and maintenance of the manometers attached to its wells.

[15] Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a)(3) (2003).
[16] 40 C.F.R. § 19.4 tbl. 1 (2005).
[17] Resource Conservation and Recovery Act, 42 U.S.C. § 6972(e) (2003).
[18] *See* http://sonris-www.dnr.state.la.us/www_root/sonris_portal_1.htm. Enervest organization code E069, Monroe Gas Field ID 6824.

RCRA Subtitle C Violations

Under RCRA's citizen suit provision, "any person may commence a civil action … 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" RCRA.[19]

Subtitle C of RCRA is a comprehensive statute that deals with hazardous waste from the cradle to the grave. It details minimum standards for any generator, transporter, handler, or facility that generates, stores, transports, or disposes of wastes that EPA has identified as hazardous in its regulations.[20]

Subtitle C also authorizes states to come up with their own hazardous waste programs.[21] Once states have implemented their programs in accordance with the statute, the state's hazardous waste regulations govern hazardous waste actions instead of the federal regulations.[22]

Louisiana has implemented its own hazardous waste program under La. Rev. Stat. § 30:2171 et seq. and has authorized the Department of Environmental Quality to promulgate the necessary regulations, as long as they are consistent with applicable federal laws and regulations.[23] The EPA granted Louisiana final authorization to operate its hazardous waste management program on November 28, 1989.[24]

Mercury is listed as a hazardous waste under 40 C.F.R § 261.33 as substance U151. The regulation states that "when [the chemicals] are applied to the land in lieu of their original intended use..." the chemicals listed constitute hazardous waste.[25] Specifically, subsection (d) of this rule states that the listed chemicals are hazardous when they are present in "any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water…"[26] Mercury is also regulated as a hazardous substance under Louisiana environmental regulations at La. Admin. Code tit. 33, § 4901. Mercury is listed as substance U151, the same number listed in the federal regulations.

Standards for Treatment, Storage, and Disposal Facilities

Subtitle C of RCRA, in 42 U.S.C. § 6925(a)—and also La. Admin. Code tit. 33, § 303B—prohibit treatment, storage, or disposal of hazardous waste without a permit.[27] EnerVest violates this provision each day at each of its facilities with leaking manometers and has done so for at least the last five years.

---

[19] Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(A) (2003).
[20] Resource Conservation and Recovery Act, 42 U.S.C. § 6921 et seq. (2003).
[21] Resource Conservation and Recovery Act, 42 U.S.C. § 6926(b) (2003).
[22] *Id*.
[23] La. Rev. Stat. §§ 30:2174, 30:2175 (2005).
[24] *Louisiana: Final Authorization of State Hazardous Waste Management Program*, 54 Fed. Reg. 48889, 48890 (Nov. 28, 1989).
[25] 40 C.F.R. § 261.33 (2005), see substance U151.
[26] 40 C.F.R. § 261.33(d) (2006).
[27] Resource Conservation and Recovery Act, 42 U.S.C. § 6925(a) (2003).

EPA promulgated regulations dealing with treatment, storage, and disposal facilities in 40 C.F.R. § 260.1 *et seq*. 40 C.F.R. § 260.10 defines *disposal* as the "spilling, leaking or placing of any solid or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters including ground waters."[28] The same section also defines *disposal facility* as "a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure."[29]

Similarly, Louisiana requires that any treatment, storage, and disposal facilities have a permit to operate as stated in La. Rev. Stat. § 30:2192. Louisiana defines *disposal* in La. Admin. Code tit. 33, § 109 in the same words as the federal regulation. *Disposal facility* is also defined in La. Admin. Code tit. 33, § 109 using the same words as the corresponding federal regulation definition of disposal facility.

EnerVest controls many of the wells with mercury manometers that are leaking or have leaked mercury onto the ground, and EnerVest has spilled mercury onto the ground when it cleaned its manometers. As such, EnerVest's actions meet the regulatory definition of disposal. When EnerVest allows the mercury to collect on the ground around the meters it controls, it meets the definition of a disposal facility. Furthermore, when EnerVest leaves gas wells that it has plugged with abandoned, leaky manometers, this meets the definition of a disposal facility. Therefore, EnerVest must have a permit and comply with the regulations for a disposal facility, which it has failed to do. The regulations that apply to treatment, storage, and disposal facilities are found in 40 C.F.R. §§ 264-65. In addition to its violations of 42 U.S.C. § 6925(a), EnerVest has violated and continues to violate regulations that include, but are not limited to:

(1) 40 C.F.R. § 264.13 General Waste Analysis. The regulations state that when an owner or operator disposes of any hazardous waste, "he must obtain a detailed chemical and physical analysis" of the waste.[30] Louisiana regulations impose the same analysis requirements in La. Admin. Code tit. 33, § 1519. EnerVest has not provided any kind of analysis of the mercury it spilled or allowed to leak from the manometers.

(2) 40 C.F.R. § 264.11 requires every owner or operator of a disposal facility to have an EPA identification number. Louisiana uses the same language as the federal regulation in La. Admin. Code tit. 33, § 303(H)(4), which requires that a disposal facility obtain an EPA identification number according to EPA regulations. EnerVest does not have an EPA identification number.

(3) 40 C.F.R. § 264.14 requires the facility to provide adequate security to the site to prevent unknown persons or livestock from coming into contact with the hazardous waste. Louisiana has the same security requirement in substantially the same words used by the federal regulations in La. Admin. Code tit. 33, § 4315. Louisiana also provides security requirements under La. Admin. Code tit. 33, § 1507. EnerVest has not provided adequate security to the site and has not taken measures to prevent unknown persons or livestock from coming into contact with the hazardous waste.

[28] 40 C.F.R. § 260.10 (2006).
[29] *Id*.
[30] 40 C.F.R. § 264.13(a)(1) (2006).

(4) 40 C.F.R. § 264.15 requires an operator to have regular inspections to ensure that the hazardous waste does not come into contact with the environment. The regulation details the elements that the inspection program must meet. Louisiana states its general inspection requirements, in substantially the same language as the federal regulation, in La. Admin. Code tit. 33, § 1509. EnerVest has not regularly inspected its property to ensure that the hazardous waste does not come into contact with the environment.

(5) 40 C.F.R. § 264.18 delineates location standards for hazardous waste disposal facilities. It contains many standards that a facility must meet to prevent the hazardous waste from spilling into the environment in the case of events like floods. La. Admin. Code tit. 33, § 1503 has similar requirements under the heading of *Site Requirements.* Like the federal regulation, Louisiana's regulation lists, among many other concerns, the importance of preventing facilities from releasing hazardous waste during flooding. EnerVest disposes the mercury onto the ground in an area prone to flooding in violation of these regulations.

(6) 40 C.F.R. § 264.116 regulates the procedure that a disposal facility must follow when it closes. It states that the owner or operator must submit a site plan indicating where the disposal sites were located. A professional land surveyor must prepare the plan, and EnerVest must file the plan with the local zoning authority and the Regional Administrator. Louisiana requires the same procedure in La Admin. Code tit. 33, § 3517 B. EnerVest has not filed any surveyor plans with the local zoning authority or the Regional Administrator regarding the abandoned manometers on plugged wells.

(7) 40 C.F.R. § 264.117 describes the plan that an owner or operator must follow regarding the post closure care of a disposal facility. The plan must "begin after completion of closure of the unit and continue for 30 years after that date" and consist of certain enumerated requirements.[31] Under La. Admin. Code tit. 33 § 3521, Louisiana's hazardous waste plan also requires the same kind of closure care and use of property plan that must last 30 years. EnerVest does not have a plan regarding the post closure care of its disposal facility with the enumerated requirements and does not meet the requirement for 30 years of post closure care.

(8) 40 C.F.R. § 264.32 details the required equipment for a disposal facility. This equipment includes an alarm system [40 C.F.R. § 264.32(a)], a device like a two-way radio or telephone to call for help in the event of an emergency [40 C.F.R. § 264.32(b)], portable fire extinguishers [40 C.F.R. § 264.32(c)], and adequate water for hoses and sprinklers [40 C.F.R. § 264.32(d)]. Louisiana has the same requirements in La. Admin. Code tit. 33 § 1507(H). EnerVest has no such equipment at or near the wells with mercury manometers.

Part 265 "interim status" regulations apply to those owners or operators that qualify for interim status under 42 U.S.C. § 6925(e). 40 C.F.R. § 265.1. Interim status requirements generally apply to facilities that (1) already existed when the wastes they handle became subject to RCRA regulation, (2) are not subject to RCRA's loss of interim status provisions, and (3)

[31] 40 C.F.R. § 264.117(a)(1) (2006).

whose owners or operators timely applied for RCRA permits.[32] 40 C.F.R. § 264.3 indicates that an interim facility must comply with the regulations of 40 C.F.R. pt. 265 until a "final administrative disposition" has been made on the permit application. The regulations in 40 C.F.R. pt. 265 track those listed under 40 C.F.R. pt. 264, prescribing the same general standards for interim status facilities that are prescribed for permit-holding facilities. In other words, even if EnerVest could qualify as an interim status facility, which it does not, it would be in violation of Part 265 regulations.

La. Admin. Code tit. 33, § 4301B makes reference to 42 U.S.C. § 6925(e) when it defines facilities that qualify for interim status. Louisiana regulates interim status facilities in a similar manner as the federal regulations. The regulation states that the standards for facilities in chapters 26 and 43 apply to interim status facilities.[33] In other words, interim regulations in the Louisiana hazardous waste scheme, like those in the federal scheme, hold interim status facilities to standards that are substantially the same as standards for facilities holding permits.

Standards for Generators of Hazardous Waste

Under 42 U.S.C. § 6922(a) generators of hazardous waste are subject to recording, labeling, and reporting requirements, among other requirements. The regulations promulgated under Subtitle C of RCRA define a *generator* of hazardous waste as "… any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation."[34] Louisiana's regulation uses the same language as the federal regulation in La. Admin. Code tit. 33, § 109. EnerVest is a generator of hazardous waste because through their careless handling of the mercury inside the manometers, it has caused the mercury to spill and leak onto the ground.

EPA regulates generators of hazardous waste under 40 C.F.R. § 262.10 et seq., requiring *inter alia* record-keeping, labeling, and reporting manifests to EPA. EnerVest has violated and continues to violate regulations that include, but are not limited to:

(1) 40 C.F.R. § 262.11 states that a generator of solid waste must determine if the waste is hazardous waste. The generator must "determine if the waste is listed as a hazardous waste in Subpart D of 40 CFR part 261."[35] "[I]f the waste is not listed in subpart D of 40 CFR part 261," the generator has to determine if "the waste is identified in subpart C of 40 CFR part 261 by either:" 1) testing the waste according to the methods in subpart C of 40 CFR part 261 or an equivalent method, or 2) "[a]pplying knowledge of the hazard characteristic of the waste in light of the materials or the processes used."[36] Louisiana also requires the generator to determine if the waste is hazardous waste in La. Admin. Code tit. 33, § 1103. EnerVest has not determined if the mercury from its manometers is hazardous waste using the methods set forth in 40 C.F.R. § 262.11.

---

[32] 40 C.F.R. § 265.1(b) (2006).
[33] La. Admin. Code tit. 33, § 4301B (1990).
[34] 40 C.F.R. § 260.10 (2006).
[35] 40 C.F.R. § 262.11(b) (2006).
[36] 40 C.F.R. § 262.11(c) (2006).

(2) 40 C.F.R. § 262.12 states that a generator cannot store any hazardous waste without an EPA ID number. Louisiana also requires an EPA ID number under its standards for generators in La. Admin. Code tit. 33, § 1105. EnerVest does not have, nor has it had, an EPA ID number for generation of hazardous waste at its Monroe gas wells.

(3) 40 C.F.R. § 262.34 allows generators to store hazardous waste for 90 days without a permit or interim status. However, the generator needs to store the hazardous waste in containers or tanks that comply with 40 C.F.R. § 265 subparts J, AA, and BB. Louisiana has the same requirements and makes references to its own regulations that detail the structural requirements of containers and tanks in La. Admin. Code tit. 33, § 1109(E). EnerVest has spilled and leaked mercury directly onto the ground, not into any type of container. The mercury has been on the ground for more than 90 days.

(4) 40 C.F.R. § 262.20 states that a generator who transports or offers for transport the hazardous waste to a permitted disposal facility must prepare a Manifest. On the Manifest, the generator has to designate a disposal facility and one alternate facility.[37] Louisiana has the same manifest requirement in La. Admin. Code tit. 33, § 1107. Under 42 U.S.C. § 6922(a)(5), a generator of hazardous waste has to use a manifest system to ensure that all hazardous waste is designated for a treatment, storage, or disposal facility. EnerVest has not filed any manifests regarding any on-site or off-site transportation or disposal of its hazardous waste.

(5) 40 C.F.R. § 262.40 states that the generator must keep a copy of every manifest it writes under 40 C.F.R. § 262.23(a). The generator must keep a copy of each manifest for at least 3 years or until it "receives a signed copy from the designated facility which received the waste."[38] The generator must keep the signed copy from the designated facility in its records for at least 3 years.[39] Louisiana has the same recordkeeping requirements for generators under La. Admin. Code tit. 33, §1111. EnerVest has not filed any manifests and, therefore, has violated the recordkeeping regulations.

The Imminent and Substantial Endangerment

RCRA's imminent and substantial endangerment provision is codified in 42 U.S.C. § 6972(a)(1)(B). It provides authority to any person to bring suit in federal court against any person "including … any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, 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."[40]

RCRA defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid

[37] 40 C.F.R. §§ 262.21(b), 262.21(c) (2006).
[38] 40 C.F.R. § 262.40(a) (2006).
[39] *Id*.
[40] Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B) (2003).

or hazardous waste … may enter the environment or be … discharged into any waters, including ground waters."[41] The same section defines hazardous waste generation broadly as "… the act or process of producing hazardous waste."[42] The statute also defines "solid waste" broadly to mean "any garbage, refuse,… and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and community activities…"[43] Spilled mercury is "solid waste" because it is discarded material. Spilled mercury also qualifies as "hazardous waste," because it may "pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."[44]

For all of the reasons noted above, EnerVest's management of its mercury manometers and associated leaked mercury in the Monroe Natural Gas Field may present an imminent and substantial endangerment to health or the environment. EnerVest's acts and omissions contribute to a situation in which:

1) Bayou DiSiard, the Black Bayou Lake, and the Ouachita River exhibit high levels of mercury endangering the lives of fish consumers and the environment.
2) Due to the seasonal flooding of the area where the affected wells are located, new waterways are likely to be contaminated.
3) Mercury contaminated soils around the well sites can wash into tributaries and continue to accumulate as contaminated sediments in the advisory waterways.

Persons Giving Notice

The full name and address of the persons giving notice is:

Gulf Restoration Network ("GRN")
P.O. Box 2245
New Orleans, LA 70716

Louisiana Environmental Action Network ("LEAN")
P.O. Box 66323
Baton Rouge, LA 70896

Louisiana Audubon Council ("LAC")
355 Napoleon Street
Baton Rouge, LA 70802

Sierra Club
85 Second Street, 2nd Floor
San Francisco, CA 94105

[41] Resource Conservation and Recovery Act, 42 U.S.C. § 6903(3) (2003).
[42] Resource Conservation and Recovery Act, 42 U.S.C. § 6903(6) (2003).
[43] Resource Conservation and Recovery Act, 42 U.S.C. § 6903(27) (2003).
[44] Resource Conservation and Recovery Act, 42 U.S.C. § 6903(5)(B) (2003).

These parties, however, should be contacted through their counsel:

Adam Babich
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
(504) 862-8800

If you believe that any portion of this Notice is in error or if you wish to discuss any portion of this Notice, please contact Adam Babich at the address and phone listed above.

Prepared by:

Shirley Ng, Student
Tulane Environmental Law Clinic

Amber Gosney, Student
Tulane Environmental Law Clinic

Respectfully submitted by:

Adam Babich, SBN 27177
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana, 70118
Tel. (504) 865-5789 // Fax (504) 862-8721
Counsel for GRN, LAC, LEAN, and Sierra Club

cc:

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

Mr. Richard Greene, Regional Administrator
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Mr. Michael McDaniel, Secretary
Louisiana Department of Environmental Quality
P.O. Box 82263
Baton Rouge, LA 70884-2263