

OFFICE OF THE  
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COUNTY OF SANTA CRUZ

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## GOVERNMENT TORT CLAIM RECOMMENDED ACTION

Agenda November 10, 1998

To: The Board of Supervisors

Re: Claim of Eric Diesel, No. 899-046

Original Document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, this is to recommend that the Board take the following action:

- X 1. Deny the claim of Eric Diesel, No. 899-046 and refer to County Counsel.
- Deny 2 the application to file a late claim on behalf of \_\_\_\_\_ and refer to County Counsel.
- Grant 3 the application to file a late claim on behalf of \_\_\_\_\_ and refer to County Counsel.
4. Approve the claim of \_\_\_\_\_ in the amount of \_\_\_\_\_ and reject it as to the balance, if any, and refer to County Counsel.
5. Reject the claim of \_\_\_\_\_ as insufficiently filed and refer to County Counsel.

cc: Alvin James, Planning Director

RISK MANAGEMENT

By Janet McKinley

COUNN COUNSEL

By Elaine Lewis

LTR9.WPT

PER 5107 Rev. 4/97

Keith M. Casto, Esq.

ROSENBLUM  
PARISH &  
ISAACS  
A LAW CORPORATION

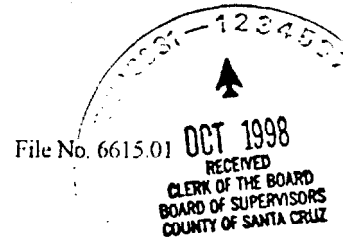
September 30, 1998

899-0460 nnc 78

(408) 280-2800

VIA REGISTERED MAIL (RETURN RECEIPT REQUESTED)

Board of Supervisors  
Santa Cruz County  
701 Ocean Street  
Room 500  
Santa Cruz, CA 95060



Re: Notice of Intent to Commence Action under RCRA and the CWA to Effect Cleanup of Solid Waste around Summit Road., Santa Cruz and Santa Clara County, California

Members of the Board of Supervisors:

This firm represents Mr. Eric Diesel who owns certain property in the Santa Cruz Mountains in both Santa Cruz and Santa Clara counties. This letter serves as notification as required by Section 7002 of the Federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6972 and Section 505 of the Clean Water Act ("CWA"), 33 U.S.C. Section 1365, that Mr. Diesel intends to commence an action under RCRA, 42 U.S.C. Section 6901, *et seq.*, and under the CWA, 33 U.S.C. Section 125 1, *et seq.*, against Santa Cruz County, the Board of Supervisors of Santa Cruz County (see Attachment A) and certain employees and directors of Santa Cruz County (see Attachment B), and other unidentified Doe defendants. This is an action for injunctive relief for cleanup, declaratory relief, related damages and costs of suit (including attorneys' fees and expert witnesses' fees) as a result of Santa Cruz County's improper handling, storage and disposal of solid and/or hazardous waste products into the environment, Santa Cruz County's illegal and unpermitted discharge or disposal of solid or hazardous waste into waters of the State of California and the United States, and the open dumping-of hazardous and/or solid waste on and around Summit Road from Mount Madonna to Mount Bache Road, in Santa Cruz County and Santa Clara County, California.

Santa Cruz County has been illegally disposing of material on and around Summit Road. The material disposed of includes garbage, dirt and organic debris. This dumping has destroyed Summit Road and damaged the Lexington Reservoir in Santa Clara County. This unlawful activity has been occurring from at least 1993 until 1998.

. Board of Supervisors, Santa Cruz County  
 RE: Notice of Intent to Commence Action Under RCRA and the CWA  
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The Santa Cruz County's disposal is prohibited by the CWA because the County has failed to obtain a National Pollution Discharge Elimination System ("NPDES") permit under section 402 of the CWA, 33 U.S.C. § 1342, or a dredge and fill wetlands permit under Section 404 of the CWA, 33 U.S.C § 1344. Santa Cruz County's disposal is also illegal under Section 4005 of RCRA, 42 U.S.C. § 6945, which prohibits open dumping of solid or hazardous wastes. In addition, the disposal of this debris onto private and public land has created an imminent and substantial endangerment to public health and the environment by causing deposition of material into streams and reservoirs regulated by the State of California and the United States, thereby triggering Section 7002 of RCRA, 42 U.S.C. § 6972.

Mr Diesel has incurred response costs, including expenses of investigation, attorneys' fees, and economic damages, and will continue to incur such fees, costs and economic damages in the future.

This private action seeks to obtain injunctive relief to restore the property and bodies of water, to compel Santa Cruz County to clean up the property damage, to recover those response costs that have been incurred and will be incurred in the future in connection with the characterization and removal/remediation at the property, and to obtain declaratory relief, costs of suit (including reasonable attorneys' fees and expert witnesses' fees), and related economic damages arising out of the illegal disposal, illegal discharge and improper maintenance for which Santa Cruz County is responsible. This letter is intended to place the recipients on notice that Mr. Diesel intends to commence this action in the federal District Court for the Northern District of California ninety (90) days after this notice is received by Santa Cruz County.

As noted, this notice is made on behalf of Mr. Eric Diesel, 2905 El Camino Real, Palo Alto, California 94306. Mr. Diesel's legal counsel in this action is Rosenblum, Parish & Isaacs, Attention : Keith M. Casto, 160 W. Santa Clara Street, 15<sup>th</sup> Floor, San Jose, California 95113 - telephone number: (408) 280-2879.

Very truly yours,

**ROSENBLUM, PARISH & ISAACS**



KEITH M. CASTO

KMC:tbp

Enclosures

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Board of Supervisors, Santa **Cruz** County  
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DISTRIBUTION LIST:

The Honorable Janet Reno  
Attorney General of the United States  
**U.S. DEPARTMENT OF JUSTICE**  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Carol M. Browner  
Administrator  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
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Washington, DC 20460

The Honorable Felicia Marcus  
Regional Administrator  
U.S. EPA, REGION IX  
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San Francisco, CA 94105

Jesse R. Huff  
Director  
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Supervisor Janet K. Beautz  
Santa Cruz County  
701 Ocean Street  
Room 500  
Santa Cruz, CA 95060

Board of Supervisors, Santa Cruz County

RE: Notice-of Intent to Commence Action Under RCRA and the CWA

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Director of Public Works  
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· Board of Supervisors, Santa Cruz Count)  
RE: Notice of Intent to Commence Action Under RCRA and the CWA  
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Dwight Herr  
County Counsel  
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701 Ocean Street, #505  
Santa Cruz, CA 95060

ATTACHMENT A

Supervisor Janet K. Beautz  
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Supervisor Walt Symons  
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Board of Supervisors, Santa Cruz County

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September 30, 1998

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ATTACHMENT B

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Department of Planning  
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