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CHANNELKEEPER and ENVIRONMENTAL DEFENSE CENTER

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13

14 SANTA BARBARA CHANNELKEEPER, a ) Case No.: 01-00456 CAS (Mcx)  
15 program of the ENVIRONMENTAL DEFENSE )  
CENTER, a California non-profit corporation, and ) [Proposed] **SECOND AMENDED**  
16 ENVIRONMENTAL DEFENSE CENTER, a ) **COMPLAINT FOR INJUNCTIVE AND**  
California non-profit corporation, ) **DECLARATORY RELIEF, AND FOR CIVIL**  
17 ) **PENALTIES**  
18 Plaintiffs, )  
19 vs. ) 33 U.S.C. Sections 1311, 1342, 1344, 1365; 42  
U.S.C. Sections 7410(k) and 7604; 42 U.S.C.  
20 ) Section 6972(b)(2)(B); California Business and  
HALACO ENGINEERING COMPANY, a ) Professions Code Section 17200 *et seq.*  
California corporation; JOHN DAVID GABLE, ) (Environmental)  
21 Secretary and Plant Manager; CLARENCE W. )  
HAACK, President; and LESLIE FINE, Vice )  
22 President and Chief Financial Officer, ) Judge: Hon. Christina A. Snyder  
23 Defendants. )  
24 )  
25 )  
26 )  
27 )  
28 )

25 Plaintiffs SANTA BARBARA CHANNELKEEPER (“ChannelKeeper”) and the  
26 ENVIRONMENTAL DEFENSE CENTER (“EDC”), by and through their counsel, hereby allege:  
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1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit provisions of the Federal Water Pollution  
3 Control Act (“Clean Water Act” or “CWA”); the Clean Air Act (“CAA”); and the Solid Waste Disposal  
4 Act, also known as the Resource Conservation and Recovery Act (“RCRA”). This Court has subject  
5 matter jurisdiction over the parties and subject matter of this action pursuant to Section 505(a)(1)(A) of  
6 the CWA, 33 U.S.C. § 1365(a)(1)(A), Section 304(a)(1)(B) of the CAA, 42 U.S.C. § 7604(a)(1)(B),  
7 Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), and 28 U.S.C. § 1331 (an action for declaratory and  
8 injunctive relief arising under the Constitution and laws of the United States).

9 2. On November 15, 2000, Plaintiffs gave written notice of Halaco Engineering Company’s  
10 and John David Gable’s violations of the CWA, CAA, and RCRA, and of Plaintiffs’ intent to file suit  
11 with regard to those violations to Halaco Engineering Company (“Halaco”), the Administrator of the  
12 Environmental Protection Agency (“EPA”), the Regional Administrator of Region 9 of EPA, the U.S.  
13 Attorney General, the Executive Officer of the California Air Resources Board (“CARB”), the Air  
14 Pollution Control Officer of the Ventura County Air Pollution Control District (“APCD”), the Acting  
15 Executive Director of the State Water Resources Control Board (“SWRCB”), the Executive Officer of  
16 the Los Angeles Regional Water Quality Control Board (“RWQCB”), the Director of the California  
17 Department of Toxic Substances Control (“DTSC”), and the U.S. Army Corps of Engineers Los  
18 Angeles District and Ventura Office (“the Army Corps”) pursuant to 33 U.S.C. § 1365(b), 42 U.S.C. §  
19 7604(b), and 42 U.S.C. § 6972(b)(2)(B). A true and correct copy of the notice letter is attached hereto  
20 as Exhibit A.

21 3. On January 17, 2001, Plaintiffs gave written notice of Clarence Haack’s and Leslie Fine’s  
22 violations of the CWA, CAA, and RCRA, and of Plaintiffs’ intent to file suit with regard to those  
23 violations pursuant to 33 U.S.C. § 1365(b), 42 U.S.C. § 7604(b), and 42 U.S.C. § 6972(b)(2)(B). A true  
24 and correct copy of the notice letter is attached hereto as Exhibit B.

25 4. More than 60 days have passed since notice was served on all Defendants and the state  
26 and federal agencies. Plaintiffs are informed and believe, and thereon allege, that neither the EPA, the  
27 SWRCB, the RWQCB, CARB, APCD, DTSC, nor the Army Corps commenced or is diligently  
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1 prosecuting a civil or criminal action under the CWA, CAA, or RCRA. In addition, this action is not  
2 barred by any prior administrative penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

3 5. This Court has supplemental jurisdiction over Plaintiffs' California Business and  
4 Professions Code Section 17200 claims pursuant to 28 U.S.C. § 1367. The claims raised arise from the  
5 same operative set of facts as the federal claims, and as such are part of the same case or controversy as  
6 the CWA, CAA, and RCRA claims.

7 6. Venue is proper in the Central District under Section 505(c) of the CWA, 33 U.S.C. §  
8 1365(c), and Section 304(c) of the CAA, 42 U.S.C. 7604(c), and Section 7002(a), 42 U.S.C. § 6972(a),  
9 because the Halaco facility, the source of the pollution, is located within the Central District.

10 7. In addition, venue is proper in the Central District under 28 U.S.C. § 1391 because the  
11 Defendants reside within the Central District.

## 12 **II. INTRODUCTION**

13 8. This is a citizen enforcement action brought by ChannelKeeper and EDC on behalf of  
14 themselves, their members, and the general public against Halaco for Halaco's illegal discharges of  
15 pollutants, polluted storm water and non-storm water, and dredged and fill material into waters of the  
16 United States, including the Ormond Beach Wetlands, drainage channels, the Ormond Beach Lagoon,  
17 and the Pacific Ocean, in violation of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* and the State of  
18 California's National Pollutant Discharge Elimination System Industrial Activities General Storm Water  
19 Permit, SWRCB Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order No. 92-12-  
20 DWQ and 97-03-DWQ), National Pollutant Discharge Elimination System ("NPDES") General Permit  
21 No. CAS000001, ("General Permit" or "Permit"). The lawsuit also seeks relief for Halaco's discharge  
22 of air contaminants that cause health problems, annoyance, discomfort, and nuisance to the public, and  
23 damage to property and businesses in violation of Ventura County Air Pollution Control District Rule  
24 51, part of the federally-approved California State Implementation Plan ("SIP") under the CAA.  
25 Plaintiffs seek relief for Halaco's creation of an imminent and substantial endangerment to health and  
26 the environment in violation of RCRA. In addition, Halaco continuously violates the Porter-Cologne  
27 Water Quality Control Act ("Porter-Cologne Act"), California Water Code §§ 13000 *et seq.*, and its  
28 operating permits. To remedy this conduct, Plaintiffs are seeking injunctive relief, civil penalties,

1 restitution (including disgorgement of profits), and other appropriate relief under Sections 309(d) and  
2 505(a)(1) of the CWA, 33 U.S.C. §§ 1319(d), 1365(a)(1); Sections 113(b) and 304(a)(1) of the CAA, 42  
3 U.S.C. §§ 7413(b) and 7604(a)(1); Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), and the California  
4 Business and Professions Code § 17200 *et seq.*

5 9. Halaco owns and operates a secondary smelting facility on approximately 41 acres of  
6 land in the City of Oxnard, California, near Port Hueneme, California on the Pacific Ocean. It recovers  
7 aluminum and magnesium by smelting waste material such as metal drosses, skimmings, sludge, and  
8 scrap metal. For the past thirty years, Halaco has discharged pollutants in the form of wastewater,  
9 leachate, dust, fill material, air emissions, and/or slag (waste) material to the surrounding air and waters  
10 of the United States, and has repeatedly and continuously violated conditions contained in its applicable  
11 permits.

12 10. These discharges of air, liquid, and solid wastes are harming the surrounding ecosystem,  
13 plant and animal life, general water quality, and the health, enjoyment, and property of people living and  
14 working nearby. The Ormond Beach Wetlands, which surround Halaco, provide habitat for rare,  
15 threatened, and endangered species. Halaco's neighbors not only include birds, fish, and water, but also  
16 residences, industrial properties, and farms. Farms and homes lie less than one mile from the Ormond  
17 Beach Wetlands and Halaco. One quarter of a mile northwest of Halaco are condominiums, and there  
18 are more homes and the community's elementary school nearby. Halaco's pollution impairs people's use  
19 of not only the Ormond Beach Wetlands, but also the public beaches, ocean, and other surrounding  
20 areas, for recreation and other beneficial uses, such as swimming, jogging, picnicking, surfing, and  
21 fishing.

22 11. In addition, the failure of industries such as Halaco to comply with the General Permit is  
23 recognized as one of the leading causes of the continuing decline in water quality of natural receiving  
24 waters. The general consensus among agencies and water quality specialists is that storm water  
25 pollution amounts to more than half the total pollution entering the marine environment each year. With  
26 every rainfall event, hundreds of millions of gallons of polluted rainwater originating from area  
27 industries pour into the areas natural receiving waters. Defendants' storm water discharges substantially  
28 contribute to the ongoing storm water pollution problem and exemplify the epidemic of violations of

1 industrial storm water permits that Plaintiffs seek to bring under control. These storm water pollution  
2 discharges can and must be controlled to allow the natural receiving waters in the Oxnard area an  
3 opportunity to regain their health.

4 12. Further, various seeps and fissures have been documented at Halaco’s facility over its  
5 nearly three decades of operation. The leachate escaping through those seeps and fissures in the waste  
6 pile, and the ground beneath the waste pile, enters the adjacent wetlands and underlying groundwater,  
7 and subsequently, the Pacific Ocean. As a result, the discharge of leachate from the facility results in an  
8 imminent and substantial endangerment to human health and the surrounding environment.

9 **III. STATUTORY BACKGROUND**

10 13. This action alleges that Halaco is and has been operating its facility in violation of (a)  
11 three distinct permitting programs promulgated under the Clean Water Act for industrial wastewater  
12 discharges, discharges of dredged and fill material, and discharges of storm water, respectively; (b) a  
13 federally enforceable air quality regulation promulgated by the APCD; (c) the “imminent and substantial  
14 endangerment to health and the environment” requirements of RCRA; and (d) a waste discharge permit  
15 issued by the RWQCB. Each of these regulatory programs is described below.

16 **A. Clean Water Act Requirements**

17 14. The Clean Water Act was intended “to restore and maintain the chemical, physical and  
18 biological integrity of the nation’s waters.” 33 U.S.C. § 1251(a). To achieve this goal, Section 301(a)  
19 of the CWA, 33 U.S.C. § 1311(a), prohibits any discharge of pollutants into waters of the United States,  
20 unless such discharge is in compliance with specified provisions of the CWA. In particular, Section  
21 301(a) prohibits all discharges of pollutants, including wastewater and waste, not authorized by, or in  
22 violation of, the terms of an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.  
23 The NPDES permit program regulates both storm water and wastewater discharges. Discharges of  
24 dredged and fill material are prohibited, unless made pursuant to and in compliance with a permit  
25 obtained from the Secretary of the Army under Section 404 of the CWA, 33 U.S.C. § 1344.

26 15. The “discharge of a pollutant” means, among other things, the addition of a pollutant to  
27 “waters of the United States” from any “point source,” as well as the addition of any pollutant to the  
28

1 waters of the “contiguous zone” or the ocean from a point source other than a vessel or floating craft. 40  
2 C.F.R. § 122.2.

3 16. “Waters of the United States” are defined as all interstate waters as well as all intrastate  
4 lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs,  
5 tributaries and impoundments of waters of the United States, etc. 40 C.F.R. § 122.2 (relating to the  
6 NPDES program); 33 C.F.R. § 328.2 (relating to the dredged and fill program).

7 17. The term “point source” means any discernible, confined and discrete conveyance,  
8 including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,  
9 rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other  
10 floating craft from which pollutants are or may be discharged. 33 U.S.C § 1362(7); 40 C.F.R. § 122.2.

11 18. Section 404 of the CWA, 33 U.S.C. § 1344, prohibits the discharge of dredged or fill  
12 material into waters of the United States without a permit at specific disposal sites. The term “discharge  
13 of fill material” is defined as “any addition of fill material into waters of the United States.” 40 CFR §  
14 323.2(f). “Fill material” “means any material used for the primary purpose of replacing an aquatic area  
15 with dry land or of changing the bottom elevation of an waterbody.” 40 C.F.R. § 323.2(e).

16 19. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), establishes a framework for regulating  
17 municipal and industrial storm water discharges under the NPDES permitting program. Federal  
18 implementing regulations require that storm water associated with industrial activity, which is  
19 discharged either directly or indirectly to waters of the United States, be regulated through an NPDES  
20 permit. 40 C.F.R § 122.26. Under the CWA certain states are authorized to regulate storm water  
21 discharges by either: (1) the issuance of an individual permit to every discharger, or (2) the issuance of  
22 a single, statewide general permit applicable to all industrial storm water discharges. 33 U.S.C. § 1342.  
23 California’s SWRCB chose to issue a statewide General Permit for industrial discharges.

24 20. In California, responsibility for issuance of individual NPDES permits has been delegated  
25 by the SWRCB to California’s nine Regional Water Quality Control Boards.

26 21. California's general permit requires facilities to implement Best Available Technology  
27 Economically Achievable (“BAT”), Best Conventional Pollutant Control Technology (“BCT”) and Best  
28 Management Practices (“BMPs”) to reduce and eliminate industrial storm water pollution. The permit

1 also requires existing facilities to: (1) submit a Notice of Intent (“NOI”) to be covered by the General  
2 Permit by March 30, 1992 or at least 14 days prior to the start of operations (Provision E(1), General  
3 Permit; Attachment 3, General Permit); (2) develop and implement a Storm Water Pollution Prevention  
4 Plan (“SWPPP”) by October 1, 1992 or prior to the start of operations, and implement any necessary  
5 revisions no later than August 1, 1997 (Section A(1)(b), General Permit); and (3) develop and  
6 implement a monitoring, reporting and sampling program for storm water discharges. Existing facilities  
7 covered under the Permit must implement all necessary revisions to their monitoring program no later  
8 than August 1, 1997 (Section B(1), General Permit). Dischargers must submit “Annual Reports” to the  
9 RWQCB by July 1 of each year. Section B(14), General Permit.

10 22. As part of the monitoring program, dischargers must conduct site inspections to identify  
11 areas contributing to storm water discharges, identify all storm water discharge locations that produce a  
12 significant storm water discharge, evaluate the effectiveness of the BMP measures in reducing pollutant  
13 loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and  
14 properly implemented. Section B, General Permit. Dischargers must also conduct dry season visual  
15 observation to identify sources of non-storm water pollution. Section B(3), General Permit.  
16 Dischargers must sample their storm water at all discharge points from at least two storm events over the  
17 five-year life of the Permit. Section B(5), General Permit. Section B(5)(c)(i) of the General Permit  
18 requires dischargers to sample and analyze during the wet season (October 15 – April 30) for pH, total  
19 suspended solids (“TSS”), specific conductance, and total organic content (“TOC”) or oil and grease;  
20 Section B(5)(c)(ii) of the General Permit requires sampling for toxic chemicals and other pollutants  
21 likely to be in the storm water discharged from the facility. Dischargers must document these visual  
22 observations and sampling results and evaluate their effectiveness in a written report. Section B(13),  
23 General Permit.

24 23. Provision A(1) of the General Permit prohibits discharges of non-storm water unless  
25 authorized under Provision D(1)(a). Provision D(1)(a) authorizes certain discharges of non-storm water,  
26 such as fire hydrant flushing, drinking fountain water and potable water sources, but does not authorize  
27 non-storm water discharges of process or wash water.  
28

1           24.     Section A(6)(v) requires a description of all non-storm water discharges including the  
2 source, quantity, frequency, and characteristics of the non-storm water discharges. Section B(3) requires  
3 SWPPPs to be revised to address the facility operator’s response to, and elimination of, the non-storm  
4 water discharges. Section C(10) and (11) of the General Permit require dischargers to certify, based on  
5 an annual site inspection, that the facility is in compliance with the General Permit and to report any  
6 non-compliance.

7           25.     In addition, California's general permit specifically prohibits<sup>1</sup>: (1) discharges of materials  
8 other than storm water which are not otherwise regulated by a NPDES permit (Provision A(1)); (2)  
9 storm water discharges causing or threatening to cause pollution, contamination or nuisance (Provision  
10 A(2)); (3) storm water discharges adversely impacting human health or the environment (Provision  
11 C(1)); and (4) storm water discharges causing or contributing to a violation of applicable State Water  
12 Quality Plan or Regional Water Board Basin Plans. Provisions A(1), A(2), C(1), and C(2), General  
13 Permit.

14           26.     Section 505(a)(1) and Section 505(f) of the CWA provide for citizen enforcement actions  
15 against any “person,” including individuals, corporations, or partnerships, to prosecute the unpermitted  
16 discharges of pollution under Sections 301, 402 and 404 of the CWA and to prosecute violations of  
17 NPDES storm water permit requirements. 33 U.S.C. §§ 1365(a)(1) and (f); 1362(5).

18 **B.     Clean Air Act Requirements**

19           27.     The Clean Air Act sets out a comprehensive regulatory scheme designed to prevent and  
20 control air pollution. Congress passed the CAA in order to prevent air pollution and to protect and  
21 enhance the quality of the Nation's air resources so as to promote the public health and welfare. 42  
22 U.S.C. § 7401.

23           28.     Section 110 of the CAA requires that each state submit a State Implementation Plan  
24 (“SIP”) to EPA for approval that provides for the implementation, maintenance and enforcement of the  
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26  
27           <sup>1</sup> The SWRCB reissued the General Permit on April 17, 1997. The requirements of the original General Permit are  
28 in effect through April 1997 while the requirements of the reissued General Permit take effect after April 1997. The  
substantive and procedural requirements of the reissued Permit are at least as stringent as those of the original General Permit  
but some are set forth in differently numbered sections and provisions. This Complaint will refer to the reissued General  
Permit.

1 national ambient air quality standards promulgated by EPA pursuant to Section 109 of the CAA. 42  
2 U.S.C. § 7410.

3 29. Ventura County APCD Rule 51 was approved in 1972 as part of California's SIP by the  
4 EPA. 37 Fed. Reg. 19806 (September 22, 1972). Accordingly, VCAPCD Rule 51 is federally  
5 enforceable as an emission standard or limitation established under a State Implementation Plan.

6 30. Rule 51 prohibits the discharge of air contaminants or other materials “which cause  
7 injury, detriment, nuisance or annoyance to any considerable number of people or which endangers the  
8 comfort, repose, health or safety of any such persons or the public or which cause or have a natural  
9 tendency to cause injury or damage to business or property.” VCAPCD Rule 51.

10 31. Sections 304(a)(1) and 304(f) of the CAA provide for citizen enforcement actions against  
11 any “person,” including individuals, corporations, or partnerships, to prosecute the violation of an  
12 emission standard or limitation which is in effect under an applicable implementation plan. 42 U.S.C. §  
13 7604(a)(1) and (f); 42 U.S.C. § 7602(e).

#### 14 **C. Resource Conservation and Recovery Act Requirements**

15 32. Section 7002(a)(1)(B) of RCRA prohibits the past and present handling, storage,  
16 treatment, transportation, or disposal of any solid or hazardous waste, which may create an imminent  
17 and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(B).

18 33. Section 7002(a)(1)(B) of RCRA provides for citizen enforcement actions against any  
19 “person,” including individuals, corporations, or partnerships, to prosecute the contribution to the past or  
20 present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which  
21 may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. §  
22 6972(a)(1)(B).

#### 23 **D. Porter-Cologne Water Quality Control Act Requirements**

24 34. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to hear Plaintiffs’  
25 state law claims.

26 35. When the Porter-Cologne Act was enacted, the Legislature found and declared that “the  
27 people of the state have a primary interest in the conservation, control, and utilization of the water  
28 resources of the state, and that the quality of the waters of the state shall be protected for the use and

1 enjoyment by the people of the state.” Cal. Water Code § 13000. The Porter-Cologne Act also  
2 implements the federal NPDES permit program. Cal. Water Code §§ 13370-13389. It also regulates  
3 discharges of wastes that are not covered by the NPDES program. Cal. Water Code §§ 13260-13274.

4 36. Section 13263 of the Porter-Cologne Act prohibits the discharge of wastes to the waters  
5 of the State without a permit, commonly referred to as “Waste Discharge Requirements” (“WDR”)  
6 issued by the relevant Regional Water Quality Control Board. Cal. Water Code § 13263. Among other  
7 things, the Revised Waste Discharge Requirements for Halaco Engineering Company (File No. 70-24),  
8 Los Angeles RWQCB Order No. 80-58, issued to Halaco in 1980 establishes requirements concerning  
9 (a) the types of waste that may be discharged at the facility, (b) the need for lateral and subsurface  
10 migration barriers around the surface impoundment which meet specific permeability standards and  
11 which prevent the movement of waste or waste leachate to groundwater, surface waters, drainage  
12 channels, and land, (c) the installation of sumps and drains for the lateral migration barriers, (f)  
13 prevention of erosion of the slag pile by storm water and surface runoff, (g) prevention of percolation of  
14 storm water through the slag pile to offsite areas, (h) prohibition of pollution of the waters of the state,  
15 (i) prohibition of creation of pollution or nuisance as a result of any waste disposal or management  
16 practices, and (j) implementation of specific monitoring and reporting requirements, including  
17 installation and maintenance of three groundwater monitoring wells.

18 37. For purposes of the Porter-Cologne Act, “waste” “includes sewage and any and all other  
19 waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human  
20 or animal origin, or from any producing, manufacturing, or processing operation, including waste placed  
21 within containers of whatever nature prior to, and for purposes of, disposal.” Cal. Water Code §  
22 13050(d).

23 38. For purposes of the Porter-Cologne Act, “waters of the State” are defined as “any surface  
24 water or groundwater, including saline waters, within the boundaries of the state.” Cal. Water Code §  
25 13050(e).

26 39. California Business and Professions Code Section 17203 provides for the issuance of  
27 such injunctive and equitable relief as may be necessary to prevent the use or employment by any person  
28 of any practice which constitutes unfair competition, or as may be necessary to restore to any person in

1 interest money or property, real or personal, which may have been acquired by means of unfair  
2 competition. Cal. Bus. & Prof. Code § 17203.

3 40. California Business and Professions Code Section 17200 defines “unfair competition” to  
4 include “*unlawful*, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading  
5 advertising.” Cal. Bus. & Prof. Code § 17200 (emphasis added). A business practice constitutes unfair  
6 competition if any law forbids it, be it civil or criminal, federal, state or municipal, statutory, regulatory  
7 or court-made. Section 17200 essentially borrows violations of other laws and treats these violations as  
8 independently actionable.

9 41. California Business and Professions Code Section 17204 provides for suits for injunctive  
10 relief by any person acting for the interests of itself, its members or the general public. Cal. Bus. &  
11 Prof. Code § 17204.

#### 12 **IV. PARTIES**

##### 13 **A. Plaintiffs**

14 42. Plaintiff SANTA BARBARA CHANNELKEEPER (“ChannelKeeper”) is a program of  
15 EDC, a non-profit public benefit corporation organized under the laws of the State of California, and is  
16 located at 120 W. Mission Street, Santa Barbara, California, 93101. ChannelKeeper has approximately  
17 150 members who live, work and/or recreate in and around the Santa Barbara Channel.  
18 ChannelKeeper’s mission is to preserve, protect, and enhance the natural resources and health of wildlife  
19 and ecosystems of the Santa Barbara Channel and other receiving waters, including the waters adjacent  
20 to and near the area occupied by Halaco. ChannelKeeper implements this mission through an on-the-  
21 water grassroots enforcement program that seeks to detect, investigate, and deter violations of  
22 environmental laws that protect water quality. Specifically, ChannelKeeper and its members: (a)  
23 monitor and participate in the activities of the RWQCB and other local, state, and federal agencies,  
24 ranging from individual discharge permitting and enforcement efforts to the development of policies and  
25 programs affecting Channel pollution issues; (b) monitor the Channel and its tributaries through its  
26 network of member volunteers to identify illegal sources of pollution; (c) investigate and report illegal  
27 discharges identified through monitoring or through examination and analysis of self-monitoring reports  
28 of dischargers into the Channel and/or other files of the RWQCB and other regulators; and (d) actively

1 support and, when necessary, supplement through citizen suits such as this, the effective enforcement of  
2 the Clean Water Act by federal and state agencies. In addition, ChannelKeeper and its members play an  
3 important role in contributing to the health of the Santa Barbara Channel through a variety of  
4 ChannelKeeper-sponsored and organized programs, including river monitoring and scientific data  
5 collection.

6 43. Plaintiff ENVIRONMENTAL DEFENSE CENTER (“EDC”) is a California non-profit  
7 organization. It is located at 906 Garden Street, Santa Barbara, California, 93101, with a Ventura office  
8 at 2021 Sperry Avenue, Suite 18, Ventura, California 93003. EDC has approximately 1200 members in  
9 the counties of Ventura, Santa Barbara, and San Luis Obispo. EDC is a public interest environmental  
10 law firm that provides legal, educational, and advocacy support to community groups to advance  
11 environmental quality in Ventura, Santa Barbara, and San Luis Obispo counties. On behalf of its  
12 members and clients, EDC is dedicated to protecting and preserving natural resources, including air and  
13 water quality, and to protecting human health and the environment from toxic exposure in the tri-county  
14 area. EDC also actively monitors compliance with legal requirements that are meant to protect air and  
15 water quality, as well as land use decision in California’s South Central Coast. EDC members live and  
16 work near Halaco and recreate at the Ormond Beach Lagoon, wetlands, and in the Pacific Ocean.

17 44. The interests of EDC, ChannelKeeper, and their members have been, are being, and  
18 continue to be adversely affected by Halaco's violations of the CWA, CAA, RCRA, California Business  
19 and Professions Code, and applicable permits. Halaco's discharge of toxics and pollutants into the  
20 natural environment used and enjoyed by these members and the public, directly and detrimentally  
21 affects the health, economic, recreational, aesthetic, and conservation interests of these members and the  
22 public. EDC and ChannelKeeper have members who live and/or work within one-half mile of Halaco.  
23 Those members frequently make complaint to the Ventura County APCD because of Halaco’s air  
24 emissions. The air emissions have nuisance impacts because the paint has been eaten off of nearby cars,  
25 and many complainants describe respiratory problems, headaches, nausea, dizziness, sore throats,  
26 burning eyes, and drying in the nose. EDC and ChannelKeeper have members who use the Ormond  
27 Beach area and other areas around Halaco for recreational, scientific, aesthetic, educational,  
28 conservation and commercial purposes, including, but not limited to, recreational fishing, boating,

1 kayaking, swimming, sailing, surfing, and windsurfing, fish and wildlife observation, photography,  
2 hiking, and aesthetic enjoyment, on a continuing and ongoing basis. Halaco's failure to comply with the  
3 procedural and substantive requirements of the CWA, CAA, RCRA, California Business and  
4 Professions Code, and applicable permits, and the resulting discharges of contaminated air as well as  
5 contaminated storm water and other pollutants into the surrounding waterbodies and wetlands, including  
6 the Pacific Ocean, impacts each of these uses. In addition, EDC and ChannelKeeper members have  
7 filed complaints against Halaco with local public agencies, such as the APCD for impacts to health, and  
8 nuisance impacts due to air emissions from Halaco. Thus, the interests of ChannelKeeper's and EDC's  
9 members have been, are being, and will continue to be adversely affected by Halaco's failure to comply  
10 with the CWA, CAA, RCRA, California Business and Professions Code, and applicable permits. These  
11 injuries are actual, concrete injuries suffered by Plaintiffs and would be redressed by the relief sought  
12 herein. Plaintiffs have no adequate remedy at law.

13 **B. Defendants**

14 45. Plaintiffs are informed and believe, and thereon allege, Defendant HALACO  
15 ENGINEERING COMPANY ("Halaco") is a California for-profit corporation with corporate offices  
16 located at 6200 Perkins Road, Oxnard, California 93033. Halaco owns and operates a secondary metal  
17 smelting facility on approximately 41 acres also located at 6200 Perkins Road, Oxnard, California  
18 93033.

19 46. Plaintiffs are informed and believe, and thereon allege, Halaco has been in the business of  
20 refining, and smelting metals since approximately 1958, and has been located at the current Perkins  
21 Road site in Oxnard since approximately 1965, and the construction of the site took place between 1965  
22 and 1973. On information and belief, metals currently and previously smelted at Halaco include, but are  
23 not limited to aluminum, magnesium, and zinc.

24 47. Plaintiffs are informed and believe, and thereon allege, Defendant JOHN DAVID  
25 GABLE is Secretary and Plant Manager for Halaco, and responsible for the business decisions made by  
26 Halaco for compliance with environmental laws and control of emissions and discharges from the  
27 Halaco site.

1           48.     Plaintiffs are informed and believe, and thereon allege, Defendant CLARENCE W.  
2 HAACK is President of Halaco, and responsible for the business decisions made by Halaco for  
3 compliance with environmental laws and control of emissions and discharges from the Halaco site.  
4 HAACK maintains an office at 6200 Perkins Road, Oxnard, California, and is engaged in, and  
5 supervises the day-to-day operations at Halaco.

6           49.     Plaintiffs are informed and believe, and thereon allege, Defendant LESLIE FINE is Vice  
7 President and Chief Financial Officer of Halaco, and responsible for the business decisions made by  
8 Halaco for compliance with environmental laws and control of emissions and discharges from the  
9 Halaco site. FINE maintains an office at 6200 Perkins Road, Oxnard, California, and is engaged in, and  
10 supervises the day-to-day operations at Halaco.

11 **V.     STATEMENT OF FACTS**

12 **A. Halaco's Facility and the Surrounding Area**

13           50.     Plaintiffs are informed and believe, and thereon allege, that beginning in the early 1970's  
14 and continuing to present day, Halaco has operated its industrial smelting operation with its toxic  
15 emissions and enormous slag pile in Ventura County, California. Bounded by the sensitive Ormond  
16 Beach Wetlands and Ormond Beach Lagoon, and nestled among farm fields, homes and other  
17 businesses, the facility lies less than 150 feet from the coastal dunes and beach of the Pacific Ocean.  
18 The Halaco facility is located on forty-one acres of land at 6200 Perkins Road in the City of Oxnard,  
19 California. Several condominium complexes are located approximately 1,000 feet west of the facility.  
20 On the northwest side and to the north across Hueneme Road, are many Port Hueneme, California  
21 residences and small businesses, as well as the local community's elementary school. To the immediate  
22 east, are the Ormond Beach Wetlands and then farmland and a farm residence. The Ormond Beach  
23 Lagoon, home to numerous species of fish and migratory birds, is directly south of the facility, and just  
24 beyond the Lagoon lies coastal dunes and the Pacific Ocean. To the immediate northwest of Halaco is  
25 the City of Oxnard's Wastewater Treatment Plant, and to the immediate north is the Willamette Paper  
26 Plant.

27           51.     The Ormond Beach Wetlands provide habitat for many migratory birds and federal- and  
28 state-listed endangered species such as the Tidewater Goby, California Least Tern, California Brown

1 Pelican, and the American Peregrine Falcon, among many others. The wetlands have also been  
2 designated for the following beneficial uses in the Water Quality Control Plan for the Los Angeles  
3 Region (“Basin Plan”): swimming; wading; picnicking; sunbathing; hiking; estuarine habitat; wildlife  
4 habitat; habitat for rare, threatened, or endangered species, flood and erosion control; and stream bank  
5 stabilization. These wetlands comprise a complex ecosystem that depends on the health of its watershed  
6 for its existence. Local residents and tourists come to the area to walk along the beach and enjoy the  
7 wetlands and the many beneficial uses. It is one of the few remaining wetlands in all of Ventura  
8 County.

9 52. The Pacific Ocean is approximately 150 feet south of the facility. The beach is used and  
10 enjoyed by many local residents and visitors all year round. People use the beach for swimming,  
11 sunbathing, surfing, recreational activities, and family outings. The Ormond Beach Lagoon runs along  
12 the coast, between Halaco and the ocean. The Lagoon also supports many bird species on their annual  
13 migrations, including the Western Snowy Plover and California Least Tern that nest on the coastal dunes  
14 and forage in the surf zone and Lagoon.

15 53. The Oxnard Industrial Drain (“OID”) runs through Halaco's facility along the west side  
16 of the slag pile and east side of the metals processing area. The Water Quality Control Plan for the Los  
17 Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (“Basin  
18 Plan”) designates the OID as a “coastal feature.” The OID discharges into the Ormond Beach Lagoon  
19 and subsequently to the Pacific Ocean. The OID is unlined and is in hydraulic connection with the  
20 shallow groundwater below Halaco's waste disposal site.

21 54. Plaintiffs are informed and believe, and thereon allege, that children play in close  
22 proximity to the Halaco facility, and in the warm shallow waters of the two channels that converge at the  
23 Halaco facility, the Oxnard Industrial Drain and the “J” Street Drain.

24 55. A semi-perched groundwater body of about fifty-feet thick underlies Halaco, and the  
25 SWRCB determined in 1980 that the groundwater moves generally toward the Pacific Ocean. Because  
26 there is also hydraulic continuity between the semi-perched groundwater and the ocean, leachate  
27 percolating into the shallow groundwater from the Halaco settling ponds can easily migrate into the  
28 nearby ocean waters.

1           56.     The current groundwater flow regime, however, is unknown because Halaco's  
2 groundwater monitoring network is inadequate, and not capable of providing this information. Halaco's  
3 monitoring wells have not been properly maintained and Halaco has not fully complied with the  
4 reporting requirements in its WDR. Finally, high groundwater conditions historically have prevailed in  
5 the waste disposal area, suggesting that migration through the groundwater is likely.

6           57.     The Oxnard Industrial Drain, the “J” Street Drain, the Ormond Lagoon, the drainage  
7 channel to the south of Halaco’s waste disposal area, and the Ormond Beach Wetlands adjacent to  
8 Halaco’s waste disposal area on the east are “waters of the United States.”

9 **B. Halaco's Waste Disposal Area**

10           58.     Halaco's operations are located on two adjacent parcels, separated by the OID. The metal  
11 processing and smelting operations take place on approximately 15 acres of land on the western portion  
12 of the Halaco property (“the operations area”). Halaco disposes of its wastes on a 25-acre parcel of land  
13 to the immediate east of the OID (“the waste disposal area”). The operations area and the waste disposal  
14 area are connected by a small bridge that spans the OID.

15           59.     The waste disposal area contains at least one active surface impoundment, other inactive  
16 surface impoundments, and several waste piles. The impoundments and waste piles are surrounded by a  
17 wall of slag that is periodically excavated from the surface impoundments (“the slag pile”). The slag  
18 pile, which forms the perimeter of the waste disposal area, is approximately four stories high, is 30-40  
19 feet thick and has a volume of approximately 430,000 cubic yards. The slag pile covers approximately  
20 10 acres.

21           60.     The surface impoundments cover approximately 15 acres. Natural ground surface  
22 elevations on the eastern and southern boundaries of the surface impoundment are approximately four  
23 feet above sea level. Chemically reactive liquid waste water and waste slurry from the secondary  
24 smelting operations are discharged to the active surface impoundment from a pipe which carries the  
25 waste across the OID bridge from the operations area. Based on observations made in 1980, Halaco  
26 estimates that at least 35 gallons per minute, or over 12 million gallons per year of effluent and waste  
27 slurry, are discharged to the surface impoundment. The temperature of the effluent discharged by  
28 Halaco to the surface impoundment averaged 80-100 degrees Fahrenheit, as reported in 1980.

1 **C. Halaco's Smelting Process**

2 61. Halaco obtains scrap, or dross, of aluminum and magnesium, and other metals from  
3 outside sources. The clean dross is placed directly into a rotary furnace for melting. Dirty dross is  
4 washed in a rotary washer and then placed into the rotary furnace. Fluxes composed of salts such as  
5 sodium chloride, potassium chloride, and magnesium chloride are fed into the furnace to help separate  
6 impurities in the dross from the aluminum, magnesium, or other metals of interest. The separated  
7 impurities and the spent fluxes rise to the top of the vats in the furnace and are removed as “slag.” This  
8 slag typically contains residual metals. The slag is placed in a “hot dross enclosure” and subsequently  
9 run through the rotary washer before it is returned to the rotary furnace.

10 62. Water from the OID is used in the two rotary washers to wash the dross and slag. Waste  
11 water and a grey-colored slurry from the rotary washers is then pumped directly via a pipe to the east  
12 side of the OID and into the surface impoundment. The molten material that remains in the furnace after  
13 the impurities have been removed is then poured into a transfer pot, and subsequently poured into ingots,  
14 which are ultimately sold as recycled metals.

15 **D. Halaco’s Air Emissions**

16 63. Halaco's smelting facility and process causes a number of air emissions. The rotary  
17 furnace, where the slag and dross are melted, generates highly corrosive exhaust gases. The furnace  
18 exhaust gases are captured, treated using lime and ammonia, and are then sent through a baghouse, a  
19 pollution control device, for particulate matter control. In addition, exhaust gases are also generated by  
20 the hot dross enclosure and other enclosures. Those exhaust gases are also captured and routed to the  
21 baghouse. In the baghouse, particulate matter is removed from the gases, and the gases then escape  
22 from a stack into the air outside. Plaintiffs are informed and believe, and thereon allege, that the  
23 baghouse dust and other waste from the baghouse process are discharged periodically to the rotary  
24 washers.

25 64. Not all emissions from the rotary furnace, the transfer pot, ingot pot, a hot dross  
26 enclosure, and other sources at the facility are captured and sent to the baghouse. Plaintiffs are informed  
27 and believe, and thereon allege, that a significant amount of these emissions escape from the facility  
28

1 through doors, windows, holes, openings, vents and cracks in the foundry building and other systems  
2 and enclosures without prior control or treatment.

3 65. Plaintiffs are informed and believe, and thereon allege, that fugitive emissions of dust  
4 associated with smelting operations occur as a result of wind dispersion of particles from waste piles and  
5 dross piles in the operations area, and as a result of wind dispersion and vehicular movement affecting  
6 particulate matter on the facility grounds and within facility buildings and structures.

7 66. The waste disposal area is also a source of air emissions. Wind also blows particulate  
8 matter from the slag pile, and vehicles driving along the slag pile disperse large amounts of particulate  
9 matter in their wake. Reactions occurring within the active surface impoundment cause the emission of  
10 large quantities of gases, including but not limited to ammonia and hydrogen gas.

11 67. During the last ten years a large number of complaints have been logged by the APCD  
12 against Halaco concerning Halaco's air emissions. These complaints were from people who live, work,  
13 or recreate near the Halaco facility, and from people who make use of public roads in the vicinity of the  
14 Halaco facility.

15 68. Many people stated that there was more smoke coming from Halaco at night than during  
16 the day, and the pollution seemed worse when the weather was rainy or overcast. Complainants declared  
17 that the emissions caused health problems, including but not limited to, respiratory problems, headaches,  
18 nausea, dizziness, sore throat, burning eyes, and drying in the nose. Some complainants also stated that  
19 the emissions from Halaco leave a metallic taste in the mouth, and there is an ammonia smell to the  
20 emissions. Complainants also reported that Halaco's air emissions ate paint off of nearby cars, and  
21 agricultural operations also relayed impacts to crops grown nearby.

22 **D. Halaco's Discharges to Waters of the United States**

23 69. Halaco has discharged and continues to discharge waste, including but not limited to,  
24 polluted storm water, waste leachate that has percolated from the surface impoundments through the  
25 slag pile, and chunks, pieces, and particles from the slag pile, into the waters of the United States.

26 70. Halaco filed an NOI to be covered by the General Permit on March 25, 1992, and is  
27 subject to the terms and conditions of the Permit. Among other things, the General Permit requires  
28

1 Halaco to develop and implement an effective SWPPP and to implement an effective Storm Water  
2 Monitoring, Reporting and Sampling Program.

3 71. Halaco uses the slag pile to control lateral migration of waste and waste leachate from the  
4 waste disposal area. The slag pile is the only lateral barrier around the surface impoundments and waste  
5 piles within the waste disposal area. Lateral migration of waste has occurred and is occurring through  
6 the slag pile. However, there is no barrier to the flow of leachate seeping through the slag pile, nor  
7 storm water that flows down the slag pile and off site into the adjacent wetlands.

8 72. Plaintiffs are informed and believe, and thereon allege, that Halaco has failed to  
9 implement best managements practices at the Halaco facility. Information available to Plaintiffs also  
10 indicates that Halaco has failed to implement adequate storm water controls to prevent rain water from  
11 coming into contact with pollutant sources in the operations area and the waste disposal area, and has  
12 failed to install adequate treatment in place at the operations area and the waste disposal area to capture  
13 all the contaminated storm water.

14 73. Plaintiffs are informed and believe, and thereon allege, that trucks and heavy equipment  
15 are transported in and out of the operations area, which causes tracking of contaminated material from  
16 the operations area onto public roadways. These pollutants are washed directly into storm drains during  
17 every rain event.

18 74. Plaintiffs are informed and believe, and thereon allege, that during every rain, storm  
19 water containing heavy metals, oil and grease, and other pollutants harmful to fish, plants, birds, and  
20 human health are discharged from the Halaco facility directly to waters of the United States and to storm  
21 drains and then to the Pacific Ocean.

22 75. The discharge of contaminated storm water has been confirmed by Halaco's own storm  
23 water sampling results.

24 76. Plaintiffs are informed and believe, and thereon allege, that Halaco failed to fully comply  
25 with the SWPPP requirements at the facility.

26 77. Plaintiffs are informed and believe, and thereon allege, that Halaco failed to fully comply  
27 with the Monitoring and Reporting Program requirements at the facility.

1 **E. Halaco's Discharges of Fill Material**

2 78. There is an unlined drainage channel that runs along the south side of Halaco's slag heap,  
3 which is a tributary to the Oxnard Industrial Drain at the southwest corner of the slag heap.

4 79. Plaintiffs are informed and believe, and thereon allege, that Halaco placed fill material in  
5 this unlined drainage channel, which impedes the flow of water between the Oxnard Industrial Drain  
6 and/or the Ormond Lagoon to the unlined drainage channel.

7 80. Plaintiffs are informed and believe, and thereon allege, that Halaco placed fill material  
8 approximately in line with the northern boundary of its property across the adjacent wetland to build an  
9 extension of McWane Boulevard in Oxnard, California.

10 **F. Halaco's WDR Violations**

11 81. According to a May 5, 2000 RWQCB internal memorandum, Halaco regularly disposed  
12 of waste oil, spent solvents, and baghouse dust by dumping them on dross which is then run through the  
13 rotary washers. Essentially Halaco adds solid and hazardous waste to dross before it is broken up and  
14 washed in the rotary washers.

15 82. Radiochemical analysis reports on samples taken from the Halaco site from 1994 to 1996  
16 also indicate the presence of detectable levels of gross alpha and beta particles.

17 83. Radiochemical analysis reports on samples taken from the Halaco site on August 19,  
18 1999, including near the Ormond Beach Wetlands, indicate the presence of detectable levels of uranium,  
19 thorium, potassium 40, and gross alpha and beta particles.

20 84. Radiochemical analysis reports on samples taken from the Halaco site on March 9, 2000,  
21 including near the OID, indicate the presence of detectable levels of thorium 228 and thorium 232.

22 85. Wastes containing uranium, thorium, potassium 40, gross alpha particles, and gross beta  
23 particles constitute radioactive wastes.

24 86. At some point between August 1999, and June 21, 2000, Halaco removed radioactive  
25 material from a location near the OID and ran the radioactive material through its rotary washer. Waste  
26 water from the rotary washer was subsequently discharged to the surface impoundment.

1           87.     The aforementioned waste oil, spent solvents, baghouse dust, and radioactive materials  
2 that are present in Halaco's discharge are not related to Halaco's aluminum, magnesium, and zinc  
3 recycling operations or from related air scrubber processes.

4           88.     Plaintiffs are informed and believe, and thereon allege, that wastes not originating from  
5 aluminum, magnesium, and zinc smelting operations, and related air scrubber processes at the Halaco  
6 facility, have been discharged by Halaco in the waste disposal area in violation of Halaco's WDR.

7           89.     Halaco's surface impoundment, which currently covers an area of approximately 15  
8 acres, is unlined and Halaco has failed to install an engineered liner system. Halaco asserts that there is  
9 a clay layer underlying the surface impoundment. Halaco bases this assertion on a 1970 study in which  
10 only four borings were drilled approximately 500 feet apart at the outer edges of the surface  
11 impoundment. No borings were ever drilled or tests conducted on the southern end of the surface  
12 impoundment. The 1970 study asserted that the natural clay liner underlying the surface impoundment  
13 (approximately 15 acres) met standards for impermeability for liners.

14           90.     In 1981, the SWRCB found that the data available on waste fluid movement potential  
15 between the surface impoundment and the underlying ground waters are inconclusive because all of the  
16 permeability tests were conducted along and beyond the surface impoundment perimeter. Thus, lateral  
17 continuity or discontinuity of the materials beneath the surface impoundment is unknown, and Halaco  
18 has failed to demonstrate that impervious conditions exist beneath the surface impoundment.

19           91.     Analysis of the ground water samples obtained on March 9, 2000 from Halaco's  
20 monitoring wells in the vicinity of the surface impoundment indicate the presence of elevated  
21 concentrations of ammonia, thorium, organic nitrogen, potassium, nitrate. All of these chemicals are  
22 found in the waste water discharged by Halaco into the surface impoundment. Water testing results  
23 from the monitoring well samples taken by inspectors indicate that ammonia is present in the  
24 groundwater at concentrations ranging from 140 mg/L to 529 mg/L. Analysis of groundwater samples  
25 by Halaco's consultant also demonstrated ammonia concentrations ranging from 140 mg/L to 190 mg/L.

26           92.     Halaco uses the slag pile to control lateral migration of waste and waste leachate from the  
27 waste disposal area. The slag pile is the only lateral barrier around the surface impoundments and waste  
28 piles within the waste disposal area. Lateral migration of waste has occurred and is occurring through

1 the slag pile. Between 1981 and the present, government inspectors and Halaco contractors have  
2 documented numerous holes, seeps, fissures, piping, breaks, and breaches in the slag pile through which  
3 waste and waste leachate have escaped.

4 93. Between 1981 and the present, government investigators and Halaco contractors have  
5 documented numerous and repeated seeps, fissures, piping, breaks and other discrete channels by which  
6 waste and waste leachate are migrating through the slag pile into the Ormond Beach Wetlands, the OID,  
7 and ultimately the Ormond Beach Lagoon and the Pacific Ocean. For example, during 1999 and 2000,  
8 during various inspections, government investigators identified (a) leachate seeps on the east and west  
9 sides of the slag pile that were 100 feet long and 70 feet long, respectively; (b) leachate seeps flowing  
10 into the OID from the banks of the OID and from near the OID bridge; (c) leachate migrating through  
11 “piping” in the slag pile; and (d) leachate migrating from the slag pile into the Ormond Beach Wetlands.  
12 “Piping” is a hollow pipe-like or fracture-like passage created in materials as a result of fluids moving  
13 through and dissolving the material. Based on samples taken downgradient from the seeps, investigators  
14 concluded that waste containing ammonia in levels toxic to fish is escaping the site. In addition,  
15 investigators have observed and documented repeated incidents in which waste and waste leachate have  
16 escaped from the Halaco site and reached the OID. Among other things, investigators have documented  
17 erosion of the slag pile, discharge of materials from five foot-high waste piles in the operations area into  
18 the OID by runoff; and wastes downgradient from a breach in the slag pile trending towards the OID.

19 94. Samples taken near leachate seeps most recently in 2000 contained elevated levels of  
20 compounds, such as copper, zinc, and ammonia, that are also present in Halaco's waste water. Samples  
21 taken of soils in the Ormond Beach Wetlands indicated the presence of chemicals and salts that are  
22 present in Halaco's waste water. Analysis of surface water samples from the OID indicate the presence  
23 of elevated levels of ammonia, including levels deemed toxic to fish.

24 95. On numerous occasions, chunks, pieces and particles from Halaco's slag pile have been  
25 found in the vicinity of the Halaco facility, including in the OID and the Ormond Beach Wetlands to the  
26 east of the Halaco facility. The base of the slag pile, which projects into the Ormond Beach Wetlands, is  
27 often wet from seepage. Analysis of samples of soils from the Ormond Beach Wetlands show high  
28

1 concentrations of metals, nitrate nitrogen, ammonia nitrogen, and organic nitrogen, all of which are  
2 present in Halaco's waste.

3 96. Plaintiffs are informed and believe, and thereon allege, that the lateral migration barriers  
4 are not equipped with collection drains and sumps to prevent lateral migration of the leachate in  
5 violation of Halaco's WDR.

6 97. Plaintiffs are informed and believe, and thereon allege, that Halaco has also failed to  
7 return intercepted seepage to a disposal site or remove it to a legal point of disposal. Plaintiffs are  
8 further informed and believe and thereon allege that Halaco is not removing the leachate to an off-site  
9 disposal facility.

10 98. Plaintiffs are informed and believe, and thereon allege, that surface runoff from areas  
11 tributary to the Halaco site and runoff from rain falling directly on the site and/or on the slag pile, erodes  
12 the slag pile and carries waste material off-site from the Halaco facility.

13 99. Halaco documented historic and continuing erosion of the slag pile resulting from surface  
14 runoff and storm water runoff in a letter to the Dennis Dickerson, Executive Officer of the RWQCB  
15 dated March 3, 2000.

16 100. Government inspectors have observed ditches on the north and south side of the OID  
17 Bridge acting like gutters and carrying runoff waste into the OID. Government inspectors have also  
18 videotaped and viewed seeps near the OID Bridge and viewed discharge pipes from a rotary washer  
19 leaking into the OID. Leachate was observed discharging into the east side of the OID from the vicinity  
20 of the discharge pipe on the southeast side of the OID Bridge.

21 101. Halaco is required to submit quarterly monitoring reports to the RWQCB by the first day  
22 of May, August, November and February of each year reporting the results of analyses of effluent,  
23 surface water, and groundwater samples from the Halaco facility. Halaco has not submitted monitoring  
24 reports for the third quarter 1996 or the first quarter 1997. On over a dozen occasions, Halaco submitted  
25 monitoring reports after the proper due dates. Halaco regularly submitted reports days or months late  
26 and, in several cases, Halaco submitted reports two and a half years after the required due date.

27 102. Halaco failed to maintain its groundwater monitoring wells so as to provide adequate  
28 protection from both structural damage and from damage by pollutants entering from sources other than

1 from the zone being monitored. During an inspection of the Halaco facility on March 9, 1999,  
2 government inspectors noted that the groundwater monitoring wells were damaged and must be legally  
3 abandoned and replaced by Halaco. The wells were not capped properly and contained water at the  
4 same level as the surrounding ground level, or sometimes above the surrounding ground level, to the top  
5 of the well casing.

6 103. Halaco is required to maintain two surface water sampling stations in the Oxnard  
7 Industrial Drain and to sample them bimonthly, in January, March, May, July, September, and  
8 November. Between 1997 and 2000, Halaco has repeatedly failed to sample the surface water stations at  
9 the proper time. On three occasions, Halaco failed completely to sample the surface water stations at all.

10 104. Halaco is required to submit an annual report to the Regional Board by February 1 of  
11 each year. Halaco failed to submit its annual reports on time for the years 1996, 1997, 1998, and 1999.

12 **G. Halaco's RCRA Violations**

13 105. Section 7002(a)(1)(B) prohibits the past and present handling, storage, transportation,  
14 treatment, or disposal of solid and hazardous waste that may create an imminent and substantial  
15 endangerment to health and the environment. Harmful effects of heavy metals, ammonia, and other  
16 solid and hazardous waste on the environment include, include among other things the disruption of  
17 ecosystem structure and productivity, nutrient cycling, biological diversity, as well as bioaccumulation  
18 in aquatic plants, fish, and invertebrates, which serve as the primary food sources for larger animals,  
19 including endangered birds and mammals. These solid and hazardous wastes have been identified in  
20 and around the Halaco facility. Halaco has violated RCRA by creating an imminent and substantial  
21 endangerment at its facility and these violations are continuing. These violations are set out in greater  
22 detail below.

23 106. Plaintiffs are informed and believe, and thereon allege, that the discharges from the  
24 Halaco site have contaminated the perched groundwater basin beneath the waste disposal area. Because  
25 the perched groundwater basin underlying the waste disposal area flows to the Pacific Ocean, that  
26 contamination is migrating to the Pacific Ocean, thereby creating an imminent and substantial  
27 endangerment to human health and the environment.  
28

1 107. Information available to the Plaintiffs demonstrates that Halaco's waste discharges and  
2 air emissions are an exposure pathway for pollutants that endanger health and the environment.

3 **H. Other enforcement by Plaintiffs against Halaco**

4 108. On November 15, 2000, Plaintiffs also sent a 60-day notice of intent to file suit against  
5 Halaco for violations of the California Safe Drinking Water and Toxic Enforcement Act of 1986 (also  
6 known as "Proposition 65") to Halaco, the California Attorney General, the Ventura County District  
7 Attorney, the Oxnard City Attorney, and the California Department of Industrial Relations. Plaintiffs  
8 filed a lawsuit in Ventura County Superior Court for those violations on January 22, 2001.

9 **FIRST CAUSE OF ACTION**  
10 Discharge of Pollutants without a Permit  
11 **(Violation of 33 U.S.C. Sections 1311(a) and 1342(a))**

12 109. Plaintiffs re-allege, as if fully set forth herein, each and every allegation contained in the  
13 preceding paragraphs.

14 110. Halaco has been discharging pollutants, including but not limited to, wastewater,  
15 leachate, dust, fill material, and slag material from its slag pile.

16 111. Halaco has been discharging the above pollutants from point sources at the facility,  
17 including but not limited to, the surface impoundment, the slag pile, and seepage channels and other  
18 discharge points from the waste disposal area.

19 112. Plaintiffs are informed and believe, and thereon allege, that Halaco discharges pollutants  
20 from the above point sources into the OID, the drainage channel south of the waste disposal area, the  
21 Ormond Beach Lagoon, the Pacific Ocean, and the Ormond Beach Wetlands located to the east of  
22 Halaco's facility, all of which are waters of the United States.

23 113. Halaco does not possess an NPDES permit for these discharges of pollutants.

24 114. Halaco has been in violation of the CWA for these unpermitted discharges every day  
25 since November 15, 1995 to the present, or on 5,667 occasions. Every day from November 15, 1995  
26 until Halaco obtains an NPDES permit and complies with the CWA constitutes a separate and distinct  
27 violation of CWA Sections 301(a) and 402(a), 33 U.S.C. §§ 1311(a) and 1342(a).  
28

1 115. Halaco's violations of the CWA NPDES permit requirements are ongoing. In light of  
2 Halaco's history of violations and the nature of the violations, Halaco will violate these requirements in  
3 the future unless and until Halaco is enjoined from doing so by the Court.

4 116. By committing the acts alleged above, Halaco is subject to an assessment of civil  
5 penalties pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a). The  
6 award of litigation costs and attorneys' fees are sought pursuant to Section 505(d) of the CWA, 33  
7 U.S.C. § 1365(d).

8 117. Plaintiffs seek injunctive relief pursuant to Section 505(a) of the CWA, 33 U.S.C. §  
9 1365(a). Continuing commission of the acts alleged above will irreparably harm Plaintiffs and the  
10 citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

11 **SECOND CAUSE OF ACTION**  
12 **Discharge of Dredged or Fill Materials to Wetlands Without a Permit**  
13 **(33 U.S.C. Sections 1311 and 1344(a))**

14 118. Plaintiffs re-allege, as if set forth fully herein, each and every allegations contained in the  
15 preceding paragraphs.

16 119. Under Section 404 of the CWA, 33 U.S.C. § 1344, a facility must obtain a permit in order  
17 to discharge dredged or fill material into waters of the United States.

18 120. The Ormond Beach Wetlands to the east of Halaco and the unlined drainage channel  
19 south of Halaco's waste disposal area are waters of the United States. 33 C.F.R. §§ 328.1, 328.3(a)(3).  
20 The wetlands provide a habitat for several federally- and state-listed endangered species, including the  
21 Tidewater Goby, the Brown Pelican, the American Peregrine Falcon, and the Western Snowy Plover.

22 121. Plaintiff is informed and believes and thereon alleges that Halaco placed fill material in  
23 the unlined drainage channel south of the slag pile, which dammed the flow between the Oxnard  
24 Industrial Drain and adjacent Ormond Beach Lagoon and "J" Street Drain. The placement of fill  
25 material at this location is ongoing.

26 122. Halaco has placed and continues to place fill material approximately in line with the  
27 northern boundary of its property across the adjacent Ormond Beach Wetlands to build and subsequently  
28 maintain a road extension of McWane Boulevard in Oxnard without securing a permit pursuant to  
Section 404 of the CWA, 33 U.S.C. § 1344.





1 139. Plaintiffs are informed and believe, and thereon allege, that since at least November 15,  
2 1995, or on at least 1,889 occasions, Halaco has been, and continues to, discharge non-storm water from  
3 its facility to waters of the United States in violation of the Clean Water Act and the General Permit.

4 140. Each day since November 15, 1995 that Halaco has been, and continues to, discharge  
5 non-storm water from its facility to waters of the United States in violation of the General Permit is a  
6 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311 (a).

7 141. By committing the acts alleged above, Halaco is subject to an assessment of civil  
8 penalties pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a). The  
9 award of litigation costs and attorneys' fees are sought pursuant to Section 505(d) of the CWA, 33  
10 U.S.C. § 1365(d).

11 142. Plaintiffs seek injunctive relief pursuant to Section 505(a) of the CWA, 33 U.S.C. §  
12 1365(a). Continuing commission of the acts alleged above will irreparably harm Plaintiffs and the  
13 citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

14 **FIFTH CAUSE OF ACTION**  
15 Failure to Develop and Implement an Adequate and Effective Storm  
16 Water Pollution Prevention Plan  
**(Violation of 33 U.S.C. §§ 1311(a) and §1342(p))**

17 143. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
18 preceding paragraphs.

19 144. Section A(1) and Section VII of Attachment 3 of the General Permit require dischargers  
20 to develop and implement a SWPPP. Facility operators must revise their existing SWPPPs as necessary  
21 and implement the revisions within 90 days. Provision E(2) and Section A(10) of the General Permit.

22 145. Halaco's SWPPP is dated October 1998.

23 146. Plaintiffs are informed and believe, and thereon alleg, that since at lease November 15,  
24 1995, Halaco has failed to develop and/or fully implement an adequate and effective SWPPP as required  
25 by Section A(1) of the General Permit.

26 147. Plaintiffs are informed and believe, and thereon allege, that Halaco's SWPPP fails to  
27 include all necessary information on the site map as required by Section A(4) of the General Permit, and  
28

1 failed to identify all storm water discharge points and drainage areas as required by Section A(4) of the  
2 General Permit.

3 148. Plaintiffs are informed and believe, and thereon allege, that Halaco's SWPPP fails to list  
4 significant materials at the facility as required by Section A(5) of the General Permit.

5 149. Plaintiffs are informed and believe, and thereon allege, that Halaco's SWPPP fails to  
6 identify and address the non-storm water discharges occurring at the facility as required by Section A(6)  
7 of the General Permit.

8 150. Plaintiffs are informed and believe, and thereon allege, that Halaco's SWPPP does not  
9 identify all potential sources of pollutants at the facility as required by Section A(6) of the General  
10 Permit.

11 151. Plaintiffs are informed and believe, and thereon allege, that Halaco's SWPPP does not  
12 assess potential pollutant sources at the facility as required by Section A(7) of the General Permit.

13 152. Halaco's SWPPP does not set forth adequate BMPs and storm water pollution controls for  
14 the various pollutant sources as required by Section A(8) of the General Permit, as indicated by Halaco's  
15 exceedance of benchmark levels for total suspended solids and pH in 1998-1999 and 1999-2000 Annual  
16 Reports, respectively. In addition, sampling performed by Plaintiffs indicates that concentrations of  
17 ammonia, mercury, cooper, and lead are orders of magnitude over benchmark levels.

18 153. Plaintiffs are informed and believe, and thereon allege, that Halaco has failed to make  
19 and implement the necessary revisions to the SWPPP as required by Section A(1) of the General Permit.  
20 Revisions to the SWPPP are required whenever there are indications that the BMPs are not adequate.  
21 The exceedances of the benchmark levels are an indication that the BMPs are not adequate and that the  
22 SWPPP therefore needs to be revised.

23 154. Halaco has been in violation of the SWPPP requirement on each and every day between  
24 November 15, 1995 and the present, or on 1,889 occasions. Each day from November 15, 1995 until the  
25 present that Halaco has been in violation of the SWPPP requirement constitutes a separate and distinct  
26 violation of Section 301(a) of the CWA. 33 U.S.C. § 1311(a).

1 155. Halaco's violations of the General Permit's requirements are ongoing. In light of Halaco's  
2 history of violations and the nature of the violations, it is likely that Halaco will continue to violate these  
3 requirements in the future unless and until Halaco is enjoined from doing so by the Court.

4 156. By committing the acts alleged above, Halaco is subject to an assessment of civil  
5 penalties pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a). The  
6 award of litigation costs and attorneys' fees are sought pursuant to Section 505(d) of the CWA, 33  
7 U.S.C. § 1365(d).

8 157. Plaintiffs seek injunctive relief pursuant to Section 505(a) of the CWA, 33 U.S.C.  
9 §1365(a). Continuing commission of the acts alleged above will irreparably harm Plaintiffs and the  
10 citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

11 **SIXTH CAUSE OF ACTION**  
12 Failure to Implement an Adequate and Effective Storm Water Monitoring,  
13 Reporting, and Sampling Program  
14 **(Violation of U.S.C. §§ 1311(a) and 1342(p))**

14 158. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
15 preceding paragraphs.

16 159. Provisions C(3), Section B(1), and Section VII of Attachment 3 of the General Permit  
17 require dischargers to develop and implement a monitoring program no later than October 1, 1992.  
18 Pursuant to Provisions E(3) and Section B(2) of the General Permit, facility operators must evaluate and  
19 revise their existing Monitoring and Reporting Program as necessary to meet changing conditions.

20 160. Sections B(3) and (4) and Section A(9) of the General Permit require dischargers to  
21 conduct site inspections to identify areas contributing to storm water discharges, to evaluate the  
22 effectiveness of BMPs, and to evaluate whether pollution control measures set out in the SWPPP are  
23 adequate and properly implemented. Section C(9) and (10) require dischargers to certify that the facility  
24 is in compliance with the General Permit and to report any noncompliance. Sections B(3) and (4)  
25 require dischargers to conduct observations to identify sources of non-storm water pollution, to identify  
26 all storm water discharge locations that produce storm water discharge, and to observe storm water  
27 discharges from one storm event per month during the wet season.  
28

1           161. Section B(5) requires dischargers to sample two storm events in each wet season and  
2 analyze the samples for pH, total suspended solids, specific conductance, total organic content or oil and  
3 grease, and any toxic chemicals and pollutants likely to be in the storm water discharged from the  
4 facility. Halaco's SWPPP further requires Halaco to analyze for the following additional parameters:  
5 BOD<sub>5</sub>, COD, total Kjeldahl nitrogen, nitrate and nitrite as nitrogen, total phosphorus, aluminum,  
6 magnesium, copper, and zinc.

7           162. Plaintiffs are informed and believe, and thereon allege, that since November 15, 1995,  
8 Halaco has failed to comply with the monitoring, reporting and sampling requirements of the General  
9 Permit. Halaco has failed (both in its 1998 - 1999 and 1999 - 2000 Annual Reports) to complete the  
10 monthly storm water discharge visual observations that are required between October 1 and May 30 of  
11 each year. Halaco also failed to obtain the two required samples for storm water for both the 1998 -  
12 1999 and 1999 - 2000 Annual Reports. Finally, Halaco did not analyze its storm water samples for all  
13 the pollutants identified in the SWPPP.

14           163. Halaco has been in violation of the monitoring, sampling, and reporting requirement  
15 every day between November 15, 1995 and the present, or on 1,889 occasions. Each day between  
16 November 15, 1995 and the present that Halaco has failed to develop and implement an adequate and  
17 effective monitoring, reporting and sampling program for the facility in violation of the General Permit  
18 is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

19           164. Halaco's violations of the General Permit's monitoring, sampling and reporting  
20 requirements are ongoing. In light of Halaco's history of violations and the nature of the violations, it is  
21 likely that Halaco will continue to violate these requirements in the future unless and until Halaco is  
22 enjoined from doing so by the Court.

23           165. By committing the acts alleged above, Halaco is subject to an assessment of civil  
24 penalties pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a). The  
25 award of litigation costs and attorneys' fees are sought pursuant to Section 505(d) of the CWA, 33  
26 U.S.C. § 1365(d).



1           173. The discharge of these air contaminants has endangered and is endangering the comfort,  
2 repose, health or safety of the public and of a considerable number of persons who live, work, and  
3 engage in recreational and other activities near the Halaco facility. Plaintiffs are informed and believe,  
4 and thereon allege, that Halaco's emissions contain a number of toxic and harmful compounds, including  
5 but not limited to hexavalent chromium and lead. Halaco's emissions have caused acute health problems  
6 for the public and for a considerable number of persons, including but not limited to respiratory  
7 problems, headaches, nausea, dizziness, sore throat, burning eyes.

8           174. The discharge of these air contaminants has caused and is causing damage to property  
9 and business, including but not limited to damage to automobile finishes and damage to local  
10 agricultural operations.

11           175. Halaco has been in violation of VCAPCD Rule 51 every day on which the discharge of  
12 these air contaminants has occurred since November 15, 1995 to the present, or on 1,889 occasions.  
13 These discharges constitute a continuing nuisance, and every day from November 15, 1995 until Halaco  
14 complies with VCAPCD Rule 51 and the CAA constitutes a separate and distinct violation.

15           176. Halaco's violations of VCAPCD Rule 51 and the CAA are ongoing. In light of Halaco's  
16 history of violations and the nature of the violations, it is likely that Halaco will continue to violate these  
17 requirements in the future unless and until Halaco is enjoined from doing so by the Court.

18           177. By committing the acts alleged above, Halaco is subject to an assessment of civil  
19 penalties pursuant to Section 304(a) of the CAA, 42 U.S.C. §§ 7604(a). The award of litigation costs  
20 and attorneys' fees are sought pursuant to Section 304(d) of the CAA, 42 U.S.C. § 7604(d).

21           178. Pursuant to Section 304(g) of the CAA, 42 U.S.C. § 7604(g), Plaintiffs request that  
22 penalties received be applied to beneficial mitigation projects which are consistent with the purpose of  
23 the Clean Air Act and enhance the public health or the environment, and that the balance of penalties  
24 received be deposited in a special fund in the United States Treasury.

25           179. Plaintiffs seek injunctive relief pursuant to Section 304(a) of the CAA, 42 U.S.C. §  
26 7604(a). Continuing commission of the acts alleged above will irreparably harm Plaintiffs and the  
27 citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

1 **EIGHTH CAUSE OF ACTION**  
2 Failure to Comply with Condition One of Waste Discharge Requirements  
3 **(Unlawful Business Practice under Section 17200 et seq. of the**  
4 **California Business and Professions Code)**

5 180. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
6 preceding paragraphs.

7 181. Pursuant to Section 13263 of the Porter-Cologne Act, in 1980 the RWQCB issued Waste  
8 Discharge Requirements to Halaco, Order No. 80-58, which includes Condition One.

9 182. Condition One requires that “[w]astes discharged at this site shall be limited to those  
10 originating at this facility from aluminum, magnesium and zinc recycling operations and from related air  
11 scrubber processes.”

12 183. Plaintiffs are informed and believe, and thereon allege, that on repeated occasions  
13 between 1995 and the present, Halaco has disposed of and is disposing of radioactive soils and debris,  
14 waste oil, spent solvents, and baghouse dust by placing the waste materials in its rotary washers. The  
15 wastewater from the rotary washers was and is subsequently discharged to the surface impoundment.

16 184. Radioactive soil and debris, waste oil, spent solvents, and baghouse dust are not related to  
17 aluminum, magnesium, and zinc recycling operations, or to related air scrubber processes.

18 185. By discharging waste containing these radioactive materials, oils, solvents, and baghouse  
19 dust, Halaco has violated and is violating Condition One of the WDR.

20 186. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
21 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
22 the meaning of the California Business and Professions Code Section 17200 *et seq.*

23 187. Halaco's violations of the WDR and the Porter-Cologne Act are ongoing. In light of  
24 Halaco's history of violations and the nature of the violations, it is likely that Halaco will continue to  
25 violate these requirements in the future unless and until Halaco is enjoined from doing so by the Court.

26 188. By committing the acts alleged above, Halaco is subject to an order or judgment  
27 requiring the disgorgement of profits obtained as a result of its unlawful and/or unfair business practices  
28 pursuant to Section 17203 of the California Business and Professions Code. The award of litigation

1 costs and attorneys' fees are also sought pursuant to Section 1021.5 of the California Code of Civil  
2 Procedure.

3 189. Plaintiffs seek injunctive relief pursuant to Section 17203 of the California Business and  
4 Professions Code. Continuing commission of the acts alleged above will irreparably harm Plaintiffs and  
5 the citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

6 **NINTH CAUSE OF ACTION**  
7 **Failure to Comply with Condition Four of Waste Discharge Requirement**  
8 **(Unlawful Business Practice under Section 17200 et seq. of the**  
9 **California Business and Professions Code)**

10 190. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
11 preceding paragraphs.

12 191. Pursuant to Section 13263 of the Porter-Cologne Act, in 1980 the RWQCB issued Waste  
13 Discharge Requirements to Halaco, Order No. 80-58, which includes Condition Four.

14 192. Condition Four of the WDR states that: “[n]o radioactive wastes shall be discharged at  
15 this site.”

16 193. Halaco has discharged radioactive waste(s) at the Halaco site in violation of Condition  
17 Four of the WDR.

18 194. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
19 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
20 the meaning of the California Business and Professions Code Section 17200 *et seq.*

21 195. Halaco's violations of the WDR and the Porter-Cologne Act are ongoing. In light of  
22 Halaco's history of violations and the nature of the violations, it is likely that Halaco will continue to  
23 violate these requirements in the future unless and until Halaco is enjoined from doing so by the Court.

24 196. By committing the acts alleged above, Halaco is subject to an order or judgment  
25 requiring the disgorgement of profits obtained as a result of its unlawful and/or unfair business practices  
26 pursuant to Section 17203 of the California Business and Professions Code. The award of litigation  
27 costs and attorneys' fees are also sought pursuant to Section 1021.5 of the California Code of Civil  
28 Procedure.



1           203. Plaintiffs are informed and believe, and thereon allege, that from at least 1995 to the  
2 present, waste and waste leachate has repeatedly come into contact with and percolated into ground  
3 water beneath and around the Halaco facility.

4           204. Plaintiffs are informed and believe, and thereon allege, that from at least 1995 until the  
5 present, waste and waste leachate have repeatedly laterally migrated and escaped to watercourses,  
6 drainage channels, adjacent wetlands, and coastal waters, including but not limited to the Ormond Beach  
7 Lagoon, the OID, the Ormond Beach Wetlands, and the Pacific Ocean.

8           205. Plaintiff are informed and believe, and thereon allege, that from at least 1995 to the  
9 present, Halaco has failed to prevent the escape of waste or waste leachate to land under circumstances  
10 that the waters of the state, including but not limited to the groundwater, drainage channels, the Ormond  
11 Beach Lagoon, the OID, the Ormond Beach Wetlands, and the Pacific Ocean, may be affected.

12           206. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
13 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
14 the meaning of the California Business and Professions Code Section 17200 *et seq.*

15           207. Halaco's violations of the WDR and the Porter-Cologne Act are ongoing. In light of  
16 Halaco's history of violations and the nature of the violations, it is likely that Halaco will continue to  
17 violate these requirements in the future unless and until Halaco is enjoined from doing so by the Court.

18           208. By committing the acts alleged above, Halaco is subject to an order or judgment  
19 requiring the disgorgement of profits obtained as a result of its unlawful and/or unfair business practices  
20 pursuant to Section 17203 of the California Business and Professions Code. The award of litigation  
21 costs and attorneys' fees are also sought pursuant to Section 1021.5 of the California Code of Civil  
22 Procedure.

23           209. Plaintiffs seek injunctive relief pursuant to Section 17203 of the California Business and  
24 Professions Code. Continuing commission of the acts alleged above will irreparably harm Plaintiffs and  
25 the citizens of California, for which harm there is no plain, speedy or adequate remedy at law.  
26  
27  
28

1 **ELEVENTH CAUSE OF ACTION**  
2 Failure to Comply with Condition Six of Waste Discharge Requirements  
3 **(Unlawful Business Practice Under Section 17200 et seq. of the California Business and**  
4 **Professions Code).**

5 210. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
6 preceding paragraphs.

7 211. Pursuant to Section 13263 of the Porter-Cologne Act, in 1980 the RWQCB issued Waste  
8 Discharge Requirements to Halaco, Order No. 80-58, which includes Condition Six.

9 212. Condition Six requires that “the barriers constructed to prevent lateral migration shall be  
10 equipped with collection drains and sumps to intercept all seepage for return to the discharge site or  
11 removal to a legal point of disposal.”

12 213. Halaco has failed to construct lateral barriers that are equipped with collection drains or  
13 sumps.

14 214. Plaintiffs are informed and believe, and thereon allege, that any drains or sumps that may  
15 exist in the berms do not function properly as evidenced by the number of active seeps and the remnants  
16 of historical seeps.

17 215. Because the seepage is not being intercepted, it is not being returned to the disposal site  
18 nor removed to a legal point of discharge. Further, no legal point of discharge currently exists at the  
19 facility.

20 216. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
21 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
22 the meaning of the California Business and Professions Code Section 17200 *et seq.*

23 217. Halaco's violations of the WDR and the Porter-Cologne Act are ongoing. In light of  
24 Halaco's history of violations and the nature of the violations, it is likely that Halaco will continue to  
25 violate these requirements in the future unless and until Halaco is enjoined from doing so by the Court.

26 218. By committing the acts alleged above, Halaco is subject to an order or judgment  
27 requiring the disgorgement of profits obtained as a result of its unlawful and/or unfair business practices  
28 pursuant to Section 17203 of the California Business and Professions Code. The award of litigation

1 costs and attorneys' fees are also sought pursuant to Section 1021.5 of the California Code of Civil  
2 Procedure.

3 219. Plaintiffs seek injunctive relief pursuant to Section 17203 of the California Business and  
4 Professions Code. Continuing commission of the acts alleged above will irreparably harm Plaintiffs and  
5 the citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

6 **TWELFTH CAUSE OF ACTION**  
7 Failure to Comply with Condition Seven of Waste Discharge Requirements  
8 **(Unlawful Business Practice Under Section 17200 et seq. of the California Business and**  
9 **Professions Code).**

10 220. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
11 preceding paragraphs.

12 221. Pursuant to Section 13263 of the Porter-Cologne Act, in 1980 the RWQCB issued Waste  
13 Discharge Requirements to Halaco, Order No. 80-58, which includes Condition Seven.

14 222. Condition Seven requires that "surface runoff from areas tributary to this site and runoff  
15 from rain falling directly on the site and on the berms shall be prevented from eroding the berms or  
16 carrying waste material from the site."

17 223. Halaco has failed and is failing to prevent runoff from areas tributary to the Halaco  
18 facility and runoff from rain falling directly on the Halaco facility and/or on the berms from eroding the  
19 berms and from carrying waste material from the site.

20 224. On repeated occasions between at least 1995 and the present, leachate and waste runoff  
21 was observed seeping out of Halaco's slag pile and flowing into the Ormond Beach Wetlands.

22 225. On repeated occasions between at least 1995 and the present, waste runoff entered the  
23 OID and the Ormond Beach Lagoon, and chunks, pieces and particles of waste material from Halaco's  
24 slag pile have been identified in the areas surrounding the slag pile, in the Ormond Beach Wetlands, and  
25 in the OID.

26 226. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
27 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
28 the meaning of the California Business and Professions Code Section 17200 *et seq.*





1 limited to the OID, the unlined drainage channel that runs along the south of the slag pile, Pacific Ocean,  
2 the Ormond Beach Lagoon, and the Ormond Beach Wetlands.

3 244. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
4 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
5 the meaning of the California Business and Professions Code Section 17200 *et seq.*

6 245. Halaco's violations of the WDR and the Porter-Cologne Act are ongoing. In light of  
7 Halaco's history of violations and the nature of the violations, it is likely that Halaco will continue to  
8 violate these requirements in the future unless and until Halaco is enjoined from doing so by the Court.

9 246. By committing the acts alleged above, Halaco is subject to an order or judgment  
10 requiring the disgorgement of profits obtained as a result of its unlawful and/or unfair business practices  
11 pursuant to Section 17203 of the California Business and Professions Code. The award of litigation  
12 costs and attorneys' fees are also sought pursuant to Section 1021.5 of the California Code of Civil  
13 Procedure.

14 247. Plaintiffs seek injunctive relief pursuant to Section 17203 of the California Business and  
15 Professions Code. Continuing commission of the acts alleged above will irreparably harm Plaintiffs and  
16 the citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

17 **FIFTEENTH CAUSE OF ACTION**  
18 **Failure to Comply with Condition Twelve of Waste Discharge Requirements**  
19 **(Unlawful Business Practice Under Section 17200 *et seq.***  
20 **of the California Business and Professions Code)**

21 248. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
22 preceding paragraphs.

23 249. Pursuant to Section 13263 of the Porter-Cologne Act, in 1980 the RWQCB issued Waste  
24 Discharge Requirements to Halaco, Order No. 80-58, which includes Condition Twelve.

25 250. Condition Twelve of the WDR requires that “[n]either the disposal nor the handling of  
26 waste at this site shall cause a pollution or nuisance.”

27 251. Halaco has been and continues to discharge waste as described in the First through  
28 Fourteenth Causes of Action in a manner that causes pollution of waters of the state, including but not

1 limited to the OID, the unlined channel that runs along the south side of the slag pile, the Pacific Ocean,  
2 the Ormond Beach Lagoon, and the Ormond Beach Wetlands, as well as pollution of the air.

3 252. Such discharges impair the comfort, repose, health and safety of the public, and  
4 significantly diminish the public's use and enjoyment of the affected natural resources.

5 253. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
6 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
7 the meaning of the California Business and Professions Code Section 17200 *et seq.*

8 254. Halaco's violations of the WDR and the Porter-Cologne Act are ongoing. In light of  
9 Halaco's history of violations and the nature of the violations, it is likely that Halaco will continue to  
10 violate these requirements in the future unless and until Halaco is enjoined from doing so by the Court.

11 255. By committing the acts alleged above, Halaco is subject to an order or judgment  
12 requiring the disgorgement of profits obtained as a result of its unlawful and/or unfair business practices  
13 pursuant to Section 17203 of the California Business and Professions Code. The award of litigation  
14 costs and attorneys' fees are also sought pursuant to Section 1021.5 of the California Code of Civil  
15 Procedure.

16 256. Plaintiffs seek injunctive relief pursuant to Section 17203 of the California Business and  
17 Professions Code. Continuing commission of the acts alleged above will irreparably harm Plaintiffs and  
18 the citizens of California, for which harm there is no plain, speedy or adequate remedy at law.

19 **SIXTEENTH CAUSE OF ACTION**  
20 **Failure to Comply with Monitoring and Reporting Program of Waste Discharge Requirements**  
21 **(Unlawful Business Practice Under Section 17200 *et seq.* of the California Business and**  
22 **Professions Code)**

23 257. Plaintiffs re-allege, as if set forth fully herein, each and every allegation contained in the  
24 preceding paragraphs.

25 258. Pursuant to Section 13263 of the Porter-Cologne Act, in 1980 the RWQCB issued Waste  
26 Discharge Requirements to Halaco, Order 80-58, which includes Monitoring and Reporting Program  
27 No. 5673.

28 259. Item 1 of the Monitoring and Reporting Program states that "Halaco Engineering  
Company shall file quarterly monitoring reports with the [RWQCB]." These quarterly reports must be

1 submitted to the RWQCB by the first of May, August, November, and February of each year. The first  
2 report, covering the fourth quarter of 1980, October through December, was due February 1, 1981.

3 260. Halaco failed to submit quarterly reports for the third quarter 1996 and the first quarter  
4 1997. Halaco submitted its quarterly reports after the required due date on at least 12 occasions since  
5 the third quarter of 1995.

6 261. Item 2 of the Monitoring and Reporting Program states that Halaco must maintain three  
7 monitoring wells for sampling. Item 2 requires that “monitoring wells shall be readily accessible, and  
8 shall be properly maintained to provide adequate protection from both structural damage and from  
9 damage by pollutants entering from sources other than from the zone being monitored.”

10 262. Plaintiffs are informed and believe, and thereon allege, the wells installed by Halaco  
11 under the WDR are not readily accessible, are not adequately protected and are not maintained so as to  
12 provide adequate protection from damage by pollutants entering from sources other than from the zone  
13 being monitored.

14 263. Item 3 of the Monitoring and Reporting Program states that Halaco must maintain two  
15 surface water stations in the Oxnard Industrial Drain and sample from them bimonthly, in January,  
16 March, May, July, September, and November.

17 264. On at least 12 occasions since May 1996, Halaco failed to sample its surface water  
18 stations at the proper time. Halaco often samples its surface water stations in months other than those  
19 required by the Monitoring and Reporting Program. Halaco failed to sample its surface water stations at  
20 all in March 1998, March 1999 and March 2000.

21 265. Item 5(g) of the Monitoring and Reporting Program states that Halaco must file an annual  
22 report by February 1 of each year. The report must summarize the information from the previous year  
23 and discuss Halaco's compliance record.

24 266. Halaco failed to submit annual reports for 1995, 1996, 1997 and 1998 by February 1 of  
25 those years, as required by the Monitoring and Reporting Program.

26 267. By committing the acts alleged above in violation of the WDR and the Porter-Cologne  
27 Act, Halaco has been and continues to be engaged in unlawful and/or unfair business practices within  
28 the meaning of the California Business and Professions Code Section 17200 *et seq.*



1 **PRAYER FOR RELIEF**

2 Wherefore, the Plaintiffs respectfully request that this Court grant the following relief:

- 3 1. A declaration that Halaco has violated and is in violation of Section 301(a) of the CWA,  
4 33 U.S.C. § 1311(a), on 5,667 occasions for unpermitted discharges of pollutants from its site.
- 5 2. A declaration that Halaco has violated Sections 301, and 404 of the CWA, 33 U.S.C. §§  
6 1311(a) and 1344 on 3,778 occasions for unpermitted discharges of dredged and fill material in  
7 wetlands.
- 8 3. A declaration that Halaco has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a),  
9 on 7,556 occasions for discharging pollutants from its site in violation of a permit issued pursuant to  
10 Section 402 of the CWA, 33 U.S.C. § 1342.
- 11 4. A declaration that Halaco has violated Section 110 of the CAA, 42 U.S.C. § 7410, and  
12 VCAPCD Rule 51 and the SIP by creating a nuisance in violation of VCAPCD Rule 51.
- 13 5. A declaration that Halaco has violated Section 7002(a)(1)(B) of RCRA, 42 U.S.C. §  
14 6972(a)(1)(B) by creating an imminent and substantial endangerment to health and the environment.
- 15 6. A declaration that Halaco has violated California Business and Professions Code Section  
16 17200 because its violations of Conditions 1, 4, 5, 6, 7, 9, 11, 12 of the WDR and the Monitoring and  
17 Reporting Program of the WDR constitute an unlawful and unfair business practices.
- 18 7. A temporary and permanent injunction prohibiting Halaco from discharging pollutants  
19 from its facility to waters of the United States without an NPDES permit.
- 20 8. A temporary and permanent injunction prohibiting Halaco from discharging pollutants  
21 from its site to the storm water system and surface waters surrounding and downstream from the facility  
22 except in compliance with the prohibitions, terms, and conditions of the General Permit.
- 23 9. A temporary and permanent injunction prohibiting Halaco from discharging dredged and  
24 fill material in wetlands without a permit from the Army Corps of Engineers.
- 25 10. A temporary and permanent injunction prohibiting Halaco from emitting pollutants into  
26 the air that create injury, detriment, nuisance, or annoyance to the public, including a considerable  
27 number of persons who live, work, or engage in recreational or other activities near the Halaco facility.  
28

1           11.     A temporary and permanent injunction requiring Halaco to abate its storage and disposal  
2 of solid or hazardous waste which is causing an imminent and substantial endangerment to health and  
3 the environment according to a court-ordered compliance schedule, and to take all steps necessary to  
4 ensure compliance with RCRA as soon as possible.

5           12.     A temporary and permanent injunction prohibiting Halaco from violating the substantive  
6 and procedural requirements of its WDR and the Monitoring and Reporting Program of the WDR.

7           13.     A temporary and permanent injunction ordering Halaco to restore the receiving waters  
8 damaged by its illegal discharges of pollutants from its facility.

9           14.     An order requiring Halaco to pay civil penalties, including \$25,000 per day per violation  
10 for violations occurring between November 15, 1995 and January 30, 1997, and \$27,500 per day per  
11 violation for violations occurring after January 30, 1997, pursuant to Sections 309(d) and 505(a) of the  
12 CWA, 33 U.S.C. § 1319(d), and 1365(a), and the Adjustment of Civil Monetary Penalties for Inflation,  
13 40 C.F.R. Part 19 (1997).

14           15.     An order requiring Halaco to pay civil penalties, including \$25,000 per day per violation  
15 for violations occurring between November 15, 1995 and January 30, 1997, and \$27,500 per day per  
16 violation for violations occurring after January 30, 1997, pursuant to Section 304(a) of the CAA, 42  
17 U.S.C. § 7604(a), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19  
18 (1997).

19           16.     An award of \$100,000 for beneficial mitigation projects to enhance the public health or  
20 environment in the community near the Halaco facility pursuant to Section 304(g) of the CAA, 42 U.S.C.  
21 § 7604(g). Such an award would mitigate, to some degree, the harm caused by Halaco's violations of  
22 the CAA to Plaintiffs' members living, working, and recreating near the facility.

23           17.     Restitution and disgorgement of any profits found by this Court to have been obtained by  
24 Halaco through its unlawful and unfair business practices under California Business and Professions  
25 Code Section 17203.

26           18.     Retain jurisdiction over this matter until such time as Halaco has come into compliance  
27 with the prohibitions, terms, and conditions of the CWA, CAA, RCRA, and its permits.  
28

1           19.     Award Plaintiffs' costs (including reasonable attorneys', expert witness and consultant  
2 fees) as authorized by the CWA, 33 U.S.C. § 1365(d).

3           20.     Award Plaintiffs' costs (including reasonable attorneys', expert witness and consultant  
4 fees) as authorized by the CAA, 42 U.S.C. § 7604(d).

5           21.     Award Plaintiffs' costs (including reasonable attorneys', expert witness and consultant  
6 fees) as authorized by RCRA, 42 U.S.C. § 6972(e).

7           22.     Award Plaintiffs' costs (including reasonable attorneys', expert witness and consultant  
8 fees) as authorized by the California Code of Civil Procedure, Cal. Code of Civ. Proc. § 1021.5.

9           23.     Such other and further relief as this Court deems just and proper.

10  
11 Dated: June \_\_\_\_, 2001

Respectfully submitted,  
ENVIRONMENTAL DEFENSE CENTER

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SANTA BARBARA CHANNELKEEPER and  
16 ENVIRONMENTAL DEFENSE CENTER

17 Dated: June \_\_\_\_, 2001

LAWYERS FOR CLEAN WATER

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