



April 17, 2018

Sent Via Certified Mail, Return Receipt Requested:

Randall H. Breitenbach, Chairman and CEO
Philip Brown, Senior Vice President Operations
John Fox, EHS Manager
Pacific Coast Energy Company LP
1555 Orcutt Hill Road
Orcutt, CA 91311

Sent Via U.S. Mail:

CT Corporation System
Agent for Service of Process for Pacific Coast Energy Company LP
(Entity Number 200416700018)
818 West Seventh Street
Suite 930
Los Angeles, CA 90017

RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

Dear Messrs. Breitenbach, Brown, and Fox:

We are writing on behalf of the Environmental Defense Center (“EDC”) regarding violations of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1251 *et seq.*, at the Orcutt Hill Facilities, located at 1555 Orcutt Hill Road in Orcutt, CA (“Orcutt Hill” or “Facility”). The responsible owner(s) and/or operator(s) of the Facility include all of the addressees in this letter, collectively referred to as “Pacific Coast Energy Company” or “PCEC.”

Specifically, this letter constitutes notice of EDC’s intent to sue PCEC for its violations of Section 301 and 402 of the CWA; 33 U.S.C. §§ 1311 and 1342; California’s General Permit for Storm Water Discharges Associated With Industrial Activities, National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board (“State Board”) Water Quality Order No. 2015-0057-DWQ (“General Permit”); and

California's General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities, Permit No. CAS000002, State Board Order No. 2009-0009-DWQ as amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ ("Construction Permit"). As detailed in this Notice Letter, PCEC is in ongoing violation of the General Permit, the Construction Permit, and the CWA. Its unlawful discharges of pollutants adversely impact the Santa Maria River and its tributaries, Orcutt Creek and its tributaries, San Antonio Creek and its tributaries, and the Pacific Ocean.

This notice is provided pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a), and its implementing regulations at 40 C.F.R. §§ 135.1–135.3. Unless PCEC takes actions necessary to remedy the ongoing violations of the General Permit, the Construction Permit, and the CWA, EDC intends to file suit in U.S. District Court following expiration of the 60-day notice period, seeking injunctive relief and civil penalties, as well as fees and costs. Under the CWA, PCEC is subject to penalties of up to \$52,414 per day per violation enumerated below. 40 C.F.R. § 19.4. If PCEC has any information demonstrating that one or more of the violations alleged in this notice did not occur or are described incorrectly, please immediately provide this information to EDC.

I. Background

A. Environmental Defense Center

Founded in 1977, EDC is a non-profit 501(c)(3), public benefit corporation with more than 3,000 members, and works primarily in Ventura, Santa Barbara, and San Luis Obispo Counties. EDC's main office is located at 906 Garden Street, in Santa Barbara, California, 93101. EDC protects and enhances the local environment through education, advocacy, and legal action. Specifically, EDC focuses on clean water, the Santa Barbara Channel, open space and wildlife, and climate and energy.

EDC has members who reside near the Santa Maria River, San Antonio Creek, Orcutt Creek, and the Pacific Ocean in Santa Barbara County, and who regularly use these waters and surrounding areas for recreational activities, including swimming, hiking, kayaking, fishing, and surfing. As described below, the Facility has unlawfully and continuously discharged pollutants into Orcutt Creek and its tributaries, which flows into the Santa Maria River and then into the Pacific Ocean; and into San Antonio Creek and its tributaries, which flows into the Pacific Ocean. These illegal discharges are due to PCEC's failure to comply with the General Permit, the Construction Permit, and the CWA, and have impaired and will continue to impair EDC members' use and enjoyment of these water bodies. Thus, the interests of EDC's members have been, are being, and will continue to be adversely affected by PCEC's failure to comply with the General Permit, the Construction Permit, and the CWA.

B. Orcutt Hill's Owners and/or Operators

Information available to EDC indicates that Orcutt Hill is owned and/or operated by the addressees to this letter. Pacific Coast Energy Company has its corporate headquarters in Orcutt, and owns and operates oil and gas facilities in Santa Barbara, Los Angeles and Orange Counties.

The company was formerly known as BreitBurn Energy Company L.P. and changed its name to Pacific Coast Energy Company LP in December 2011. As explained herein, PCEC is liable for violations of the General Permit, the Construction Permit, and the CWA.

C. The Clean Water Act

The objective of the CWA is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the CWA prohibits the discharge of a pollutant from a point source into waters of the United States except as in compliance with other specified sections of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342. Section 402(p) establishes the framework for regulating pollutants in industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p).

In California, the United States Environmental Protection Agency (“EPA”) has delegated authority to issue NPDES permits to the State Board. 33 U.S.C. § 1342(b), (d). In turn, the State Board has delegated the Central Coast Regional Water Quality Control Board (“Regional Board”), responsibility for the implementation and enforcement of the General Permit and the Construction Permit in Region 3, which includes Santa Barbara County. In order to discharge storm water lawfully in California, industrial facility operators must enroll in and comply with the terms of the General Permit and, when applicable, the Construction Permit.

i. The General Permit

The General Permit requires that dischargers meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require control of pollutant discharges using Best Management Practices (“BMPs”) that achieve either best available technology economically achievable (“BAT”) or best conventional pollutant control technology (“BCT”) to prevent or reduce pollutants.¹ General Permit, Effluent Limitations V(A); 33 U.S.C. §§ 1311(b)(2)(A), (e). The General Permit requires that all facility operators develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”) that includes BMPs. General Permit, Section X. The General Permit requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary, to achieve compliance with the effluent and receiving water limitations of the General Permit. *Id.* In addition, the General Permit requires all facility operators to sample all storm water discharges and to compare sample and analytical results with numeric action levels (“NALs”). *Id.*, Section XI. All facility operators are required to perform Exceedance Response Actions (“ERAs”) as appropriate whenever sampling indicates NAL exceedances. *Id.*, Section XII.

¹ Effluent Limitation V(A) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BCT for conventional pollutants, which include total suspended solids (“TSS”), oil and grease (“O&G”), pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional, which must undergo BAT treatment prior to discharge. *Id.*; 40 C.F.R. § 401.15.

The General Permit requires facility operators to: (1) submit a Notice of Intent (“NOI”) that certifies the type of activity or activities undertaken at the facility and commits the operator to comply with the terms and conditions of the permit; (2) eliminate unauthorized non-stormwater discharges; (3) develop and implement a SWPPP; (4) perform monitoring of storm water discharges and authorized non-stormwater discharges; and (5) file an Annual Report that summarizes the year’s industrial activities and compliance with the General Permit.

ii. The Construction Permit

In 1990, the EPA adopted regulations specifying what activities were considered “industrial” and thus required discharges of storm water associated with those activities to obtain coverage under NPDES permits. 55 Fed. Reg. 47, 990 (1990); 40 C.F.R. § 122.26(b)(14). Construction activities, deemed a subset of the industrial activities category, must also be regulated by an NPDES permit. 40 C.F.R. § 122.26(b)(14)(x). In 1999, USEPA issued regulations for “Phase II” of storm water regulation, which required most small construction sites (1-5 acres) to be regulated under the NPDES program. 64 Fed. Reg. 68,722; 40 C.F.R. § 122.26(b)(15)(i). On September 2, 2009, the State Board issued the Construction Permit. It became effective on July 1, 2010. An amendment to the Construction Permit became effective on February 14, 2011, and a subsequent amendment became effective on July 17, 2012.

The Construction Permit prohibits any discharges of storm water associated with construction activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation V(A)(2) of the Construction Permit requires discharges to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT/BCT technologies may include passive systems such as conventional runoff and sediment control as well as treatment systems such as coagulation/flocculation using sand filtration. Construction Permit, Rationale, F(1).

II. Orcutt Hill and Associated Discharges of Pollutants

A. Orcutt Hill Field Site Description

The Facility comprises approximately 5,400 acres, located in the Orcutt Oilfield in the northern section of Santa Barbara County. Under EPA regulations, oil and gas facilities must obtain storm water NPDES permit coverage when the facility has discharged a “reportable quantity” of a specified pollutant, including discharges of oil, or has contributed to a violation of a water quality standard. 40 C.F.R. § 122.26(c)(iii). The Facility has discharged crude oil and other pollutants to storm water in excess of reportable quantities. Although PCEC requested on February 3, 2016, to be terminated from General Permit coverage, the request was denied by the Regional Board and the State Board. Accordingly, PCEC is required to maintain NPDES coverage for the Facility.

PCEC originally certified and submitted its NOI for the Facility via the State Board’s Stormwater Multiple Application and Report Tracking System (“SMARTS”) website on or about July 15, 2015. The State Board processed the NOI on September 10, 2015. PCEC filed a

revised NOI on September 28, 2016. The NOI identifies the Facility's Waste Discharge Identification ("WDID") number as 3 42I026106. According to its NOI, PCEC has certified that the Facility's operations fall within SIC Code 1311, and the regulated activity is described as Crude Petroleum and Natural Gas ("Establishments primarily engaged in operating oil and gas field properties").²

According to the Facility's SWPPP, the Facility consists of numerous oil and gas leases, fee properties, and approximately 280 production wells. Based on PCEC's NOI, SWPPP, review and aerial photography, and EDC's information and belief, storm water is collected from the Facility through a diverse range of point sources dispersed throughout the field. The SWPPP identifies significant pollution point sources as including well drilling, well completion and stimulation, oil and gas production activities, aboveground storage tanks and vessels, but only with respect to crude oil and produced water. The SWPPP does not associate these sources with sediment disturbance. Additional point sources not identified in the SWPPP include road drainage infrastructure, and erosion gullies and channels associated with roads and pads. However, the September 29, 2017 Level 1 ERA Report for the Facility concedes that industrial activities that could be a source for total suspended solids include well drilling, well completion and stimulation, oil and gas production, above ground storage tanks and vessels, outdoor solid materials storage, general facility maintenance, and industrial parking lots.

The most recent SWPPP prepared by PCEC for the Facility on the SMARTS system is dated June 22, 2015, and the most recent revision is dated October 20, 2017. That SWPPP and revision do not provide specific quantified information concerning the number of well pads and other industrial sites. Nor does it provide any specific or detailed information regarding the extent and mileage of the Facility's road system.³

The SWPPP indicates that the Facility collects and discharges storm water through at least nine discharge locations. On information and belief, EDC alleges the outfalls contain storm water that is commingled with runoff from areas of the Facility where industrial processes occur.

B. Orcutt Hill Construction Project

Within the Facility, PCEC is also engaging in a construction project that is subject to the requirements of the Construction Permit. The project site ("Site") is located within a 285-acre portion of the Facility. The project involves the installation of 100 seep cans at the Site. The project has disturbed at least 6.10 acres at the Site. The seep cans involve the installation of the seep cans themselves, and additionally may entail the installation of French drains. Before each seep can is installed, the contaminated soil due to the initial occurrence of a natural seep is removed and stockpiled on site at PCEC's waste pile management facility on Orcutt Hill. The Site's Construction Permit includes construction work related to the installation of existing and future seep cans owned by PCEC.

² Other potentially applicable SIC codes include: 1381 (drilling oil and gas wells) and 1382 (oil and gas field exploration services)

³ "Source" is defined under the General Permit to include "[a]ny facility or building, road, or area that causes or contributes to pollutants in stormwater."

Although the construction project began in 2008, PCEC first filed its NOI to comply with the Construction Permit on or about March 21, 2017. In its NOI, PCEC certifies that the final stabilization date is November 1, 2019. It indicates that storm water runoff from the site flows to San Antonio Creek. It also includes risk values for the project that indicate the Site is a Risk Level 3 discharger. The NOI identifies the Site’s WDID number as 3 42C379239.

C. Orcutt Hill Pollutants

The EPA SECTION I: OIL AND GAS EXTRACTION FACILITIES FACT SHEET (December 2006), part of the EPA Industrial Fact Sheet Series, provides a summary of the permitting program, the types of facilities included in the sector (EPA has produced fact sheets for each of the 29 different industrial sectors regulated under its Multi-State General Permit (“MSGP”) for Industrial Activities), a summary of typical pollutants associated with the sector, and types of storm water control measures (including BMPs) used to minimize the discharge of those pollutants. A portion of this Fact Sheet is reproduced as Table 1. EDC alleges that these pollutants are likely to be found at Orcutt Hill.

**TABLE 1: COMMON ACTIVITIES, POLLUTANT SOURCES,
 AND ASSOCIATED POLLUTANTS
 AT OIL AND GAS FACILITIES**

Activity	Pollutant Source	Pollutant
Construction of: Access roads Drill pads Mud/reserve pits Personnel quarters Surface impoundments Storage tanks Pipelines	Soil/dirt, leaking equipment, and vehicles	Total suspended solids (TSS), Total dissolved solids (TDS), oil and grease
Well drilling	Drilling fluid *, lubricants, mud, cuttings, and produced water	TSS, TDS, oil and grease, chemical oxygen demand (COD), chlorides, barium, naphthalene, benzene, lead, arsenic, fluoride
Well completion/stimulation	Fluids (used to control pressure in well), cement, residual oil, acids, surfactants, solvents, produced water, and sand	TSS, TDS, oil and grease, COD, acid, acetone, toluene, ethanol, exlenes
Production	Produced water, oil, waste sludge, tank bottoms, acids, oily debris, and emulsions	Chlorides, TDS, oil and grease, TSS, pH, benzene, phenanthrene, barium, arsenic, lead, antimony
Vehicle and equipment cleaning and repairing	Cleaning solvents, lubricants, and chemical additives	TSS, TDS, oil and grease, pH

Site closures	Residual muds and oily debris	TSS, TDS, oil and grease, pH
Vehicle fueling	Diesel fuel	TSS, TDS, oil and grease

* The potential contaminants to be found in drilling fluid varies from site to site, depending on the components of the fluid and any pollutants added due to use of the fluid. Storm water discharges that come into contact with used drilling fluids may include the following pollutants, among others: toluene, ethyl benzene, xylene, phenol, benzene, and phenanthrene. Used drilling fluids may also contain inorganic pollutants from additives or downhole exposure, such as arsenic, chromium, lead, aluminum, sulfur, and sulfate salts.

D. Receiving Waters: San Antonio Creek and Orcutt Creek

Storm water runoff from the Facility drains to two receiving waters, tributaries that flow to San Antonio Creek and tributaries that flow to Orcutt Creek. Some of these tributaries are blue line tributaries. According to the Facility’s SWPPP, the Newlove Fee and Cal Coast Lease drain into tributaries of San Antonio Creek, which is approximately 3 miles south of the property. The Hartnell and Squires Leases drain into Graciosa Canyon which drains into Orcutt Creek, approximately 2 miles north of the property. The Fox, Pinal, Hobbs, Dome, Folsom, Rice Ranch and Brookshire properties drain into Pine Canyon which drains into Orcutt Creek, approximately 1 mile north of property. There is also a blue line tributary to San Antonio Creek within 50 feet from the pipe yard office, while there are several wells in the north of the complex along blue line tributaries to Orcutt Creek. These waters provide important habitat for threatened and endangered species, such as the Unarmored Threespined Stickleback, the Tidewater Goby, the Red Legged frog and steelhead.

The EPA 303(d) List of Water Quality Limited Segments lists San Antonio Creek, from Rancho del las Flores Bridge at Hwy 135 to downstream at Railroad Bridge, as impaired for ammonia, boron, chloride, low dissolved oxygen, nitrogen as nitrite, among other pollutants. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml. Orcutt Creek flows into the Santa Maria River, which is impaired for sediment toxicity, turbidity, among other pollutants. *Id.* Orcutt Creek is impaired for sediment toxicity, turbidity, nitrate, ammonia, boron, among other pollutants. *Id.*

E. Applicable Water Quality Standards

The Regional Board has identified beneficial uses of the Santa Maria River, San Antonio Creek, and Orcutt Creek and established water quality standards for them in the “Water Quality Control Plan for the Central Coastal Basin”, generally referred to as the Basin Plan. *See* https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/. The Basin Plan identifies the “Beneficial Uses” of water bodies in the region. *See* Basin Plan, Table 2-1.

The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, fresh water replenishment, water contact recreation, non-contact water recreation, cold freshwater habitat, warm freshwater habitat, wildlife habitat, rare, threatened, or endangered species. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-8. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of these waters for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations which are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-30. The Basin Plan provides that “[w]aters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses.” *Id.* The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* The Basin Plan has a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-30.

The Basin Plan provides that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-30. The Basin Plan provides that “[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* at 3-30. It provides that “[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-29. The Basin Plan provides that “[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-29. For waters with a beneficial use of cold freshwater habitat, the Basin Plan provides that “[t]he pH value shall neither be depressed below 7.0 nor raised above 8.3.” *Id.* at 3-31.

F. Applicable Levels to Determine Compliance with BAT/BCT

The General Permit requires all industrial facilities to sample and analyze storm water discharges for the following parameters: pH, TSS, and O&G. *See* General Permit, §§ XI(B)(6)(a), (b).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT mandated by the CWA.⁴ The following EPA benchmarks have been established for pollution parameters

⁴ The Benchmark Values can be found at

applicable to Orcutt Hill: pH – 6.0-9.0 s.u.; TSS – 100 mg/L; and O&G – 15 mg/L.

These benchmarks are reflected in the General Permit in the form of NALs. The General Permit incorporates annual NALs, which reflect the 2008 MSGP benchmark values, and instantaneous NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the General Permit: TSS – 100 mg/L; and O&G – 15 mg/L. The General Permit also establishes the following instantaneous maximum NALs: pH –6.0-9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

For sites with a Risk Level 3, the Construction Permit contains an NAL for pH of 6.5 – 8.5 pH units and for turbidity of 250 NTU.

III. Alleged Violations of the Clean Water Act and the General Permit

The citizen suit provision of the CWA provides that “any citizen” may commence a suit “against any person,” including a corporation, “who is alleged to be in violation of an effluent standard or limitation under this chapter.” 33 U.S.C. § 1365(a)(1). The CWA in turn defines “effluent standard or limitation” to include “a permit or condition” issued under section 402. *Id.* § 1365(f)(6). Accordingly, a citizen may commence a suit alleging violations of the General Permit. *See Natural Resource Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985 (9th Cir. 2000) (storm water permit enforcement action where company was liable for discharges of “significant contributions of pollutants” and inadequate recordkeeping).

Since enrolling under the General Permit, PCEC has failed to meet its obligations under the General Permit and CWA. As discussed in further detail below, PCEC is in ongoing violation of the General Permit. Specifically, PCEC has repeatedly discharged storm water in violation of the General Permit’s effluent limitations requiring BAT/BCT; failed to develop an adequate monitoring and reporting program; and failed to develop, implement or update an adequate SWPPP to ensure development and implementation of BMPs that achieve BAT/BCT.

B. Discharges in Violation of the General Permit not Subjected to BAT/BCT

PCEC has violated and continues to violate the terms and conditions of the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation V(A) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BMPs that meet BAT standards for toxic and nonconventional pollutants, and BCT standards for conventional pollutants.⁵

In addition, Discharge Prohibition III(B) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either

http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

⁵ Toxic pollutants are listed at 40 C.F.R. § 401.15 and conventional pollutants are listed at 40 C.F.R. § 401.16.

directly or indirectly to waters of the United States. Discharge Prohibition III(C) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation VI(B) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the General Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation VI(A) of the General Permit. As a result, compliance with this provision is measured at the Facility’s discharge monitoring locations.

Orcutt Hill has discharged and continues to discharge storm water with unacceptable levels of TSS and pH in violation of the General Permit. Orcutt Hill’s sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained pollutants in excess of numeric and narrative water quality standards established in the Basin and have thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

Date	Parameter	Observed Concentration / Conditions	Basin Plan Water Quality Standard	Outfall (as identified by the Facility)
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Field Welders
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Dome 19
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Main Facilities
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Pipe Yard
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Fueling Area
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Folsom 9
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Pinal Tank Farm
3/21/2018	Narrative	Turbidity	Basin Plan at 3-30	Pinal 7
3/13/2018	Narrative	Turbidity	Basin Plan at 3-30	Main Facilities Culvert (Sample #1)
3/21/2017	pH	6.91 s.u.	7.0 – 8.5 s.u.	Sampling Location #7
1/9/2018	Narrative	Turbidity	Basin Plan at 3-30	Main Facilities Culvert (Sample #1)

1/9/2018	Narrative	Turbidity / Oil and Grease	Basin Plan at 3-30	Pipe Yard Surface Runoff (Sample #2)
3/21/2017	Narrative	Turbidity	Basin Plan at 3-30	#7 / #1 / #2
2/20/2017	Narrative	Turbidity	Basin Plan at 3-30	Sampling Location #7
2/20/2017	Narrative	Turbidity	Basin Plan at 3-30	Sampling Location #6
2/20/2017	Narrative	Turbidity	Basin Plan at 3-30	Sampling Location #2

The information in the above table reflects data gathered from Orcutt Hill’s self-monitoring during the 2016-2017 and 2017-2018 reporting years. EDC alleges that during each of those reporting years and continuing through today, Orcutt Hill has discharged storm water contaminated with pollutants at levels or observations that exceed or violate one or more applicable water quality standards, including but not limited to each of the following:

- pH – 7.0 – 8.5 s.u. (Basin Plan)
- Oil and grease – Waters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses. (Basin Plan at 3-30)
- Turbidity – Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. (Basin Plan at 3-30)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the General Permit; and are evidence of ongoing violations of Effluent Limitation V(A) of the General Permit.

TABLE 3: SAMPLING DEMONSTRATING EXCEEDANCES OF EPA BENCHMARKS AND APPLICABLE NALS

DATE	PARAMETER	OBSERVED CONCENTRATION	EPA BENCHMARK VALUE / ANNUAL NAL	DISCHARGE LOCATION (AS IDENTIFIED BY OPERATOR)
3/21/2018	Total Suspended Solids	150 mg/L	100 mg/L	Field Welders Site
3/21/2018	Total Suspended Solids	110 mg/L	100 mg/L	Upper Main Facilities
3/21/2018	Total Suspended Solids	470 mg/L ⁶	100 mg/L	Dome 19

⁶ This value is also in excess of the instantaneous maximum NAL for TSS of 400 mg/L.

3/21/2018	Total Suspended Solids	160 mg/L	100 mg/L	Pipe Yard
3/21/2018	Total Suspended Solids	160 mg/L	100 mg/L	Fueling Area
3/21/2018	Total Suspended Solids	410 mg/L ⁷	100 mg/L	Folsom 9
3/21/2018	Total Suspended Solids	640 mg/L ⁸	100 mg/L	Pinal Tank Farm
3/21/2018	Total Suspended Solids	150 mg/L	100 mg/L	Pinal 7
3/13/2018	Total Suspended Solids	230 mg/L	100 mg/L	Main Facilities (culvert) (Sample #1)
1/9/2018	Total Suspended Solids	280 mg/L	100 mg/L	Main Facilities
3/21/2017	Total Suspended Solids	440 mg/L	100 mg/L	Sampling Location #1
3/21/2017	Total Suspended Solids	440 mg/L	100 mg/L	Sampling Location #2
3/21/2017	Total Suspended Solids	2,800 mg/L	100 mg/L	Sampling Location #7
2/10/2017	Total Suspended Solids	430 mg/L	100 mg/L	Sampling Location #2
2/10/2017	Total Suspended Solids	930 mg/L	100 mg/L	Sampling Location #6
16-17 Average	Total Suspended Solids	849 mg/L	100 mg/L	Average of all sample locations

The information in the above tables reflects data gathered from Orcutt Hill's self-monitoring during the 2016-2017 and 2017-2018 reporting years. EDC alleges that during those years and continuing through today, Orcutt Hill has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA benchmark value and NAL values for TSS. Information available to EDC, including PCEC sampling data exhibiting consistent exceedances of EPA Benchmarks and NALs, demonstrates that PCEC has failed and continues to fail to develop and/or implement BMPs at the Facility that achieve compliance with BAT/BCT standards. In addition, pictures from a December 2017 communication from PCEC to the State Board show seep cans lacking adequate BMPs. Many of these seep cans are ostensibly part of the Orcutt Hill industrial facility. Orcutt Hill was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. EDC cannot find any evidence that the Facility has adequate BAT/BCT for its elevated levels of TSS likely originating from seep cans, roads, well pads, and other sources at the Facility. Thus, Orcutt Hill is discharging polluted storm water associated with its industrial operations without having

⁷ This value is also in excess of the instantaneous maximum NAL for TSS of 400 mg/L.

⁸ This value is also in excess of the instantaneous maximum NAL for TSS of 400 mg/L.

implemented BAT and BCT.

In addition, the numbers listed in the tables above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the General Permit. EDC alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since July 15, 2015, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which EDC alleges that Orcutt Hill has discharged storm water containing impermissible levels of TSS in violation of Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the General Permit.⁹

These unlawful discharges from the Facility are ongoing. Every day that PCEC does not implement BAT/BCT is a violation of Effluent Limitation V(A) of the General Permit and is thus a separate and distinct violation of the General Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). PCEC is subject to civil penalties for all violations of the CWA occurring since July 15, 2015.

EDC is aware that PCEC has mentioned that the sources of TSS at the Facility are not from industrial activities that PCEC has represented are more likely naturally occurring. EDC notes that the General Permit includes “Natural Background Pollutant Source Demonstration” as a category of ERA. General Permit, § XII(D)(2)(c). In order to qualify as an ERA under this category, the discharger must meet nine requirements, including the fundamental requirement to show that the pollutant exceedance (in this case, TSS) is “attributable *solely* to the presence of the pollutant in the natural background that has not been disturbed by industrial activities.” PCEC has not made this demonstration, and accordingly is not exempt from TSS effluent limitation requirements under the General Permit. PCEC is responsible for runoff from disturbed areas at the Facility, as these areas have the potential to contribute to sediment runoff.

It is undisputed that best management practices significantly reduce the amount of erosion and sediment from oil and gas activities. *See, e.g.*, U.S. Department of the Interior and U.S. Department of Agriculture, SURFACE OPERATING STANDARDS AND GUIDELINES FOR OIL AND GAS EXPLORATION AND DEVELOPMENT (GOLD BOOK) (4th ed. 2006). PCEC must invest the time and resources to manage the quantity and quality of storm water pollutant discharges from its industrial activity at Orcutt Hill, including the Facility’s extensive road network.

C. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility

The General Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* General

⁹ The rain dates on the attached table are all the days when 0.1” or more rain was observed at a weather station near the Santa Maria Airport located approximately 5.4 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at <https://www.ncdc.noaa.gov/cdo-web/>. (Last accessed on April 17, 2018).

Permit, § XI. The primary objective of the Monitoring and Reporting Program is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

i. Failure to Conduct Sampling and Analysis

The General Permit requires that facility operators sample four storm water discharges from all storm water discharge locations during qualifying storm events over the course of the reporting year. *See* General Permit, §§ XI(B)(2), (3). The General Permit requires sampling for storm water discharges that occur during facility operating hours and that are preceded by 48 hours without discharge. *See* General Permit, § XI(B)(1)(b). The Facility has repeatedly violated these monitoring requirements.

During the 2015-2016 reporting year, and during the first half of the 2016-2017 reporting year, the Facility failed to collect and analyze any storm water discharge samples. In the explanations for these failures to sample, Orcutt Hill claimed that it was exempt from sampling because it had submitted and then later appealed an NOT to exempt the Facility from General Permit coverage. However, this excuse is invalid. PCEC filed an NOT on February 3, 2016, but it was denied by April 22, 2016. Section II(C)(1) of the General Permit provides that “[u]ntil a valid NOT is received, the Discharger remains responsible for compliance with this General Permit and payment of accrued annual fees.” Section II(C)(6) provides that “Dischargers that are denied approval of a submitted NOT ... by the Regional Water Board, shall continue compliance with this General Permit under their existing NOI coverage.” Because no valid NOT was ever filed by PCEC, the Facility was required to comply with the General Permit at all times.

In addition, on information and belief, EDC alleges that PCEC failed to sample from all nine sampling locations at the Facility during the 2015-2016 and 2016-2017 reporting years. The samples taken in 2017 were only from four different sampling locations at the Facility, and PCEC has represented that there are at least nine storm water sampling locations at the Facility. PCEC has not made a representation reducing the number of sampling locations within a drainage area in accordance with the Representative Sampling Reduction in Section XI(C)(4) of the General Permit. Indeed, PCEC represented it had not made this reduction in its 2016-2017 Annual Report and there is no inclusion of such a reduction in the SWPPP for the Facility.

The Facility's failure to conduct sampling and monitoring as required by the General Permit demonstrates that it has failed to develop, implement, and/or revise a Monitoring and Reporting Program that complies with the requirements of Section XI of the General Permit and the CWA. The above failures result in at least 84 violations of the General Permit. PCEC is in ongoing violation of the General Permit's Monitoring and Reporting Program requirements and is subject to civil penalties for all violations of the CWA occurring since July 15, 2015.

ii. Failure to Analyze for Pollutants That May be Present in Significant Quantities

Under the General Permit, facilities must analyze storm water samples for “[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment.” General Permit, Section XI(B)(6)(c). EPA has identified numerous pollutants that are expected to be discharged in significant amounts from oil and gas facilities, including but not limited to total petroleum hydrocarbons, chemical oxygen demand, chlorides, barium, naphthalene, phenanthrene, benzene, lead, arsenic, fluoride, acetone, toluene, ethanol xylenes, barium, and antimony. *See* Table 1.

Moreover, available evidence strongly indicates that Orcutt Hill is discharging significant quantities of toxic chemicals, including metals and petroleum-based pollutants, in its storm water. In a recent study of northern Ventura County coastal watersheds impacted by oil fields similar to Orcutt Hill, researchers found that storm water samples had high concentrations of total suspended and dissolved solids containing high concentrations of metals, including aluminum, arsenic, barium, lead, and zinc, as well as high concentration of PAHs, including naphthalene and oil and grease. Maximum concentrations above CTR criteria were detected in water samples for toxics including chrysene, antimony, copper, mercury, and nickel.¹⁰

On information and belief, EDC alleges that PCEC has failed to monitor for the above-mentioned pollutants in violation of the General Permit. PCEC has never collected and analyzed its storm water discharges for any of these additional parameters. PCEC is in ongoing violation of the General Permit’s Monitoring and Reporting Program requirements and is subject to civil penalties for violations of the CWA occurring each day since July 15, 2015.

D. Failure to Complete Annual Evaluation

The General Permit requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation (“Annual Evaluation”) for each reporting year that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. *See* General Permit, § XV. Sec. XV also requires dischargers to revise their SWPPP within 90 days of the Annual Evaluation. On information and belief, EDC alleges that PCEC has failed to complete an Annual Evaluation for the 2016-2017 reporting year.

PCEC is in ongoing violation of Section XV of the General Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. PCEC is subject to civil penalties for all violations of the CWA occurring since July 15, 2015.

¹⁰ Blue Tomorrow and Dr. Arturo Keller. NORTHERN VENTURA COUNTY COASTAL WATERSHED PROJECT AND ASSESSMENT (2014).

E. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* General Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. General Permit, § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. General Permit Factsheet § I(1).

Sections X(D) – X(I) of the General Permit set forth the requirements for the SWPPP, including a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective; and a requirement for dischargers to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the General Permit's technology-based effluent limitations and receiving water limitations.

The General Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. General Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the General Permit. *See* General Permit Fact Sheet § I(2)(o). The General Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* General Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the General Permit. *Id.* The General Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* General Permit § X(H)(4), (5).

Despite these clear BMP requirements, PCEC has been conducting and continues to conduct industrial operations at Orcutt Hill with an inadequately developed, implemented, and/or revised SWPPP. These inadequacies include, but are not limited to a failure to include the requisite list of industrial materials, a description of each industrial process, a description of each

material handling and storage area, a description of all industrial activities that generate a significant amount of dust or particulate, and an adequate evaluation and description of non-storm water discharges. The SWPPP also fails to accurately and fully identify potential pollutant sources, which preclude the identification of adequate BMPs. For example, the SWPPP fails to identify the Facility's road network as a pollutant source. The SWPPP also fails to include or describe any of the seep cans at the Facility.

PCEC has failed to develop effective and comprehensive BMPs under the terms of the General Permit. The Facility's storm water samples and discharge observations have consistently greatly exceeded EPA benchmarks, NALs, and water quality standards, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, PCEC has failed to identify in the SWPPP any areas of the Facility where the minimum BMPs will not adequately reduce or prevent pollutants in storm water discharges in compliance with the General Permit. PCEC has failed to identify any advanced BMPs for those areas. PCEC has failed to implement and maintain requisite advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability. PCEC has failed to sufficiently update the Facility's SWPPP. Orcutt Hill's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges.

EDC puts PCEC on notice that it violates the General Permit and the CWA every day that Orcutt Hill operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and EDC will include additional violations as information and data become available. PCEC is subject to civil penalties for all violations of the CWA occurring since July 15, 2015.

F. Failure to Comply with General Permit Evaluation and ERA Requirements

On or about September 29, 2017, PCEC submitted a "Storm Water Level 1 ERA Report" to the State Board's SMARTS system. The ERA Report and Level 1 status are triggered by exceedances of the NALs adopted in the General Permit. The ERA Level 1 report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." General Permit, § XII(C)(1)(c).

Orcutt Hill's ERA Level 1 report addresses the Facility's exceedance of the NAL for TSS during the 2016-2017 reporting year. The TSS NAL is an annual average of 100 mg/L and an instantaneous value of 400 mg/L for two or more samples. Although the report addresses TSS, PCEC failed to identify additional BMPs necessary to prevent future NAL exceedances or to comply with BAT/BCT requirements of the General Permit. The failure of the ERA to include additional BMP measures identified could not and has not helped Orcutt Hill to achieve the applicable NALs for TSS.

Although “[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances.” General Permit, Fact Sheet, p. 60. Accordingly, EDC puts PCEC on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without an adequate Level 1 ERA Report for TSS since at least September 29, 2017. These violations are ongoing. PCEC is subject to civil penalties for each day it has failed to submit an adequate Level 1 ERA Report.

IV. CONSTRUCTION PERMIT VIOLATIONS

A. Failure to Implement BAT/BCT

Receiving Water Limitation VI(A) of the Construction Permit prohibits storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation VI(B) of the Construction Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. The Construction Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation VI(C) of the Construction Permit. As a result, compliance with this provision is measured at the Site’s discharge monitoring locations.

EDC’s investigation, including its review of the Site’s SWPPP, PCEC’s correspondence with the Regional Board, and the Site’s 2016-2017 Annual Report, indicate that PCEC has not implemented BAT and BCT at the Site for potential pollutants in its storm water discharges in violation of Effluent Limitation V(A)(2) of the Construction Permit. In a December 2017 report, PCEC even admits that a number of the existing seep cans are in need of additional BMPs. PCEC was required to have implemented BAT and BCT since the date construction activities began at the Site. Thus, PCEC is discharging polluted storm water associated with its construction activities without having implemented BAT and BCT.

On information and belief, EDC alleges that the Site is discharging polluted storm water in violation of Receiving Water Limitations VI(A) and VI(B) of the Construction Permit. EDC alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since at least March 21, 2017, and that will occur at the Site subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which EDC alleges that PCEC has discharged polluted storm water in violation of Section 301(a) of the Act as well as Effluent Limitation V(A)(2), and Receiving Water Limitations VI(A) and VI(B) of the Construction Permit.¹¹

These unlawful discharges from the Site are ongoing. Each discharge of polluted storm water constitutes a separate violation of the Construction Permit and the Act. Each discharge of polluted storm water constitutes an unauthorized discharge in violation of Section 301(a) of the

¹¹ Note that the only applicable rain dates in Attachment A are those occurring since March 21, 2017.

CWA. Each day that the Site operates without implementing BAT/BCT is a violation of the Construction Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PCEC is subject to penalties for violations of the Construction Permit and the Act since at least March 21, 2017.

B. Failure to Comply With Risk Level 3 Requirements

Section XI of the Construction Permit requires Risk Level 3 dischargers to comply with the requirements stated in Attachment E of the Construction Permit. On information and belief, EDC alleges that PCEC has failed and is continuously failing to comply with numerous requirements set forth in Attachment E of the Construction Permit.

i. Failure to Comply with Good Site Management “Housekeeping” Requirements

Section B of Attachment E to the Construction Permit sets forth requirements for Good Site Management “Housekeeping.” On information and belief, EDC alleges that PCEC is in ongoing violation of provisions in this section.

For construction materials, Section B(1)(b) requires that the discharger “[c]over and berm loose stockpiled construction materials that are not actively being used.” Section B(1)(e) requires that dischargers “[i]mplement BMPs to prevent the off-site tracking of loose construction and landscape materials.” On information and belief, EDC alleges that PCEC has failed to comply with these requisite housekeeping provisions for construction materials.

ii. Failure to Comply with Erosion Control Requirements

Section D of Attachment E to the Construction Permit sets forth requirements for Erosion Control. D(2) requires dischargers to “provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.” On information and belief, EDC alleges that PCEC has violated this section, failing to provide soil cover throughout the Site. On information and belief, EDC alleges that these violations have occurred daily since at least March 21, 2017, and are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PCEC is subject to penalties for violations of the Construction Permit and the Act’s erosion control requirements since at least March 21, 2017.

iii. Failure to Comply with Sediment Controls Requirements

Section E(1) of Attachment E of the Construction Permit requires Risk Level 3 dischargers to “establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.” On information and belief, EDC alleges that PCEC has failed to comply with this requirement.

Section E(3) of Attachment E requires that dischargers “implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.” On information and belief, EDC alleges that PCEC has

failed to implement the appropriate erosion control BMPs for any areas under active construction.

Section E(5) of Attachment E requires that dischargers “ensure that construction activity traffic to and from the project is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment.” On information and belief, EDC alleges that PCEC has failed to employ effective controls to prevent offsite tracking of sediment.

On information and belief, EDC alleges that the above violations have occurred daily since at least March 21, 2017, and are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PCEC is subject to penalties for violations of the Construction Permit and the Act’s sediment controls requirements since at least March 21, 2017.

iv. Failure to Comply with Run-On and Run-Off Controls

Section F of Attachment E of the Construction Permit requires Risk Level 3 dischargers to “effectively manage all run-on, all runoff within the site and all runoff that discharges off the site” and requires that “[r]un-on from off site shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitations in this General Permit.” On information and belief, EDC alleges that PCEC has failed to effectively manage all run-on to and run-off with the Site and that run-on from off site has not been directed away from all disturbed areas. On information and belief, EDC alleges that the above violations have occurred daily since at least March 21, 2017, and are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PCEC is subject to penalties for violations of the Construction Permit and the Act’s run-on and run-off controls requirements since at least March 21, 2017.

v. Failure to Comply with Risk Level 3 Monitoring and Reporting Requirements

Section I of Attachment E of the Construction Permit sets forth monitoring and reporting requirements for Risk Level 3 dischargers. On information and belief, EDC alleges that PCEC is in ongoing violation of this section.

Section I(4) sets forth the Water Quality Sampling and Analysis requirements for Risk Level 3 dischargers. It requires that dischargers collect 3 samples per day of each qualifying event from all sampling locations, and that samples are analyzed for pH, turbidity, and any additional parameters required by the Regional Board. EDC alleges that PCEC has failed to comply with these requirements. In its 2016-2017 Annual Report, PCEC states that two qualifying storm events occurred at the Site, but that it failed to collect any samples from these qualifying events. PCEC’s explanation for its failure to sample the first qualifying storm event is not valid. PCEC states that the event “was not sampled due to rain event exceeding the 5-year, 24-hour Compliance Storm Event.” There is no such exception in the Construction Permit.

The above results in at least one violation of the Construction Permit. On information

and belief, EDC alleges that the above violations have occurred daily since at least March 21, 2017, and are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PCEC is subject to penalties for violations of the Construction Permit and the Act's monitoring and sampling requirements since at least March 21, 2017.

C. Failure to Implement Additional BMPs Pursuant to NAL Exceedances

Section I(H)(54) of the Construction Permit requires dischargers with NAL exceedances to "immediately implement additional BMPs and revise their Storm Water Pollution Prevention Plans (SWPPPs) accordingly to either prevent pollutants and authorized non-storm water discharges from contaminating storm water, or to substantially reduce the pollutants to levels consistently below the NALs." On March 13, 16, 21, and 22, 2018, PCEC measures exceedances of the NALs for pH and turbidity at the Site. On information and belief, EDC alleges that PCEC failed to immediately implement additional BMPs subsequent to such exceedances.

The above results in at least four violations of the Construction Permit. On information and belief, EDC alleges that the above violations have occurred daily since at least March 13, 2018, and are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, PCEC is subject to penalties for violations of the Construction Permit and the Act's monitoring and sampling requirements since at least March 13, 2018.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Section XIV of the Construction Permit sets forth SWPPP requirements. Section XIV(A) requires that a SWPPP be designed to, *inter alia*, address all pollutants and their sources, ensure that site BMPs are effective and result in the reduction or elimination of pollutant in conformity with BAT/BCT, and ensure that calculations and design details for run-on are complete and correct. Section XIV(B) requires that the SWPPP include information that supports the conclusions, selections, use, and maintenance of BMPs. On information and belief, EDC alleges that PCEC has failed to update and revise the SWPPP for the Site in a way that complies with the Construction Permit. On information and belief, EDC alleges that the Site's SWPPP fails to incorporate BMPs that conform with BAT/BCT. On information and belief, EDC alleges that PCEC has failed to revised the SWPPP pursuant to NAL exceedances that PCEC measured from the site during March 2018 as required by Section I(H)(54) of the Construction Permit.

In addition, Section V(B)(3) of the Construction Permit requires that dischargers conduct a site evaluation whenever they measure NAL exceedances. Section V(B)(4) requires that site evaluations be documented in the SWPPP. On information and belief, PCEC alleges that any site evaluations conducted pursuant to the Site's March 2018 NAL exceedances have not been documented in the Site's SWPPP.

EDC puts PCEC on notice that it violates the General Permit and the CWA every day that

the Site operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing and have been occurring since at least March 21, 2017. EDC will include additional violations as information and data become available. PCEC is subject to civil penalties for all violations of the CWA occurring since at least March 21, 2017.

E. Failure to Comply with Annual Reporting Requirements

Section XVI of the Construction Permit sets forth Annual Reporting requirements for all dischargers. Dischargers are required to prepare and electronically submit an Annual Report by September 1 of each year. Construction Permit, § XVI(A). Section XVI(E) sets forth various requirements for training information that must be included with the Annual Report. On information and belief, EDC alleges that the Site's 2016-2017 Annual Report fails to include any of the information required pursuant to XVI(E) of the Construction Permit.

EDC puts PCEC on notice that it violates the Construction Permit and the CWA every day that the Site fails to submit a proper Annual Report. These violations are ongoing, and EDC will include additional violations as information and data become available. PCEC is subject to civil penalties for all violations of the CWA occurring since at least March 21, 2017.

V. Persons Responsible for the Violations

EDC puts each of the owners and/or operators of the Facility identified above on notice that they are the entities and/or persons responsible for the violations described above. If additional entities and/or persons are subsequently identified as also being responsible for the violations set forth above, EDC puts the owners and/or operators of the Facility on notice that it intends to include those identified persons in this action.

VI. Name and Address of Noticing Party

The name, address, and telephone number of EDC are as follows:

Owen Bailey
Executive Director
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101
(805) 963-1622

VII. Counsel

EDC has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP

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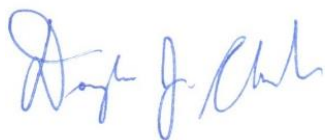
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VIII. Relief Sought

As detailed in this Notice of Intent to Sue sent to PCEC, in accordance with requirements of the CWA, PCEC is in violation of multiple requirements of the General Permit, including violations of receiving water limitations and effluent limitations, monitoring and reporting violations, and SWPPP violations. PCEC is in violation of multiple requirements of the Construction Permit, including violations of receiving water limitation, Risk Level 3 monitoring violations, and SWPPP violations. Section 309 of the CWA, 33 U.S.C. § 1319(d), as adjusted by 40 C.F.R. §19.4, provides for penalties of up to \$37,500 per day per violation for all violations occurring since October 28, 2011, up to and including November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015. In addition to civil penalties, EDC will seek injunctive relief to prevent further violations of the CWA, General Permit, and Construction Permit pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a), (d). EDC will also seek to recover its costs associated with this action, including attorneys' fees and experts' fees.

EDC believes that this Notice of Intent to Sue sufficiently states grounds for filing suit under the CWA. We intend to file a citizen suit under section 505(a) of the CWA against PCEC and its agents for the above-referenced violations upon the expiration of the 60-day notice period. During the 60-day notice period, however, we are willing to discuss effective remedies for the violations alleged in this letter. If you wish to pursue such discussions in the absence of litigation, we respectfully request that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period, as we do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP



Alicia Roessler, Staff Attorney
Environmental Defense Center

SERVICE LIST

Via Certified Mail

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John M. Robertson, Executive Officer
Central Coast Regional Water Quality Control
Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

ATTACHMENT A
Rain Dates, Orcutt, Santa Barbara County, California

7/19/2015	11/26/2016	2/19/2017
11/2/2015	11/27/2016	2/20/2017
11/9/2015	12/8/2016	2/21/2017
11/15/2015	12/9/2016	2/26/2017
12/11/2015	12/15/2016	3/5/2017
12/13/2015	12/16/2016	3/21/2017
12/19/2015	12/23/2016	3/25/2017
12/22/2015	1/4/2017	4/7/2017
1/5/2016	1/7/2017	4/17/2017
1/6/2016	1/8/2017	4/18/2017
1/7/2016	1/9/2017	5/7/2017
1/10/2016	1/10/2017	9/3/2017
1/19/2016	1/11/2017	9/10/2017
1/31/2016	1/12/2017	1/4/2018
2/18/2016	1/18/2017	1/8/2018
3/5/2016	1/19/2017	1/9/2018
3/6/2016	1/20/2017	2/26/2018
3/7/2016	1/22/2017	3/2/2018
3/11/2016	1/23/2017	3/3/2018
3/13/2016	2/2/2017	3/10/2018
4/8/2016	2/3/2017	3/14/2018
4/9/2016	2/5/2017	3/20/2018
5/5/2016	2/6/2017	3/21/2018
10/16/2016	2/7/2017	3/22/2018
10/27/2016	2/10/2017	4/7/2018
10/28/2016	2/16/2017	
11/20/2016	2/17/2017	