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14 SAN FRANCISCO BAYKEEPER

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO DIVISION

18 SAN FRANCISCO BAYKEEPER, a California  
19 non-profit corporation,

20 Plaintiff,

21 v.

22 LEVIN ENTERPRISES, INC., a California  
23 corporation; LEVIN-RICHMOND TERMINAL  
24 CORPORATION, a California corporation,

25 Defendants.

Civil Case No.: 12-04338-EDL

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**

1 San Francisco Baykeeper (“Baykeeper” or “Plaintiff”), by and through its counsel, hereby  
2 alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provision of the Federal  
5 Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”). *See* 33 U.S.C.  
6 § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant 33 U.S.C.  
7 § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising  
8 under the Constitution and laws of the United States).

9 2. On 6 June 2012, Baykeeper issued a 60-day notice letter (“Notice Letter”) to Levin  
10 Enterprises, Inc. and Levin-Richmond Terminal Corporation (“Defendants”). The Notice Letter  
11 informed Defendants of their violations of the Clean Water Act at their marine bulk terminal located at  
12 402 Wright Avenue, Richmond, California (“Levin Facility”), and of Baykeeper’s intention to file suit  
13 against Defendants.

14 3. The Notice Letter was sent to the registered agent for Levin Enterprises, Inc., to the  
15 registered agent for Levin-Richmond Terminal Corporation, and to the owners and operators of the  
16 Levin Facility, as required by 40 C.F.R. § 135.2(a)(1). The Notice Letter was also sent to the  
17 Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of  
18 EPA Region IX, the Executive Director of the State Water Resources Control Board (“State Board”),  
19 and the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region,  
20 (“Regional Board”) as required by section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The Notice  
21 Letter is attached hereto as Exhibit A and is incorporated herein by reference.

22 4. More than sixty (60) days have passed since the Notice Letter was served on the  
23 Defendants and the State and Federal agencies.

24 5. On 17 August 2012, Baykeeper filed its Complaint for Declaratory and Injunctive Relief  
25 and Civil Penalties, Civil Case No. 12-04338-EDL (“Complaint”) against Defendants.

26 6. On 11 September 2012, Baykeeper served its Complaint on Defendants.

27 7. On 26 September 2012, Baykeeper and Defendants stipulated to extend the deadline for  
28 Defendants’ response to Baykeeper’s Complaint from 2 October 2012 to 22 October 2012.

1           8.       The 22 October 2012 deadline for Defendants' pleading in response to Baykeeper's  
2 Complaint has not yet passed, and Defendants have filed no response to Baykeeper's Complaint.

3           9.       Baykeeper is informed and believes, and thereon alleges, that neither the EPA nor the  
4 State of California has commenced or is diligently prosecuting an action to redress the violations alleged  
5 in the Notice Letter and in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by  
6 any prior administrative penalty under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

7           10.      Venue is proper in the Northern District of California pursuant to section 505(c)(1) of the  
8 CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

9           11.      Plaintiff seeks relief from Defendants' violations of the procedural and substantive  
10 requirements of the State Board's *General Permit for Discharges of Storm Water Associated with*  
11 *Industrial Activities, National Pollutant Discharge Elimination System ("NPDES") General Permit No.*  
12 *CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ* ("Storm  
13 Water Permit").

14          12.      Plaintiff also seeks relief from Defendants' violations of the procedural and substantive  
15 requirements of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

## 16 **II.       INTRADISTRICT ASSIGNMENT**

17          13.      Pursuant to L.R. 3-2(c) and (d), intradistrict assignment of this matter to the San  
18 Francisco Division of the Court or the Oakland Division of the Court is appropriate in that the events or  
19 omissions which give rise to Plaintiff's claims occurred in Contra Costa County. In addition, many of  
20 Baykeeper's members reside in Contra Costa County. No event or omission giving rise to Baykeeper's  
21 claims occurred within the jurisdiction of any other Divisions of this Court.

## 22 **III.      PARTIES**

### 23 **A.       San Francisco Baykeeper**

24          14.      Baykeeper is a non-profit public benefit corporation formed in the state of California.  
25 Baykeeper's mission is to protect and enhance the water quality of the San Francisco Bay-Delta Estuary  
26 and its tributaries for the benefit of its ecosystems and the surrounding human communities. Baykeeper  
27 accomplishes its mission through education, advocacy, restoration, and enforcement of environmental  
28 laws.

1           15. Baykeeper's office is located at 785 Market Street, Suite 850, in San Francisco,  
2 California 94103.

3           16. Baykeeper's members use and enjoy the waters surrounding the Levin Facility, including  
4 San Francisco Bay, to sail, swim, windsurf, picnic, fish, hike, conduct scientific study and research,  
5 and/or for aesthetic enjoyment.

6           17. Defendants' failure to comply with the procedural and substantive requirements of the  
7 Storm Water Permit and/or the Clean Water Act, including but not limited to Defendants' discharge of  
8 polluted storm water and non-storm water from the Levin Facility, negatively impacts and impairs  
9 Baykeeper's members' use and enjoyment of these waters.

10           18. The interests of Baykeeper's members have been, are being, and will continue to be  
11 adversely affected by Defendants' failure to comply with the Clean Water Act and the Storm Water  
12 Permit. The relief sought herein will redress the harms to Plaintiff caused by Defendants' activities.

13           19. Continuing commission of the acts and omissions alleged herein will irreparably harm  
14 Baykeeper's members, for which harm they have no plain, speedy, or adequate remedy at law.

15           **B. The Owners and Operators of the Levin Facility**

16           20. Baykeeper is informed and believes, and thereon alleges, that Levin Enterprises, Inc. is a  
17 corporation formed under the laws of the State of California.

18           21. Baykeeper is informed and believes, and thereon alleges, that Levin Enterprises, Inc.  
19 maintains an office at 112 Washington Ave # 250, Richmond, California 94801.

20           22. Baykeeper is informed and believes, and thereon alleges, that Levin Enterprises, Inc. is  
21 an owner of the Levin Facility.

22           23. Baykeeper is informed and believes, and thereon alleges, that Levin Enterprises, Inc. is  
23 an operator of the Levin Facility.

24           24. Baykeeper is informed and believes, and thereon alleges, that the registered agent for  
25 service of process for Levin Enterprises, Inc. is Gary Levin, at 112 Washington Avenue #250,  
26 Richmond, California 94801.

27           25. Baykeeper is informed and believes, and thereon alleges, that Levin-Richmond Terminal  
28 Corporation is a corporation formed under the laws of the State of California.

1           26. Baykeeper is informed and believes, and thereon alleges, that Levin-Richmond Terminal  
2 Corporation maintains an office at 402 Wright Avenue, Richmond, California 94804.

3           27. Baykeeper is informed and believes, and thereon alleges, that Levin-Richmond Terminal  
4 Corporation is an owner of the Levin Facility.

5           28. Baykeeper is informed and believes, and thereon alleges, that Levin-Richmond Terminal  
6 Corporation is an operator of the Levin Facility.

7           29. Baykeeper is informed and believes, and thereon alleges, that the registered agent for  
8 service of process for Levin-Richmond Terminal Corporation is Gary Levin, at 112 Washington Avenue  
9 #250, Richmond, California 94801.

10 **IV. LEGAL BACKGROUND**

11 **A. The Clean Water Act and California's Storm Water Permit**

12           30. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of  
13 any pollutant into waters of the United States unless the discharge complies with various enumerated  
14 sections of the CWA. Among other things, section 301(a) prohibits discharges not authorized by, or in  
15 violation of, the terms of an NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C.  
16 §§ 1311(a) and 1342(b).

17           31. The “discharge of a pollutant” means, among other things, the addition of a pollutant to  
18 “waters of the United States” from any “point source.” 40 C.F.R. § 122.2.

19           32. The term “pollutant” includes “dredged spoil, solid waste, incinerator residue, sewage,  
20 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat,  
21 wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste  
22 discharged into water.” 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.

23           33. “Waters of the United States” are defined as “navigable waters,” and “all waters which  
24 are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce,  
25 including waters which are subject to the ebb and flow of the tide.” 33 U.S.C. § 1362(7).

26           34. The term “point source” means any “discernible, confined and discrete conveyance,  
27 including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,  
28 rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which

1 pollutants are or may be discharged.” 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2.

2 35. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows each state to administer its own  
3 EPA-approved NPDES permit program for regulating the discharge of pollutants, including discharges  
4 of polluted storm water.

5 36. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), establishes a framework for regulating  
6 industrial storm water discharges under the NPDES program. States with approved NPDES permit  
7 programs are authorized by section 402(b) to regulate industrial storm water discharges through  
8 individual NPDES permits issued to dischargers and/or through the issuance of a single, statewide  
9 general NPDES permit applicable to all industrial storm water dischargers. *See* 33 U.S.C. § 1342(b).

10 37. In California, the State Board is charged with regulating pollutants to protect California’s  
11 water resources.

12 38. The Storm Water Permit is a statewide general NPDES permit issued by the State Board  
13 pursuant to section 402 of the CWA, 33 U.S.C. § 1342(b), and 40 C.F.R § 123.25.

14 39. In order to discharge storm water lawfully in California, industrial dischargers must  
15 secure coverage under the Storm Water Permit and comply with its terms, or obtain and comply with an  
16 individual NPDES permit.

17 40. Violations of the Storm Water Permit are also violations of the CWA. Storm Water  
18 Permit Section C(1) (Standard Provisions).

19 41. Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), provides for citizen enforcement  
20 actions against any “person” who is alleged to be in violation of an “effluent standard or limitation... or  
21 an order issued by the Administrator or a State with respect to such a standard or limitation.” *See* 33  
22 U.S.C. §§ 1365(a)(i), 1365(f).

23 42. The Defendants are “person[s]” within the meaning of section 502(5) of the Clean Water  
24 Act, 33 U.S.C. § 1362(5).

25 43. An action for injunctive relief is authorized under section 505(a) of the CWA, 33 U.S.C.  
26 § 1365(a).

27 44. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to  
28 \$32,500 per day per violation for violations occurring from 6 June 2007 through 12 January 2009, and

1 \$37,500 per day for violations occurring after 12 January 2009. 33 U.S.C. § 1319(d); Adjustment of  
2 Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).

3 45. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing or  
4 substantially prevailing parties to recover litigation costs, including attorneys' fees, experts' fees, and  
5 consultants' fees.

6 **B. The Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and**  
7 **Receiving Water Limitations**

8 46. Discharge Prohibition (A)(1) of the Storm Water Permit prohibits permittees from  
9 discharging materials other than storm water (non-storm water discharges) either directly or indirectly to  
10 waters of the United States.

11 47. Discharge Prohibition (A)(2) of the Storm Water Permit prohibits storm water discharges  
12 that cause or threaten to cause pollution, contamination, or nuisance.

13 48. Effluent Limitation (B)(3) of the Storm Water Permit requires dischargers to reduce or  
14 prevent pollutants associated with industrial activity in storm water discharges through the  
15 implementation of Best Available Technology Economically Achievable ("BAT") for toxic or non-  
16 conventional pollutants, and Best Conventional Pollutant Control Technology ("BCT") for conventional  
17 pollutants.

18 49. EPA Benchmarks are the pollutant concentrations above which EPA has determined  
19 represent a level of concern indicating that a facility has not successfully developed or implemented  
20 Best Management Practices ("BMPs") that meet BAT for toxics pollutants and BCT for conventional  
21 pollutants. *See* Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm  
22 Water Multi-Sector General Permit for Industrial Activities, 65 Fed. Reg. 64,766 (October 30, 2000).

23 50. The EPA Benchmark values provide an objective level to determine whether a facility's  
24 storm water pollution prevention measures are successfully implemented. *Id.* at 64,766-67.

25 51. Discharges with pollutant levels that exceed levels known to adversely impact aquatic  
26 species and the environment are violations of Receiving Water Limitation (C)(1) of the Storm Water  
27 Permit.

28 52. Receiving Water Limitation (C)(1) of the Storm Water Permit prohibits storm water

1 discharges and authorized non-storm water discharges from adversely impacting human health or the  
2 environment.

3 53. Receiving Water Limitation (C)(2) of the Storm Water Permit prohibits storm water  
4 discharges that cause or contribute to an exceedance of any “applicable Water Quality Standard in a  
5 Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.”

6 54. Water Quality Standards (“WQS”) include pollutant concentration levels determined by  
7 the State Board, the various Regional Boards, and the EPA to be protective of the beneficial uses of the  
8 waters that receive polluted discharges. Discharges above water quality standards contribute to the  
9 impairment of the receiving waters’ beneficial uses.

10 55. Discharges above WQS contribute to the impairment of the receiving waters’ beneficial  
11 uses.

12 56. The applicable WQS include, but are not limited to, those set out in the San Francisco  
13 Bay Basin (Region 2) Water Quality Control Plan (“Basin Plan”) (California Regional Water Quality  
14 Control Board, San Francisco Bay Region, Rev. Dec. 2011), the State Water Resources Control Board  
15 (“State Board”) Water Quality Control Plan for Enclosed Bays and Estuaries (“Estuary Plan”), and by  
16 the EPA in the Criteria for Priority Toxic Pollutants for the State of California (“California Toxics Rule”  
17 or “CTR”), 40 C.F.R. § 131.38.

18 57. These numeric criteria are set to protect human health and the environment in the state of  
19 California. Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California  
20 Factsheet, EPA-823-00-008; April 2000 available at  
21 <http://water.epa.gov/lawsregs/rulesregs/ctr/factsheet.cfm>.

22 58. Discharges with pollutant levels in excess of the CTR criteria, the Basin Plan, the Estuary  
23 Plan, and/or other applicable water quality standards are violations of Receiving Water Limitation (C)(2)  
24 of the Storm Water Permit.

25 **C. The Storm Water Permit’s Storm Water Pollution Prevention Plan Requirements**

26 59. Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to  
27 develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”) that complies with the  
28 requirements of the Storm Water Permit prior to commencing industrial activities.

1           60.     The objectives of the SWPPP are to identify and evaluate sources of pollutants associated  
2 with industrial activities that may affect the quality of storm water discharges, to identify and implement  
3 site-specific BMPs to prevent the exposure of pollutants to storm water, and to reduce or prevent the  
4 discharge of polluted storm water from industrial facilities. Storm Water Permit, Section A(2).

5           61.     Section A(4) of the Storm Water Permit requires that the SWPPP include a site map that  
6 contains: the facility boundaries, storm water drainage areas and directions of flow for each drainage  
7 area, on-site surface water bodies, nearby water bodies, areas of soil erosion, and municipal storm drain  
8 inlets where the facility's storm water discharges may be received (Section A(4)(a)); the location of the  
9 storm water collection, conveyance and discharge system and structural control measures that affect  
10 storm water discharges (Section A(4)(b)); an outline of all impervious areas of the facility, including  
11 paved areas, buildings, covered storage areas, or other roofed structures (Section A(4)(c)); locations  
12 where materials are directly exposed to precipitation and where significant spills or leaks have occurred  
13 (Section A(4)(d)); and areas of industrial activity, including areas that are actual and potential pollutant  
14 sources (Section A(4)(e)).

15           62.     Section A(5) of the Storm Water Permit requires that the SWPPP include a list of  
16 significant materials handled and stored at the site.

17           63.     Section A(6)(a) of the Storm Water Permit requires that the SWPPP include a narrative  
18 description of the facility's industrial activities, associated potential pollutant sources and potential  
19 pollutants that could be discharged in storm water discharges. At a minimum, the discharger must  
20 consider industrial processes, material handling and storage areas, dust and particulate generating  
21 activities, significant spills and leaks, and locations where soil erosion may occur. Storm Water Permit,  
22 Section A(6)(a)(i)-(vi). Section A(6)(b) of the Storm Water Permit requires that the SWPPP include a  
23 summary of all areas of industrial activities, potential pollutant sources, and potential pollutants.

24           64.     Section A(7)(a) of the Storm Water Permit requires that the SWPPP include a narrative  
25 assessment of all industrial activities and potential pollutant sources to determine which areas of the  
26 facility are likely sources of pollutants and which pollutants are likely to be present in the storm water  
27 discharges. Section A(7)(b) of the Storm Water Permit requires that the SWPPP include a summary of  
28 the areas of the facility that are likely sources of pollutants and the corresponding pollutants likely to be

1 present in storm water discharges.

2           65. Section A(8) of the Storm Water Permit requires that the SWPPP include a narrative  
3 description of the storm water BMPs to be implemented at the facility for each potential pollutant and its  
4 source. BMPs shall be developed and implemented to reduce or prevent pollutants in storm water  
5 discharges. Storm Water Permit, Section A(8). Dischargers must develop and implement structural  
6 and/or non-structural BMPs. *Id.*, Sections A(8)(a) and (b).

7           66. Section A(9) of the Storm Water Permit requires that the discharger evaluate the SWPPP  
8 on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit.  
9 Sections A(9)(a)-(c) of the Storm Water Permit require that the discharger conduct an annual  
10 comprehensive site compliance evaluation that includes a review of all visual observation records,  
11 inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources  
12 for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of  
13 all BMPs to determine whether the BMPs are adequate, properly implemented and maintained or  
14 whether additional BMPs are needed, and a visual inspection of equipment needed to implement the  
15 SWPPP. Section A(9)(d) of the Storm Water Permit requires that the discharger submit an evaluation  
16 report that includes an identification of personnel performing the evaluation, the date(s) of the  
17 evaluation(s), necessary SWPPP revisions, a schedule for implementing SWPPP revisions, any incidents  
18 of non-compliance and the corrective actions taken, and a certification that the discharger is in  
19 compliance with the Storm Water Permit. Storm Water Permit, Section A(9)(d)(i)-(vi). If certification of  
20 compliance cannot be provided, the discharger must explain in the evaluation report why the facility is  
21 not in compliance with the Storm Water Permit. *Id.*, Section A(9)(d). The evaluation report shall be  
22 submitted as part of the Annual Report specified in Section B(14) of the Storm Water Permit. *Id.*

23           67. Section A(10) of the Storm Water Permit requires that the discharger revise the SWPPP  
24 as necessary prior to changes in industrial activities, or as otherwise required by the Storm Water Permit.

25           **D. The Storm Water Permit's Monitoring and Reporting Requirements**

26           68. Provision E(3) and Section B(1) of the Storm Water Permit require dischargers to  
27 develop and implement a Monitoring and Reporting Program ("M&RP") prior to commencing industrial  
28 activities.

1           69.     The objectives of the M&RP are to ensure that BMPs have been adequately developed  
2 and implemented, revised if necessary, and to ensure that storm water and non-storm water discharges  
3 are in compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and  
4 Receiving Water Limitations. Storm Water Permit, Sections B(2)(a) and B(2)(b).

5           70.     The M&RP aids in the implementation and revision of the SWPPP and measures the  
6 effectiveness of BMPs to prevent or reduce pollutants in storm water discharges. *Id.*, Section B(2)(c) and  
7 B(2)(d).

8           71.     Section B(2)(d) requires that the M&RP "shall be revised" as necessary to ensure  
9 compliance with the Storm Water Permit.

10          72.     Section B(4)(a) of the Storm Water Permit requires dischargers to conduct monthly visual  
11 observations of storm water discharges during the first hour of discharge and at all discharge locations  
12 during the Wet Season (defined as October 1 – May 30).

13          73.     Section B(4)(c) of the Storm Water Permit requires dischargers to document the presence  
14 of any floating and suspended materials, oil and grease, discolorations, turbidity, or odor in the  
15 discharge, and the source of any pollutants in storm water discharges from the facility. This same section  
16 requires dischargers to maintain records of observations, observation dates, discharge locations  
17 observed, and responses taken to reduce or prevent pollutants from contacting storm water discharges.  
18 Section B(4)(c) of the Storm Water Permit also requires dischargers to revise the SWPPP as necessary to  
19 ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility.

20          74.     Sections B(5) and (7) of the Storm Water Permit require dischargers to visually observe  
21 and collect samples of storm water discharges from all locations where storm water is discharged.

22          75.     Section B(5)(a) requires facility operators to collect storm water samples during the first  
23 hour of the discharge from (1) the first storm event of the wet season; and (2) at least one other storm  
24 event in the wet season. All storm water discharge locations are required to be sampled. Storm Water  
25 Permit, Section B(5)(a). Sampling of stored or contained storm water is required to occur at the time the  
26 stored or contained storm water is released. *Id.* Facility operators that do not collect samples from the  
27 first storm event of the wet season are still required to collect samples from two other storm events of  
28 the wet season and shall explain in the Annual Report why the first storm event was not sampled. *Id.*

1           76.     Section B(5)(b) requires that sampling conducted pursuant to the Storm Water Permit  
2 occur during scheduled facility operating hours that are preceded by at least three (3) working days  
3 without storm water discharge.

4           77.     Section B(5)(c)(i) of the Storm Water Permit requires dischargers to analyze each sample  
5 for pH, specific conductance, TSS, and total organic carbon (“TOC”). A discharger may substitute oil  
6 and grease for TOC.

7           78.     Section B(5)(c)(ii) of the Storm Water Permit requires dischargers to analyze each  
8 sample for toxic chemicals and other pollutants likely to be present in significant quantities in the storm  
9 water discharged from the facility.

10          79.     Section B(5)(c)(iii) and Table D of the Storm Water Permit require facilities classified as  
11 Sector Q, SIC code 4491, to analyze storm water samples for iron, lead, zinc, and aluminum, or as  
12 required by the Regional Board.

13          80.     Section B(14) of the Storm Water Permit requires that dischargers submit an Annual  
14 Report to the applicable Regional Board by July 1 of each year. The Annual Report must include a  
15 summary of visual observations and sampling results, an evaluation of the visual observations and  
16 sampling and analysis results, laboratory reports, the annual comprehensive site compliance evaluation  
17 report specified in Section A(9), an explanation of why a facility did not implement any activities  
18 required, and the records specified in Section B(13).

19          81.     Section B(15)(f) of the Storm Water Permit requires that sampling and analysis be  
20 performed according to Section B of the Storm Water Permit.

21 **V.     FACTUAL BACKGROUND**

22 **A.     The Levin Facility’s Storm Water Permit Coverage**

23          82.     Baykeeper is informed and believes, and thereon alleges, that the Defendants filed a  
24 Notice of Intent for General Permit to Discharge Storm Water Associated with Industrial Activity for its  
25 industrial operations in March of 1992 (“March 1992 NOI”).

26          83.     Baykeeper is informed and believes, and thereon alleges, that the Defendants filed a  
27 subsequent Notice of Intent for Existing Facility Operators to Comply with the Terms of the General  
28 Permit to Discharge Storm Water Associated with Industrial Activity for its industrial operations in May

1 of 1998 (“May 1998 NOI”).

2 84. Baykeeper is informed and believes, and thereon alleges, that the March 1992 NOI and  
3 the May 1998 NOI identified the Owner/Operator of the Levin Facility as “Levin Enterprises.”

4 85. Baykeeper is informed and believes, and thereon alleges, that the March 1992 NOI  
5 identified the address for the Owner/Operator of the Levin Facility as 1800 Monterey, San Jose,  
6 California 95112.

7 86. Baykeeper is informed and believes, and thereon alleges, that the May 1998 NOI  
8 identified the address for the Owner/Operator of the Levin Facility as 550 Hamilton Avenue, Suite 329,  
9 Palo Alto, California 94301.

10 87. Baykeeper is informed and believes, and thereon alleges, that the March 1992 NOI and  
11 the May 1998 NOI identified the name of the Levin Facility as the “Levin-Richmond Terminal  
12 Corporation.”

13 88. Baykeeper is informed and believes, and thereon alleges, that the March 1992 NOI and  
14 the May 1998 NOI identified the address for the Levin Facility as 402 Wright Avenue, Richmond,  
15 California 94804.

16 89. Baykeeper is informed and believes, and thereon alleges, that the March 1992 NOI and  
17 the May 1998 NOI identified the Levin Facility as being forty-two (42) acres in size.

18 90. Baykeeper is informed and believes, and thereon alleges, that the March 1992 NOI  
19 identified the receiving water for runoff from the Levin Facility to be the Santa Fe Channel.

20 91. Baykeeper is informed and believes, and thereon alleges, that the March 1992 NOI and  
21 the May 1998 NOI list the SIC code of regulated industrial activity as 4491 (marine bulk terminal).

22 92. Baykeeper is informed and believes, and thereon alleges, that the current SWPPP for the  
23 Levin Facility is dated June 2011-July 2012.

24 93. Baykeeper is informed and believes, and thereon alleges, that the Levin Facility is  
25 approximately forty-two (42) acres in size.

26 **B. Levin Facility Parcels**

27 94. Baykeeper is informed and believes, and thereon alleges, that the 42-acre Levin Facility  
28 consists of five (5) parcels identified as: (1) Main Terminal; (2) North Parr Yard; (3) South Parr Yard;

1 (4) West Parr Yard; and (5) Sequoia Yard.

2 95. Baykeeper is informed and believes, and thereon alleges, that the Main Terminal is  
3 located at 402 Wright Avenue bounded by Cutting Boulevard, BNSF railroad tracks, Fourth Street and  
4 Pacific Energy Partners LP, Santa Fe Channel, and Lauritzen Canal.<sup>1</sup>

5 96. Baykeeper is informed and believes, and thereon alleges, that the Main Terminal is used  
6 for the loading and unloading of dry bulk materials from ships.

7 97. Baykeeper is informed and believes, and thereon alleges, that the Main Terminal is used  
8 for the loading and unloading of dry bulk materials from trucks.

9 98. Baykeeper is informed and believes, and thereon alleges, that the Main Terminal is used  
10 for the loading and unloading of dry bulk materials from containers.

11 99. Baykeeper is informed and believes, and thereon alleges, that the Main Terminal is used  
12 for the loading and unloading of dry bulk materials from railroad cars.

13 100. Baykeeper is informed and believes, and thereon alleges, that railroad cars at the Levin  
14 Facility are used to transport petroleum cargoes.

15 101. Baykeeper is informed and believes, and thereon alleges, that an equipment repair  
16 building is located on the Main Terminal with an adjacent outdoor equipment steam-cleaning area.

17 102. Baykeeper is informed and believes, and thereon alleges, that a warehouse used for  
18 indoor storage of bulk materials and a hopper building used for storage of dry distilled grain are also  
19 located on the Main Terminal.

20 103. Baykeeper is informed and believes, and thereon alleges, that five (5) acres of the Main  
21 Terminal are contaminated by pesticides, including dichlorodiphenyl trichloroethane (“DDT”), and that  
22 those five acres are listed on the National Priority List as a Superfund site.

23 104. Baykeeper is informed and believes, and thereon alleges, that Defendants are responsible  
24 for operating and maintaining the remediation area of the five-acre Superfund site, including a partial  
25 concrete cap.

26 105. Baykeeper is informed and believes, and thereon alleges, that the remediation of the five-

27 \_\_\_\_\_  
28 <sup>1</sup> Defendants refer to the same water body as the “Lauritzen Channel” and the “Lauritzen Canal” interchangeably. Baykeeper refers only to the Lauritzen Canal for purposes of clarity, and all such references include the “Lauritzen Channel.”

1 acre Superfund site was completed in 1999.

2           106. Baykeeper is informed and believes, and thereon alleges, that the North Parr Yard parcel  
3 is located at 799 Wright Avenue bounded by Sims Metal of America, Wright Street, and South Eighth  
4 Street.

5           107. Baykeeper is informed and believes, and thereon alleges, that portions of the North Parr  
6 Yard are used for temporary stockpiling of bulk materials, terminal equipment, and vehicles.

7           108. Baykeeper is informed and believes, and thereon alleges, that the South Parr Yard parcel  
8 is located at 790 Wright Avenue approximately 450 feet east of the Main Terminal.

9           109. Baykeeper is informed and believes, and thereon alleges, that the South Parr Yard is  
10 bounded by Wright Avenue, South Eighth Street, Santa Fe Channel, and Parr Canal. The Parr Canal  
11 bisects the South Parr Yard parcel.

12           110. Baykeeper is informed and believes, and thereon alleges, that the South Parr Yard is used  
13 for temporary stockpiling and loading of dry bulk materials.

14           111. Baykeeper is informed and believes, and thereon alleges, that the South Parr Yard is used  
15 for temporary stockpiling and loading of rail cars that have been or are transporting petroleum cargoes.

16           112. Baykeeper is informed and believes, and thereon alleges, that the South Parr Yard is used  
17 for temporary stockpiling and loading of accumulated non-hazardous debris to be disposed of off site.

18           113. Information available to Baykeeper indicates that the West Parr Yard and the Sequoia  
19 Yard are under long-term lease to Eagle Rock Aggregates, Inc. and CEMEX, respectively, and are not  
20 part of Defendants' coverage under the Storm Water Permit.

21           **C. Industrial Activities at the Levin Facility**

22           114. Baykeeper is informed and believes, and thereon alleges, that the following industrial  
23 operations are conducted at the Levin Facility: bulk material stockpiling; vehicle maintenance; rail car  
24 maintenance; and bulk material handling and transport.

25           115. Baykeeper is informed and believes, and thereon alleges, that Defendants store hazardous  
26 materials such as waste oil, gasoline, diesel fuel, lubricating oils and grease, oxygen, liquid oxygen,  
27 acetylene, mapp gas, light aliphatic naphtha (cleaning solvent), and antifreeze on the Main Terminal  
28 parcel.

1 116. Baykeeper is informed and believes, and thereon alleges, that steel scrap, aggregates,  
2 metallurgical coke, petroleum coke, green coke, coal, eucalyptus wood chips, iron ore, sand, aggregates,  
3 and bauxite are collected and stockpiled outdoors.

4 117. Baykeeper is informed and believes, and thereon alleges, that steel scrap, aggregates,  
5 metallurgical coke, petroleum coke, green coke, coal, eucalyptus wood chips, iron ore, sand, aggregates,  
6 and bauxite collected and stockpiled outdoors are without adequate cover to prevent storm water  
7 exposure to these pollutant sources.

8 118. Baykeeper is informed and believes, and thereon alleges, that some or all of Defendants'  
9 industrial operations are conducted outdoors without secondary containment or other measures to  
10 prevent polluted storm water from discharging from the Levin Facility.

11 119. Baykeeper is informed and believes, and thereon alleges, that some or all of Defendants'  
12 industrial operations are conducted outdoors without secondary containment or other measures to  
13 prevent non-storm water from discharging from the Levin Facility.

14 120. Baykeeper is informed and believes, and thereon alleges, that coal, petroleum coke,  
15 metallurgical coke, oil and grease, transmission and vehicle fluids (such as antifreeze and gasoline),  
16 metal particles, and other pollutants have been and continue to be tracked throughout the Levin Facility  
17 operations area.

18 121. Baykeeper is informed and believes, and thereon alleges, that these pollutants accumulate  
19 at the bulk material stockpiling areas, the loading and unloading areas, and the parking lot and the  
20 driveways leading onto Wright Avenue, Cutting Boulevard, and/or Eighth Street.

21 122. Baykeeper is informed and believes, and thereon alleges, that these pollutants are  
22 deposited to streets and/or storm drains adjacent to the Levin Facility via fugitive coke and other dust,  
23 including but not limited to dust generated by wind, conveyors, and trucks.

24 123. Baykeeper is informed and believes, and thereon alleges, that trucks and vehicles leaving  
25 the Levin Facility via staging areas and driveways are pollutant sources tracking sediment, dirt, oil and  
26 grease, metal particles, and other pollutants off-site.

27 124. Baykeeper is informed and believes, and thereon alleges, that sources of pollutants  
28 associated with the industrial activities at the Levin Facility include, but are not limited to: outdoor bulk

1 material stockpiling areas; oil and coolant storage and disposal areas; rail car storage areas; fluid  
2 draining areas; vehicle and equipment maintenance areas; parking areas; shipping and receiving areas;  
3 loading and unloading areas; driveway areas; maintenance areas; office building(s); the on-site material  
4 handling equipment such as conveyors, forklifts, and trucks; and the five-acre Superfund site.

5 125. Baykeeper is informed and believes, and thereon alleges, that the pollutants associated  
6 with operations at the Levin Facility include, but are not limited to: heavy metals such as zinc, copper,  
7 lead, aluminum, iron; benzene; oil and grease; fuel and fuel additives; TSS; coolant; pH-affecting  
8 substances; pesticides such as DDT, aldrin, dieldrin, and endrin; and fugitive and other dust, dirt, and  
9 debris.

10 126. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
11 properly address pollutant sources and pollutants results in the exposure of pollutants associated with  
12 their industrial activities to precipitation, and that this results in the discharge of polluted storm water  
13 from the Levin Facility and into local waterways in violation of the Storm Water Permit.

14 127. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed to  
15 adequately develop and/or implement BMPs to prevent the exposure of pollutants and their sources to  
16 storm water flows at, and adjacent to, the Levin Facility.

17 128. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed to  
18 adequately develop and/or implement BMPs sufficient to prevent polluted storm water from discharging  
19 from the Levin Facility.

20 129. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
21 properly address pollutant sources and pollutants results in the discharge of fugitive coke and other dust,  
22 including but not limited to dust generated by wind, conveyors, and trucks, from the Levin Facility, and  
23 this fugitive coke and other dust discharges from the Levin Facility into local waterways in violation of  
24 the Storm Water Permit and/or the Clean Water Act.

25 130. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
26 continue to fail to adequately develop and/or implement BMPs sufficient to prevent pollutants from  
27 leaving the Levin Facility via fugitive coke and other dust, including but not limited to dust generated by  
28 wind, conveyors, and trucks, and being deposited to adjacent streets and/or storm drains.

1           131. Baykeeper is informed and believes, and thereon alleges, that BAT/BCT for the Levin  
2 Facility is full enclosure of all uncovered bulk material stockpiles and uncovered bulk material transport  
3 systems, including, but not limited to, conveyors.

4           132. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed to  
5 achieve compliance with BAT/BCT requirements by failing to fully enclose uncovered bulk material  
6 stockpiles and/or uncovered bulk material transport systems on the Levin Facility.

7           133. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
8 properly address these pollutants and their sources results in the exposure of pollutants to precipitation,  
9 which carries these pollutants with storm water flows from the Levin Facility into Santa Fe Channel,  
10 Lauritzen Canal and/or Parr Canal, which flow to the San Francisco Bay.

11           134. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
12 properly address these pollutants and their sources results in the discharge of fugitive coke and other  
13 dust, including but not limited to dust generated by wind, conveyors and trucks, which carries these  
14 pollutants to off-site streets and storm drains adjacent to the Levin Facility. These pollutants deposited  
15 on adjacent streets and/or in adjacent storm drains are then discharged with storm water flows into Santa  
16 Fe Channel, Lauritzen Canal, Parr Canal, and/or San Francisco Bay.

17           135. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
18 properly address pollutant sources and pollutants results in the discharge of fugitive coke and other dust,  
19 including but not limited to dust generated by wind, conveyors, and trucks, from bulk material stockpiles  
20 collected on the Levin Facility into local waterways in violation of the Storm Water Permit and/or in  
21 violation of section 301(a) of the Clean Water Act.

22           136. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
23 properly address these pollutants and their sources results in the discharge of polluted storm water flows  
24 from the Levin Facility directly and/or indirectly into Santa Fe Channel, Lauritzen Channel and/or Parr  
25 Canal, all of which flow to the San Francisco Bay.

26           **D. Storm Water Discharge Locations at the Levin Facility**

27           137. Baykeeper is informed and believes, and thereon alleges, that the SWPPP for the Levin  
28 Facility identifies storm water discharge points from the Levin Facility as: SW-1; SW-2; SW-3; SW-4;

1 SW-5; SW-6; SW-7; NO. PARR SW-12; SO. PARR SW-10; and SO. PARR SW-11.

2 138. Baykeeper is informed and believes, and thereon alleges, that the M&RP for the Levin  
3 Facility identifies storm water sample locations at the Levin Facility as: SW-1; SW-2; SW-3; SW-4;  
4 SW-5; SW-6; SW-7; SW-8; SW-8<sup>2</sup>; and SW-10.

5 139. Baykeeper is informed and believes, and thereon alleges, that the 2007-2008 Annual  
6 Storm Water Report for the Levin Facility identifies storm water discharge points from the Levin  
7 Facility as: SW-1; SW-2; SW-3; SW-4; SW-5; SW-6; SW-7; SW-8; SW-9; SW-10; PARR SW-10; and  
8 PARR SW-11.

9 140. Baykeeper is informed and believes, and thereon alleges, that the 2008-2009 Annual  
10 Storm Water Report for the Levin Facility identifies storm water discharge points from the Levin  
11 Facility as: SW-1; SW-2; SW-3; SW-4; SW-5; SW-6; SW-7; NO PARR SW-12; SO PARR SW-10; and  
12 SO PARR SW-11.

13 141. Baykeeper is informed and believes, and thereon alleges, that the 2009-2010 Annual  
14 Storm Water Report for the Levin Facility identifies storm water discharge points from the Levin  
15 Facility as: SW-1; SW-2; SW-3; SW-4; SW-5; SW-6; SW-7; NO PARR SW-12; SO PARR SW-10; and  
16 SO PARR SW-11.

17 142. Baykeeper is informed and believes, and thereon alleges, that the 2010-2011 Annual  
18 Storm Water Report for the Levin Facility identifies storm water discharge points from the Levin  
19 Facility as: SW-1; SW-2; SW-3; SW-4; SW-5; SW-6; SW-7; NO PARR SW-12; SO PARR SW-10; and  
20 SO PARR SW-11.

21 143. Baykeeper is informed and believes, and thereon alleges, that the 2011-2012 Annual  
22 Storm Water Report for the Levin Facility is incomplete as pages 16-19 of the report are missing.

23 144. Baykeeper is informed and believes, and thereon alleges, that the 2011-2012 Annual  
24 Storm Water Report identifies storm water discharge points from the Levin Facility as: SO PARR SW-  
25 10 and SO PARR SW-11.

26 145. Baykeeper is informed and believes, and thereon alleges, that discharge points/sample  
27 locations SW-8, SW-9, and SW-10 listed in the M&RP for the Levin Facility are not listed in the Annual  
28

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<sup>2</sup> The M&RP in fact lists "SW-8" twice.

1 Storm Water Reports for 2008-2009, 2009-2010, 2010-2011, 2011-2012.

2 146. Baykeeper is informed and believes, and thereon alleges, that discharge points/sample  
3 locations at the Levin Facility have changed without revision to the M&RP.

4 147. Baykeeper is informed and believes, and thereon alleges, that SW-1 is an onsite  
5 separator/sedimentation basin system located on the Main Terminal that discharges storm water from the  
6 Levin Facility to Santa Fe Channel and/or Lauritzen Canal. Baykeeper is informed and believes, and  
7 thereon alleges, that storm water on the Main Terminal is collected in catch basins, which drain to SW-1  
8 before discharging to Santa Fe Channel.

9 148. Baykeeper is informed and believes, and thereon alleges, that SW-2 is an onsite  
10 separator/sedimentation basin system on the Main Terminal that collects storm water runoff from the  
11 piers and main stockpiling/loading areas and then discharges storm water from the Levin Facility to  
12 Santa Fe Channel and/or Lauritzen Canal.

13 149. Baykeeper is informed and believes, and thereon alleges, that SW-3 through SW-7 collect  
14 drainage from the northern portion of the Main Terminal via twenty-six (26) catch basins. Baykeeper is  
15 informed and believes, and thereon alleges, that SW-3 through SW-7 have potential to discharge storm  
16 water from the Levin Facility to Lauritzen Canal.

17 150. Baykeeper is informed and believes, and thereon alleges, that storm water can be stored  
18 in SW-3 through SW-7 and discharged to the City of Richmond sanitary sewer. Baykeeper is informed  
19 and believes, and thereon alleges, that discharges from SW-3 through SW-7 are regulated under an  
20 industrial discharge pretreatment permit issued by the City of Richmond, which is separate from  
21 Defendants' coverage under the Storm Water Permit.

22 151. Baykeeper is informed and believes, and thereon alleges, that NO. PARR SW-12 located  
23 within the North Parr Yard discharges storm water from the Levin Facility to the City of Richmond  
24 municipal storm drainage system, which follows Eighth Street prior to discharging into the Parr Canal.  
25 Baykeeper is informed and believes, and thereon alleges, that storm water on the North Parr Yard is  
26 directed into shallow swales that divert captured runoff into storm water system NO. PARR SW-12,  
27 which consists of two Jensen precast concrete vaults designed to allow the settling of sediments and  
28 other storm water pollution prevention materials.

1           152. Baykeeper is informed and believes, and thereon alleges, that SO. PARR SW-10 and SO.  
2 PARR SW-11 discharge storm water from the South Parr Yard on the Levin Facility to the City of  
3 Richmond storm sewer, which then discharges to the Parr Canal.

4           153. Baykeeper is informed and believes, and thereon alleges, that SO. PARR SW-10 storm  
5 water interceptor was constructed with three-tiered chambers to allow the settling of sediments.  
6 Baykeeper is informed and believes, and thereon alleges, that the area surrounding SO. PARR SW-10 is  
7 surfaced with asphalt/concrete and includes swales to direct storm water into the interceptor, and that the  
8 swales exclude runoff from the West Parr parcel.

9           154. Baykeeper is informed and believes, and thereon alleges, that SO. PARR SW-11 consists  
10 of eleven (11) concrete vaults, including media filters and an oil/water separation curtain. Baykeeper is  
11 informed and believes, and thereon alleges, that the South Parr Yard is graded to direct storm water into  
12 shallow swales that convey captured runoff into a storm water system that discharges into SO. PARR  
13 SW-11.

14           155. Baykeeper is informed and believes, and thereon alleges, that a truck route, leading out to  
15 Wright Avenue from the Levin Facility, is also a discharge point from the Levin Facility.

16           156. Baykeeper is informed and believes, and thereon alleges, that storm water containing oil,  
17 grease, fuel, metal shavings, and other pollutants discharges from the above-described truck route to  
18 drop inlets of the storm drain system along Wright Avenue and South Fourth Street, which ultimately  
19 discharge to San Francisco Bay.

20           157. Baykeeper is informed and believes, and thereon alleges, that polluted storm water  
21 discharges directly to Santa Fe Channel, Lauritzen Canal, Parr Canal, and/or San Francisco Bay from  
22 each uncovered bulk material stockpiling stockpile and/or uncovered bulk material transport systems.

23           158. Baykeeper is informed and believes, and thereon alleges, that uncovered bulk material  
24 stockpiles and/or uncovered bulk material transport systems on the Levin Facility are adjacent, or in  
25 close proximity, to Santa Fe Channel, Lauritzen Canal, Parr Canal, and/or San Francisco Bay.

26           159. Baykeeper is informed and believes, and thereon alleges, that storm water containing  
27 pollutants deposited from the Levin Facility via fugitive coke and other dust, including but not limited to  
28 dust generated by wind, conveyors, and trucks, to streets and/or storm drains adjacent to the Levin

1 Facility discharges from those adjacent streets and/or storm drains to Santa Fe Channel, Lauritzen Canal,  
2 Parr Canal, and/or San Francisco Bay.

3 **E. The Storm Water Discharges from the Levin Facility Contain Elevated Levels of**  
4 **Pollutants**

5 160. Storm water discharges containing heavy metals such as copper, lead, and zinc adversely  
6 affect the aquatic environment.

7 161. Samples of storm water discharges collected at the Levin Facility contain pollutants  
8 including specific conductance, TSS, lead, copper, and zinc, in excess of levels known to adversely  
9 impact aquatic species and the environment, WQS, and EPA Benchmarks in violation of the Storm  
10 Water Permit's Effluent Limitations and Receiving Water Limitations.

11 162. Baykeeper is informed and believes, and thereon alleges, that during and/or after every  
12 significant rain event<sup>3</sup> or any other storm water discharge that has occurred at the Levin Facility since 6  
13 June 2007 through the present, Defendants have discharged and continue to discharge storm water from  
14 the Levin Facility that contains pollutants at levels that violate the prohibitions and limitations set forth  
15 in the Storm Water Permit, the EPA Benchmarks, and the WQS.

16 163. Baykeeper is informed and believes, and thereon alleges, that during and/or after every  
17 significant rain event or any other storm water discharge that has occurred at streets and/or storm drains  
18 adjacent to the Levin Facility since 6 June 2007 through the present Defendants have discharged and  
19 continue to discharge concentrations of pollutants from the Levin Facility that violate the prohibitions  
20 and limitations set forth in the Storm Water Permit, the EPA Benchmarks, and the WQS.

21 **F. Non-Storm Water Discharges from the Levin Facility**

22 164. Baykeeper is informed and believes, and thereon alleges, that Defendants collect and  
23 store petroleum coke, green coke, metallurgical coke, and other bulk materials in uncovered bulk  
24 material stockpiles on the Levin Facility.

25 165. Baykeeper is informed and believes, and thereon alleges, that Defendants handle and  
26 transport petroleum coke, green coke, metallurgical coke, and other bulk materials via uncovered  
27

28 <sup>3</sup> A significant rain event is an event that produces storm water runoff, which according to EPA occurs  
with more than 0.1 inches of precipitation.

1 transport systems, such as conveyors, rail cars, and trucks, on the Levin Facility.

2 166. Baykeeper is informed and believes, and thereon alleges, that Defendants' uncovered  
3 bulk material stockpiles are point sources, as defined by the Clean Water Act. 33 U.S.C. § 1362(14).

4 167. Baykeeper is informed and believes, and thereon alleges, that Defendants' uncovered  
5 bulk material transport systems are point sources, as defined by the Clean Water Act. 33 U.S.C.  
6 § 1362(14).

7 168. Baykeeper is informed and believes, and thereon alleges, that Defendants' uncovered  
8 bulk material stockpiles are adjacent to and/or abut Santa Fe Channel, Lauritzen Canal, Parr Canal,  
9 and/or San Francisco Bay.

10 169. Baykeeper is informed and believes, and thereon alleges, that Defendants' handling and  
11 transport of petroleum coke, green coke, metallurgical coke, and other bulk materials via uncovered  
12 transport systems, such as conveyors, rail cars, and trucks, generates fugitive coke and other dust.

13 170. Baykeeper is informed and believes, and thereon alleges, that Defendants' uncovered  
14 bulk material transport systems are adjacent to and/or directly above Santa Fe Channel, Lauritzen Canal,  
15 Parr Canal, and/or San Francisco Bay.

16 171. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
17 from uncovered bulk material stockpiles on the Levin Facility, including but not limited to dust  
18 generated by wind, conveyors, and trucks, is deposited directly to Santa Fe Channel, Lauritzen Canal,  
19 Parr Canal, and/or San Francisco Bay.

20 172. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
21 from uncovered bulk material transport systems, including but not limited to dust generated by wind,  
22 conveyors, and trucks, on the Levin Facility is deposited directly to Santa Fe Channel, Lauritzen Canal,  
23 Parr Canal, and/or San Francisco Bay.

24 173. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
25 from uncovered bulk material stockpiles, including but not limited to dust generated by wind,  
26 conveyors, and trucks, on the Levin Facility is deposited to the storm sewer system on the Levin Facility  
27 during dry weather.

28 174. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust

1 from uncovered bulk material transport systems, including but not limited to dust generated by wind,  
2 conveyors, and trucks, on the Levin Facility is deposited to the storm sewer system on the Levin Facility  
3 during dry weather.

4 175. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
5 from uncovered bulk material stockpiles, including but not limited to dust generated by wind,  
6 conveyors, and trucks, on the Levin Facility is deposited to the storm sewer system adjacent to the Levin  
7 Facility during dry weather.

8 176. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
9 from uncovered bulk material transport systems, including but not limited to dust generated by wind,  
10 conveyors, and trucks, on the Levin Facility is deposited to the storm sewer system adjacent to the Levin  
11 Facility during dry weather.

12 177. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
13 is a pollutant, as defined by the Clean Water Act. 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.

14 178. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
15 discharged to Santa Fe Channel, Lauritzen Canal, Parr Canal, and/or San Francisco Bay is a discharge of  
16 pollutants to Waters of the United States, as defined by the Clean Water Act. 40 C.F.R. § 122.2.

17 179. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
18 from uncovered bulk material stockpiles and/or uncovered bulk material transport systems on the Levin  
19 Facility discharged to Santa Fe Channel, Lauritzen Canal, Parr Canal, and/or San Francisco Bay  
20 constitute prohibited non-storm water discharges. Storm Water Permit, Discharge Prohibition (A)(1).

21 180. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
22 from uncovered bulk material stockpiles and/or uncovered bulk material transport systems on the Levin  
23 Facility discharged to the storm sewer system on the Levin Facility during dry weather constitute  
24 prohibited non-storm water discharges. Storm Water Permit, Discharge Prohibition (A)(1).

25 181. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
26 from uncovered bulk material stockpiles and/or uncovered bulk material transport systems on the Levin  
27 Facility discharged to the storm sewer system adjacent to the Levin Facility during dry weather  
28 constitute prohibited non-storm water discharges. Storm Water Permit, Discharge Prohibition (A)(1).

1 182. Baykeeper is informed and believes, and thereon alleges, that fugitive coke and other dust  
2 from uncovered bulk material stockpiles and/or uncovered bulk material transport systems on the Levin  
3 Facility discharged to Santa Fe Channel, Lauritzen Canal, Parr Canal, and/or San Francisco Bay violate  
4 section 301(a) of the Clean Water Act.

5 **G. The Waters Receiving Discharges of Storm Water and Non-Storm Water**  
6 **Discharges from the Levin Facility**

7 183. Baykeeper is informed and believes, and thereon alleges, that during and/or after every  
8 significant rain event<sup>4</sup> and any other time storm water discharges from the Levin Facility, polluted storm  
9 water discharges from the Levin Facility via the storm drain system and into receiving waters.

10 184. Baykeeper is informed and believes, and thereon alleges, that the receiving waters into  
11 which the Levin Facility discharges polluted storm water are waters of the United States, and that the  
12 Storm Water Permit properly regulates discharges to those waters.

13 185. The EPA promulgated regulations for the Section 402 NPDES permit program defining  
14 waters of the United States. *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to  
15 include not only traditionally navigable waters but also other waters, including waters tributary to  
16 navigable waters, wetlands adjacent to navigable waters, and other waters including intermittent streams  
17 that could affect interstate commerce. The CWA requires any person who discharges or proposes to  
18 discharge pollutants into waters of the United States to submit an NPDES permit application. 40 C.F.R.  
19 § 122.21.

20 186. Santa Fe Channel is traditional navigable water and tributary to the San Francisco Bay.

21 187. Lauritzen Canal is traditional navigable water and tributary to the San Francisco Bay.

22 188. Parr Canal is traditional navigable water and tributary to the San Francisco Bay.

23 189. The Basin Plan lists the beneficial uses for the San Francisco Bay as: industrial service  
24 supply (IND); industrial process supply (PROC); shellfish harvesting (SHELL); navigation (NAV);  
25 commercial and sport fishing (COMM); water contact recreation (REC1); non-contact water recreation  
26 (REC2); estuarine habitat (EST); wildlife habitat (WILD); rare, threatened, or endangered species  
27

28 <sup>4</sup> A significant rain event is an event that produces storm water runoff, which according to the EPA  
occurs with more than 0.1 inches of precipitation.

1 (RARE); migration of aquatic organisms (MIGR); and spawning, reproduction and development  
2 (SPWN). *See* Basin Plan at Table 2-1.

3 190. Polluted storm water and non-storm water discharges from industrial facilities like the  
4 Levin Facility contribute to the impairment of surface waters.

5 **H. Defendants' Failure to Comply with the Storm Water Permit's SWPPP**  
6 **Requirements**

7 191. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
8 continue to fail to develop an adequate SWPPP for the Levin Facility that complies with Section A of  
9 the Storm Water Permit.

10 192. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
11 develop BMPs to achieve compliance with effluent limits violates the Effluent Limitations of the Storm  
12 Water Permit.

13 193. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
14 develop BMPs to achieve compliance with receiving water limits violates the Receiving Water  
15 Limitations of the Storm Water Permit.

16 194. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
17 continue to fail to implement an adequate SWPPP for industrial operations at the Levin Facility that  
18 complies with Section A of the Storm Water Permit.

19 195. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
20 continue to fail to develop an adequate site map as part of the SWPPP for industrial operations at the  
21 Levin Facility that complies with Section A of the Storm Water Permit.

22 196. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to  
23 develop an adequate site map for industrial operations at the Levin violates Section A(4) of the Storm  
24 Water Permit.

25 197. Baykeeper is informed and believes, and thereon alleges, that Defendants' SWPPP failed  
26 and continues to fail to include an adequate list of all non-storm water discharges and their source, in  
27 violation of Sections A(5) and A(6) of the Storm Water Permit.

28 198. Baykeeper is informed and believes, and thereon alleges, that Defendants' SWPPP failed

1 and continues to fail to develop, implement, and/or revise BMPs to prevent exposure of storm water to  
2 pollutants contaminating the five (5) acre Superfund site, in violation of Sections A(5) and A(6) of the  
3 Storm Water Permit.

4 199. Baykeeper is informed and believes, and thereon alleges, that Defendants are required to  
5 comply with the Clean Water Act and the Storm Water Permit though five (5) acres of the Levin facility  
6 are also regulated under the Comprehensive Environmental Response, Compensation, and Liability Act  
7 (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*

8 200. Baykeeper is informed and believes, and thereon alleges, that the requirements that  
9 Defendants develop, implement, and/or revise BMPs to prevent exposure of storm water to pollutants  
10 contaminating the five (5) acre Superfund site in compliance with the Clean Water Act and the Storm  
11 Water Permit do not, and will not, interfere with, or require changes to, the completed remediation at the  
12 Superfund site.

13 201. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
14 continue to fail to revise the SWPPP for the Levin Facility as necessary to ensure compliance with the  
15 Storm Water Permit in violation of Sections A(9) and A(10) of the Storm Water Permit.

16 **I. Defendants’ Failure to Comply with the Storm Water Permit’s Monitoring and**  
17 **Sampling Requirements**

18 202. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
19 continue to fail to develop an adequate M&RP for industrial operations at the Levin Facility that  
20 complies with Section B of the Storm Water Permit.

21 203. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
22 continue to fail to revise the M&RP for the Levin Facility as necessary to ensure compliance with the  
23 Storm Water Permit, in violation of Section B(2)(d) of the Storm Water Permit.

24 204. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
25 continue to fail to collect samples during the first hour of the first storm event of the Wet Season over  
26 the past five years, in violation of Section B(5)(a) of the Storm Water Permit.

27 205. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
28 continue to fail to analyze storm water samples for Biological Oxygen Demand, as required by Section

1 B(5)(c) of the Storm Water Permit.

2 206. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
3 continue to fail to analyze storm water samples collected at the Levin Facility for all toxic chemicals and  
4 other pollutants likely to be present in significant quantities in the storm water discharges, in violation of  
5 Section B(5)(c) of the Storm Water Permit.

6 207. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
7 continue to fail to demonstrate that storm water sampling for pesticides, such as DDT, is representative  
8 of pollutants from the Levin Facility, in violation of Storm Water Permit Section B(7).

9 208. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
10 continue to fail to sample storm water discharges from all discharge locations, in violation of Storm  
11 Water Permit Section B(7).

12 209. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
13 continue to fail to list sampling results from each monitoring location listed in Defendants' and M&RP  
14 in Defendants' Annual Storm Water reports, and/or the monitoring locations have changed without  
15 revision to the M&RP, in violation of Storm Water Permit Sections B(7) and B(14).

16 210. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
17 continue to fail to adequately revise the M&RP for the Levin Facility as necessary to ensure compliance  
18 with the Storm Water Permit in violation of Sections A(9) and A(10) of the Storm Water Permit.

19 **J. Defendants' Failure to Comply with the Storm Water Permit's Reporting**  
20 **Requirements**

21 211. Baykeeper is informed and believes, and thereon alleges, that since at least 1 July 2007  
22 Defendants have failed to submit Annual Reports that comply with Section B(14) of the Storm Water  
23 Permit.

24 212. Baykeeper is informed and believes, and thereon alleges, that Defendants' certifications  
25 of compliance with the Storm Water Permit in each of its past five (5) Annual Reports was erroneous  
26 because Defendants have not developed and/or implemented the required BMPs, or revised the SWPPP  
27 or the M&RP, as required by Sections A and B of the Storm Water Permit.

28 213. Baykeeper is informed and believes, and thereon alleges, that Defendants failed to submit

1 Annual Reports that contained explanations of their failures to implement activities required by the  
2 Storm Water Permit, as required by Section B(14) of the Storm Water Permit.

3 214. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed to  
4 submit complete Annual Reports to the Regional Board in violation of Section B(14) of the Storm Water  
5 Permit.

6 **VI. CLAIMS FOR RELIEF**

7 **FIRST CAUSE OF ACTION**

8 **Discharges of Contaminated Storm Water in Violation of**  
9 **the Storm Water Permit's Discharge Prohibitions and the Clean Water Act,**  
10 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

11 215. Baykeeper incorporates the allegations contained in the above paragraphs as though fully  
12 set forth herein.

13 216. Baykeeper is informed and believes, and thereon alleges, that Defendants discharged and  
14 continue to discharge storm water from the Levin Facility containing levels of pollutants that cause or  
15 threaten to cause pollution, contamination, or nuisance, in violation of Discharge Prohibition (A)(2) of  
16 the Storm Water Permit, during and/or after every significant rain event or any other storm water  
17 discharge from the Levin Facility occurring from 6 June 2007 through the present.

18 217. Baykeeper is informed and believes, and thereon alleges, that Defendants' violations of  
19 Discharge Prohibition (A)(2) of the Storm Water Permit and the CWA are ongoing.

20 218. Defendants will continue to be in violation of the Storm Water Permit and the CWA each  
21 and every time contaminated storm water discharges from the Levin Facility in violation of Discharge  
22 Prohibition (A)(2) of the Storm Water Permit.

23 219. Each and every time Defendants discharge contaminated storm water from the Levin  
24 Facility in violation of Discharge Prohibition (A)(2) of the Storm Water Permit is a separate and distinct  
25 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

26 220. By committing the acts and omissions alleged above, the Defendants are subject to an  
27 assessment of civil penalties for each and every violation of the CWA occurring from 6 June 2007 to the  
28 present pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and the  
Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).



1 system in violation of Discharge Prohibition (A)(1) of the Storm Water Permit.

2 228. Each and every time Defendants discharge non-storm water from the Levin Facility in  
3 violation of Discharge Prohibition (A)(1) of the Storm Water Permit is a separate and distinct violation  
4 of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

5 229. By committing the acts and omissions alleged above, the Defendants are subject to an  
6 assessment of civil penalties for each and every violation of the CWA occurring from 6 June 2007 to the  
7 present pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and the  
8 Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).

9 230. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
10 Continuing commission of the acts and omissions alleged above would irreparably harm Baykeeper and  
11 the citizens of the State of California, for which harm Baykeeper has no plain, speedy, or adequate  
12 remedy at law.

13 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

14 **THIRD CAUSE OF ACTION**  
15 **Discharges of Pollutants to Waters of the United States without**  
16 **NPDES Permit Coverage in Violation of the**  
**Clean Water Act, 33 U.S.C. §§ 1311(a), 1365(a) and 1365(f)**

17 231. Baykeeper incorporates the allegations contained in the above paragraphs as though fully  
18 set forth herein.

19 232. Baykeeper is informed and believes, and thereon alleges, that Defendants discharged and  
20 continue to discharge pollutants from the Levin Facility to Waters of the United States without NPDES  
21 Permit coverage, in violation of Clean Water Act section 301(a), 33 U.S.C. § 1311(a), each time fugitive  
22 coke and other dust, including but not limited to dust generated by wind, conveyors, and trucks,  
23 discharges from uncovered bulk material stockpiles and/or uncovered bulk material transport systems on  
24 the Levin Facility to a water of the United States from 6 June 2007 through the present.

25 233. Baykeeper is informed and believes, and thereon alleges, that Defendants' violations of  
26 Clean Water Act section 301(a), 33 U.S.C. § 1311(a) are ongoing.

27 234. Defendants will continue to be in violation of the Clean Water Act each and every time  
28 pollutants discharge from the Levin Facility to waters of the United States in violation of section 301(a)

1 of the Act.

2 235. Each and every time Defendants discharge pollutants from the Levin Facility without  
3 NPDES permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), is a separate  
4 and distinct violation.

5 236. By committing the acts and omissions alleged above, the Defendants are subject to an  
6 assessment of civil penalties for each and every violation of the CWA occurring from 6 June 2007 to the  
7 present pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and the  
8 Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).

9 237. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
10 Continuing commission of the acts and omissions alleged above would irreparably harm Baykeeper and  
11 the citizens of the State of California, for which harm Baykeeper has no plain, speedy, or adequate  
12 remedy at law.

13 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

14 **FOURTH CAUSE OF ACTION**  
15 **Discharges of Contaminated Storm Water in Violation of**  
16 **the Storm Water Permit's Effluent Limitation (B)(3) and the Clean Water Act,**  
17 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

18 238. Baykeeper incorporates the allegations contained in the above paragraphs as though fully  
19 set forth herein.

20 239. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
21 continue to fail to implement BAT/BCT at the Levin Facility, as storm water discharges from the Levin  
22 Facility contain concentrations of pollutants above EPA Benchmarks, in violation of Effluent Limitation  
23 (B)(3) of the Storm Water Permit, during and/or after every significant rain event or any other storm  
24 water discharge from the Levin Facility occurring from 6 June 2007 through the present.

25 240. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and  
26 continue to fail to implement BAT/BCT at the Levin Facility by, among other things, failing to fully  
27 enclose uncovered bulk material stockpiles and uncovered bulk material transport systems, in violation  
28 of Effluent Limitation (B)(3) of the Storm Water Permit.

29 241. Baykeeper is informed and believes, and thereon alleges, that Defendants' violations of

1 Effluent Limitation (B)(3) of the Storm Water Permit and the CWA are ongoing.

2 242. Defendants will continue to be in violation of the Storm Water Permit and the CWA each  
3 and every time contaminated storm water discharges from the Levin Facility in violation of Effluent  
4 Limitation (B)(3) of the Storm Water Permit.

5 243. Each and every time Defendants discharge contaminated storm water from the Levin  
6 Facility in violation of Effluent Limitation (B)(3) of the Storm Water Permit is a separate and distinct  
7 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

8 244. Defendants have been in violation of Effluent Limitation (B)(3) of the Storm Water  
9 Permit at the Levin Facility every day from 6 June 2007 to the present.

10 245. By committing the acts and omissions alleged above, the Defendants are subject to an  
11 assessment of civil penalties for each and every violation of the CWA occurring from 6 June 2007 to the  
12 present pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and the  
13 Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).

14 246. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
15 Continuing commission of the acts and omissions alleged above would irreparably harm Baykeeper and  
16 the citizens of the State of California, for which harm Baykeeper has no plain, speedy, or adequate  
17 remedy at law.

18 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

19 **FIFTH CAUSE OF ACTION**

20 **Discharges of Contaminated Storm Water in Violation of**  
21 **the Storm Water Permit's Receiving Water Limitations and the Clean Water Act,**  
22 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

23 247. Plaintiff incorporates the allegations contained in the above paragraphs as though fully  
24 set forth herein.

25 248. Baykeeper is informed and believes, and thereon alleges, that Defendants have  
26 discharged and continue to discharge storm water from the Levin Facility containing levels of pollutants  
27 that adversely impact human health and/or the environment in violation of Receiving Water Limitation  
28 (C)(1) of the Storm Water Permit during and/or after every significant rain event or any other storm  
water discharge from the Levin Facility occurring from 6 June 2007 through the present.

1           249. Baykeeper is informed and believes, and thereon alleges, that Defendants have  
2 discharged and continue to discharge storm water from the Levin Facility containing levels of pollutants  
3 that cause or contribute to exceedances of water quality standards in violation of Receiving Water  
4 Limitation (C)(2) of the Storm Water Permit, during and/or after every significant rain event or other  
5 storm water discharge from the Levin Facility occurring from 6 June 2007 through the present.

6           250. Baykeeper is informed and believes, and thereon alleges, that Defendants' violations of  
7 Receiving Water Limitation (C)(1) of the Storm Water Permit and the CWA from the Levin Facility are  
8 ongoing.

9           251. Baykeeper is informed and believes, and thereon alleges, that Defendants' violations of  
10 Receiving Water Limitation (C)(2) of the Storm Water Permit and the CWA from the Levin Facility are  
11 ongoing.

12           252. Defendants will continue to be in violation of the Storm Water Permit and the CWA each  
13 and every time storm water containing pollutants at levels that violate Receiving Water Limitation  
14 (C)(1) of the Storm Water Permit discharges from the Levin Facility.

15           253. Defendants will continue to be in violation of the Storm Water Permit and the CWA each  
16 and every time storm water containing pollutants at levels in violation of Receiving Water Limitation  
17 (C)(2) of the Storm Water Permit discharges from the Levin Facility.

18           254. Each and every violation of Receiving Water Limitation (C)(1) of the Storm Water  
19 Permit is a separate and distinct violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

20           255. Each and every violation of Receiving Water Limitation (C)(2) of the Storm Water  
21 Permit is a separate and distinct violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

22           256. By committing the acts and omissions alleged above, the Defendants are subject to an  
23 assessment of civil penalties for each and every violation of the CWA occurring from 6 June 2007 to the  
24 present pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and the  
25 Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).

26           257. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
27 Continuing commission of the acts and omissions alleged above would irreparably harm Baykeeper and  
28 the citizens of the State of California, for which harm Baykeeper has no plain, speedy, or adequate

1 remedy at law.

2 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

3 **SIXTH CAUSE OF ACTION**

4 **Failure to Adequately Develop, Implement and/or Revise a**  
5 **Storm Water Pollution Prevention Plan in Violation of the Storm Water Permit**  
6 **and Clean Water Act, 33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

7 258. Plaintiff incorporates the allegations contained in the above paragraphs as though fully  
8 set forth herein.

9 259. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
10 continue to fail to adequately develop a SWPPP for the Levin Facility, in violation of Section A and  
11 Provision E(2) of the Storm Water Permit.

12 260. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
13 continue to fail to adequately implement a SWPPP for the Levin Facility, in violation of Section A and  
14 Provision E(2) of the Storm Water Permit.

15 261. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
16 continue to fail to identify and implement BMPs in the SWPPP for the Levin Facility that reduce or  
17 prevent pollutants in storm water discharges from the Levin Facility through implementation of  
18 BAT/BCT, as the SWPPP fails to identify and implement full enclosure of uncovered bulk material  
19 stockpiles and uncovered bulk material transport systems as a BMP, in violation of Section A(8) of the  
20 Storm Water Permit.

21 262. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
22 continue to fail to adequately revise a SWPPP for the Levin Facility, in violation of Sections A(9) and  
23 A(10) of the Storm Water Permit.

24 263. Defendants have been in violation of Section A and Provision E(2) of the Storm Water  
25 Permit at the Levin Facility every day from 6 June 2007 to the present.

26 264. Defendants' violations of Section A and Provision E(2) of the Storm Water Permit and  
27 the CWA at the Levin Facility are ongoing.

28 265. Defendants will continue to be in violation of Section A and Provision E(2) of the Storm  
Water Permit and the CWA each and every day Defendants fail to adequately develop, implement,

1 and/or revise the SWPPP for the Levin Facility.

2 266. Each and every violation of the Storm Water Permit's SWPPP requirements at the Levin  
3 Facility is a separate and distinct violation of the CWA.

4 267. By committing the acts and omissions alleged above, the Defendants are subject to an  
5 assessment of civil penalties for each and every violation of the CWA occurring from 6 June 2007 to the  
6 present pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and the  
7 Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).

8 268. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
9 Continuing commission of the acts and omissions alleged above would irreparably harm Baykeeper and  
10 the citizens of the State of California, for which harm Baykeeper has no plain, speedy, or adequate  
11 remedy at law.

12 WHEREFORE, Plaintiff prays for judgment against the Defendants as set forth hereafter.

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Adequately Develop, Implement, and/or Revise a**  
15 **Monitoring and Reporting Program in Violation of the Storm Water Permit**  
**and the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

16 269. Plaintiff incorporates the allegations contained in the above paragraphs as though fully  
17 set forth herein.

18 270. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
19 continue to fail to adequately develop an M&RP for the Levin Facility in violation of Section B and  
20 Provision E(3) of the Storm Water Permit.

21 271. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
22 continue to fail to adequately implement an M&RP for the Levin Facility in violation of Section B and  
23 Provision E(3) of the Storm Water Permit.

24 272. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and  
25 continue to fail to adequately revise an M&RP for the Levin Facility in violation of Section B and  
26 Provision E(3) of the Storm Water Permit.

27 273. The Defendants have been in violation of the Section B and Provision E(3) of the Storm  
28 Water Permit at the Levin Facility every day from 6 June 2007 to the present.



1 Reports were inaccurate and/or did not include a complete information in violation of Sections A(9) and  
2 B(14) of the Storm Water Permit.

3 283. Baykeeper is informed and believes, and thereon alleges, that Defendants' Annual  
4 Reports were inaccurate and stated that the SWPPP's BMPs address existing potential pollutant sources  
5 when they did not, in violation of Storm Water Permit Section B.

6 284. Baykeeper is informed and believes, and thereon alleges, that Defendants' Annual  
7 Reports were false and stated that the SWPPP was up to date when it was not, in violation of Section B  
8 of the Storm Water Permit.

9 285. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed to  
10 submit written reports identifying what additional BMPs will be implemented to achieve WQS even  
11 though the Levin Facility's discharges exceeded receiving Water Quality Standards, in violation of  
12 Receiving Water Limitations C(3) and C(4) of the Storm Water Permit.

13 286. Defendants have been in violation of the reporting requirements of the Storm Water  
14 Permit each day the Levin Facility has operated without reporting as required by Section B(14) of the  
15 Storm Water Permit.

16 287. Defendants' violations of the Reporting Requirements of the Storm Water Permit and the  
17 CWA are ongoing.

18 288. Defendants have been in daily and continuous violation of Section B(14) of the Storm  
19 Water Permit every day since at least 6 June 2007.

20 289. By committing the acts and omissions alleged above, the Defendants are subject to an  
21 assessment of civil penalties for each and every violation of the CWA occurring from 6 June 2007 to the  
22 present pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and the  
23 Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009).

24 290. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
25 Continuing commission of the acts and omissions alleged above would irreparably harm Baykeeper and  
26 the citizens of the State of California, for which harm Baykeeper has no plain, speedy, or adequate  
27 remedy at law.

28 WHEREFORE, Plaintiff prays judgment against the Defendants as set forth hereafter.

**VII. RELIEF REQUESTED**

291. Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

a. A Court order declaring Defendants to have violated and to be in violation of the Storm Water Permit and Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342, for their unlawful discharges of pollutants and violations of the substantive and procedural requirements of the Storm Water Permit and the CWA;

b. A Court order enjoining Defendants from violating the substantive and procedural requirements of the Storm Water Permit and Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342;

c. A Court order assessing civil monetary penalties for each violation of the CWA at \$32,500 per day per violation for violations occurring since 6 June 2007 through 12 January 2009, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

d. A Court order assessing civil monetary penalties for each violation of the CWA at \$37,500 per day per violation for violations occurring since 12 January 2009, as permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009);

e. A Court order awarding Plaintiff its reasonable costs of suit, including attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d); and

f. Any other relief as this Court may deem appropriate.

Dated: 19 October 2012

Respectfully submitted,



\_\_\_\_\_  
Daniel Cooper  
Caroline Koch  
LAWYERS FOR CLEAN WATER, INC.  
Attorneys for Plaintiff  
San Francisco Baykeeper





SAN FRANCISCO  
**BAYKEEPER**®

June 5, 2012

**VIA CERTIFIED MAIL**

Levin-Richmond Terminal Corporation  
Gary Levin, CEO  
402 Wright Avenue  
Richmond, California 94804

Levin-Richmond Terminal Corporation  
Bill Buffalow, Director of Operations  
402 Wright Avenue  
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Levin-Richmond Terminal Corporation  
Jim Holland, Facilities and Equipment  
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Levin-Richmond Terminal Corporation  
Tony Lester, Operations Supervisor  
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Levin Enterprises, Inc.  
Gary Levin, CEO  
112 Washington Avenue, #250  
Richmond, California 94801

Levin-Richmond Terminal Corporation  
Gary Levin, Registered Agent for  
Service of Process  
112 Washington Avenue, #250  
Richmond, California 94801

Levin Enterprises, Inc.  
Gary Levin, Registered Agent for Service of  
Process  
112 Washington Avenue, #250  
Richmond, California 94801

**Re: Notice of Violation and Intent to File Suit Under the Clean Water Act**

To Whom It May Concern:

I am writing on behalf of San Francisco Baykeeper (“Baykeeper”) in regard to violations of the Clean Water Act<sup>1</sup> and California’s Storm Water Permit<sup>2</sup> occurring at Levin-Richmond Terminal Corporation located at 402 Wright Avenue, Richmond, California 94804 (hereinafter the “Levin Facility”). The purpose of this letter is to put the owner(s) and/or operator(s) of the Levin Facility<sup>3</sup> on notice of the violations of the Storm Water Permit occurring at the Levin Facility, including, but not limited to, violations caused by discharges of polluted storm water from the Levin Facility into local water bodies. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, the Levin Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

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<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ.

<sup>3</sup> The owners and/or operators of the Levin Facility are identified in Section I(B) below and referred to hereinafter as the “Levin Facility Owners and/or Operators.”

Notice of Violation and Intent to File Suit

June 5, 2012

Page 2 of 20

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency (“EPA”), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This letter is being sent to you as the responsible owner(s), officer(s), and/or operator(s) of the Levin Facility, or as the registered agent for these individuals and entities. By this letter (“Notice Letter”), pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act, Baykeeper puts the Levin Facility Owners and/or Operators on notice that, after the expiration of sixty (60) days from the date of this letter, Baykeeper intends to file an enforcement action in Federal court against them for violations of the Storm Water Permit and the Clean Water Act.

## **I. Background**

### **A. San Francisco Baykeeper**

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its main office in San Francisco, California. Baykeeper’s purpose is to preserve, protect, and defend the environment, wildlife, and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area. To further its goals, Baykeeper actively seeks federal and state agency implementation of state and federal water quality related laws. As necessary, Baykeeper directly initiates enforcement actions on behalf of itself and its members. Baykeeper has over two thousand members who use and enjoy San Francisco Bay, its tributaries, and other waters for various recreational, educational, and spiritual purposes.

Baykeeper’s members’ use and enjoyment of these waters are adversely impacted by operations at the Levin Facility. Polluted storm water and non-storm water discharges from the Levin Facility to the Parr Canal, Lauritzen Canal,<sup>4</sup> Santa Fe Channel, and San Francisco Bay (collectively “Receiving Waters”). Discharges of polluted storm water and non-storm water from the Levin Facility degrade water quality and harm aquatic life in the Receiving Waters. Members of Baykeeper live, work, and/or recreate in or around the Receiving Waters. For example, Baykeeper members use and enjoy some or all the Receiving Waters for fishing, boating, swimming, bird watching, picnicking, viewing wildlife, and engaging in scientific study. The discharge of pollutants from the Levin Facility impairs each of these uses. Further, discharges of polluted storm water and non-storm water from the Levin Facility are ongoing and continuous. As a result, Baykeeper’s members’ use and enjoyment of the Receiving Waters has been and continues to be adversely impacted. Thus, the interests of Baykeeper’s members have been, are being, and will continue to be adversely affected by the failure of the Levin Facility Owners and/or Operators to comply with the Storm Water Permit and the Clean Water Act.

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<sup>4</sup> Levin Facility Owners and/or Operators refer to the same water body as the “Lauritzen Channel” and the “Lauritzen Canal” interchangeably. Baykeeper refers only to the Lauritzen Canal for purposes of clarity, and all such references include the “Lauritzen Channel.”

Notice of Violation and Intent to File Suit

June 5, 2012

Page 3 of 20

**B. The Owners and/or Operators of the Levin Facility**

The Levin Facility Owners and/or Operators submitted a Notice of Intent (“NOI”) to obtain Storm Water Permit coverage to the State Water Resources Control Board on March 27, 1992. The March 27, 1992 NOI identified the Owner/Operator of the Levin Facility as “Levin Enterprises” located 1800 Monterey, San Jose, California 95112. On May 25, 1998, Levin Facility Owners and/or Operators submitted a subsequent NOI to obtain Storm Water Permit coverage. The May 25, 1998 NOI identified the Owner/Operator of the Levin Facility as “Levin Enterprises” located at 550 Hamilton Avenue, Suite 329, Palo Alto, California 94301. Both NOIs identify the facility name and location as “Levin-Richmond Terminal Corporation, 402 Wright Avenue, Richmond, California 94804.” The March 27, 1992 NOI lists the Levin Facility Standard Industrial Classification (“SIC”) code of regulated activity as 4491 (*marine bulk terminal*).

Information available to Baykeeper indicates that Levin-Richmond Terminal Corporation is an active corporation registered in California. Information available to Baykeeper indicates that Levin-Richmond Terminal Corporation is an owner of the Levin Facility. Information available to Baykeeper indicates that Levin-Richmond Terminal Corporation is an operator of the Levin Facility. Information available to Baykeeper indicates that Levin Enterprises, Inc. is an active corporation registered in California. Information available to Baykeeper indicates that Levin Enterprises, Inc. is an owner of the Levin Facility. Information available to Baykeeper indicates that Levin Enterprises, Inc. is an operator of the Levin Facility.

The Registered Agent for both Levin-Richmond Terminal Corporation and Levin Enterprises, Inc. is Gary Levin at 112 Washington Avenue, #250, Richmond, California 94801.

The Levin Facility Owners and/or Operators have discharged and continue to discharge pollutants unlawfully from the Levin Facility into the Receiving Waters. As explained herein, the Levin Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

**C. Storm Water Pollution and the San Francisco Bay Watershed**

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Levin Facility pour into storm drains and the Receiving Waters. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Pollution entering surface waters via air deposition is also recognized as a significant cause of degradation of water quality. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated storm water and non-storm water discharges can and must be controlled for the San Francisco Bay ecosystem to regain its health.

Discharges of polluted storm water and non-storm water from marine bulk storage facilities such as the Levin Facility can carry pesticides, benzene and benzene compounds,

Notice of Violation and Intent to File Suit

June 5, 2012

Page 4 of 20

methyl tertiary butyl ether (“MTBE”), copper, polychlorinated biphenyl (“PCBs”), toluene, vanadium, lead and lead compounds, nickel compounds, zinc, aluminum, and iron. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, developmental, or reproductive harm. Discharges of polluted storm water and non-storm water to San Francisco Bay pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment. Polluted storm water discharges from the Levin Facility to the storm drain system, which then discharges to Receiving Waters. Polluted storm water and non-storm water also discharge from the Levin Facility directly to the Receiving Waters.

San Francisco Bay and its shoreline, tributaries, and adjacent wetlands are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished the Bay’s once-abundant and varied fisheries, the Bay and its wetlands and tributaries are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water contaminated with sediment, heavy metals and other pollutants, and non-storm water harm the special aesthetic and recreational significance that San Francisco Bay has for people in the surrounding communities. The public’s usage of San Francisco Bay for water contact sports exposes many people to toxic metals and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also damaged by storm water and non-storm water contaminants discharged to San Francisco Bay.

The California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”) issued the San Francisco Bay Basin (Region 2) Water Quality Control Plan (“Basin Plan”). The Basin Plan identifies the “Beneficial Uses” of water bodies in the region. The Beneficial Uses for the waters that receive polluted storm water discharges from the Levin Facility include: industrial service supply (IND); industrial process supply (PROC); shellfish harvesting (SHELL); navigation (NAV); commercial and sport fishing (COMM); water contact recreation (REC1); non-contact water recreation (REC2); estuarine habitat (EST); wildlife habitat (WILD); rare, threatened, or endangered species (RARE); migration of aquatic organisms (MIGR); and spawning, reproduction and development (SPWN). *See* Basin Plan at Table 2-1. The Basin Plan sets Water Quality Standards (“WQS”) intended to control activities that can adversely affect aquatic systems and to protect these beneficial uses, including, but not limited to, standards for oil and grease, pH, and heavy metals such as copper, lead, mercury, nickel, and zinc. *See* Basin Plan at Chpt. 3 and Table 3-3. Polluted storm water discharges from industrial sites like the Levin Facility contribute to the degradation of surface waters and aquatic dependent wildlife.

The State Water Resources Control Board Water Quality Control Plan for Enclosed Bays and Estuaries (“Estuary Plan”) establishes WQS for sediments in enclosed bays and estuaries such as the San Francisco Bay. These WQS require that pollutants in sediments shall not be present in quantities that, alone or in combination, are toxic to benthic communities in bays and estuaries of California, and that pollutants shall not be present in sediments at levels that will bioaccumulate in aquatic life to levels that are harmful to human health. *See* Estuary Plan at IV.A; IV.B. These WQS are intended to protect Beneficial Uses of San Francisco Bay, including

Notice of Violation and Intent to File Suit

June 5, 2012

Page 5 of 20

estuarine habitat, marine habitat, commercial and sport fishing, aquaculture, and shellfish harvesting. *See* Estuary Plan at Table 1.

## **II. The Levin Facility and Associated Discharges of Pollutants**

### **A. Levin Facility Parcels**

Information available to Baykeeper indicates that the Levin Facility is a 42-acre site consisting of five (5) parcels identified as: (1) Main Terminal; (2) North Parr Yard; (3) South Parr Yard; (4) West Parr Yard; and (5) Sequoia Yard.

The Main Terminal is located at 402 Wright Avenue bounded by Cutting Boulevard, BNSF railroad tracks, Fourth Street and Pacific Energy Partners LP, Santa Fe Channel, and Lauritzen Canal. The Main Terminal is used for the loading and unloading of dry bulk materials from ships, trucks, containers, and railroad cars. An equipment repair building is located on the Main Terminal with an adjacent outdoor equipment steam-cleaning area. A warehouse used for indoor storage of bulk materials and a hopper building used for storage of dry distilled grain are also located on the Main Terminal.

Five (5) acres of the Main Terminal are contaminated by pesticides, including dichlorodiphenyl trichloroethane (“DDT”), and are now a Superfund site on the National Priorities List. The Levin-Richmond Terminal Corporation purchased the site in 1981. The five-acre contaminated area was remediated with a partial concrete cap in 1999. The remaining five-acre area not capped with concrete was capped with geotextile fabric and gravel. Levin Facility Owners and/or Operations are responsible for operating and maintaining the remediation area.

The North Parr Yard parcel is located at 799 Wright Avenue bounded by Sims Metal of America, Wright Street, and South Eighth Street. Portions of the North Parr Yard are used for temporary storage of bulk materials, terminal equipment, and vehicles.

The South Parr Yard parcel is located at 790 Wright Avenue approximately 450 feet east of the Main Terminal. The South Parr Yard is bounded by Wright Avenue, South Eighth Street, Santa Fe Channel, and Parr Canal. The Parr Canal bisects the South Parr Yard parcel. The South Parr Yard is used for temporary storage and loading of dry bulk materials and rail cars that have been or are to be unloaded. Accumulated non-hazardous debris to be disposed of off site is also stored on the South Parr Yard.

Information available to Baykeeper indicates that the West Parr Yard and the Sequoia Yard are under long-term lease to Eagle Rock Aggregates, Inc. and CEMEX, respectively. Industrial activities occurring on the West Parr Yard and the Sequoia parcels, and storm water or non-storm water discharges resulting from those activities, are not included in this Notice Letter.

### **B. Levin Facility Industrial Activities and Pollutant Sources**

Information available to Baykeeper indicates that the following industrial operations are

Notice of Violation and Intent to File Suit

June 5, 2012

Page 6 of 20

conducted at the Levin Facility: bulk material storage; vehicle maintenance; rail car maintenance and/or cleaning; and bulk material handling. Information available to Baykeeper indicates that Levin Facility Owners and/or Operators also store hazardous waste such as waste oil, gasoline, diesel fuel, lubricating oils and grease, oxygen, liquid oxygen, acetylene, mapp gas, light aliphatic naphtha (cleaning solvent), and antifreeze on the Main Terminal parcel. Information available to Baykeeper indicates that steel scrap, aggregates, metallurgical coke, petroleum coke, green coke, coal, eucalyptus wood chips, iron ore, sand, aggregates, and bauxite are stored outdoors without adequate cover or containment, and near driveways leading out of the Levin Facility. Information available to Baykeeper indicates that industrial operations at the Levin Facility are conducted outdoors without adequate cover to prevent storm water exposure to pollutant sources or direct discharge of pollutants via air deposition, and without secondary containment or other measures to prevent polluted storm water and/or other pollutants from discharging from the Levin Facility.

Historically, pesticides were formulated, processed, and shipped from the five-acre portion of the Main Terminal that is now a Superfund site. While DDT accounted for approximately 95 percent of the pesticides handled at the Levin Facility, the pesticides aldrin, dieldrin, and endrin were also part of the historical industrial activities.

Sources of pollutants associated with the industrial activities at the Levin Facility include, but are not limited to: outdoor bulk material storage areas; rail car cleaning areas; oil and coolant storage and disposal areas; rail car storage areas; fluid draining area; vehicle and equipment maintenance areas; parking areas; shipping and receiving areas; loading and unloading areas; driveway areas; maintenance areas; office building(s); and the on-site material handling equipment such as conveyors, forklifts, and trucks. The Superfund site is also a source of pollutants associated with the historical use of the Levin Facility for which Levin Facility Owners and/or Operators are responsible.

Information available to Baykeeper also indicates that coal, petroleum coke, metallurgical coke, oil and grease, transmission and vehicle fluids (such as antifreeze and gasoline), metal particles, and other pollutants have been and continue to be tracked throughout the Levin Facility operations area. These pollutants accumulate at the bulk storage areas, the loading and unloading areas, and the parking lot and the driveways leading onto Wright Avenue, Cutting Boulevard, and/or Eighth Street. As a result, trucks and vehicles leaving the Levin Facility via staging areas and driveways are pollutant sources tracking sediment, dirt, oil and grease, metal particles, and other pollutants off-site.

### **C. Levin Facility Pollutants and Discharge Points**

The pollutants associated with operations at the Levin Facility include, but are not limited to: heavy metals such as zinc, copper, lead, aluminum, iron; benzene; oil and grease; fuel and fuel additives; total suspended solids ("TSS"); coolant; pH-affecting substances; pesticides such as DDT, aldrin, dieldrin, and endrin; and fugitive and other dust, dirt, and debris. The Levin Facility Owners' and/or Operators' failure to properly address pollutant sources and pollutants results in the exposure of pollutants associated with their industrial activities to precipitation, and

## Notice of Violation and Intent to File Suit

June 5, 2012

Page 7 of 20

results in the discharge of polluted storm water from the Levin Facility into Receiving Waters in violation of the Storm Water Permit. The Levin Facility Owners' and/or Operators' failure to properly address pollutant sources and pollutants also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act, and/or unpermitted discharges of pollutants in violation of the Clean Water Act.

Information available to Baykeeper indicates there are at least fourteen (14) storm water discharge points at the Levin Facility. Thirteen (13) of these discharge points are listed in the Levin Facility Storm Water Pollution Prevention Plan ("SWPPP") dated June 2003 as well as the Levin Facility's Annual Storm Water Reports (which are to be submitted to the Regional Board no later than July 1 each year). The discharge points are identified as: SW-1; SW-2; SW-3; SW-4; SW-5; SW-6; SW-7; NO. PARR SW-12; SO. PARR SW-10; and SO. PARR SW-11. Information available to Baykeeper indicates that SW-1 located on the Main Terminal discharges storm water from the Levin Facility to the storm drain system then to Santa Fe Channel and/or Lauritzen Canal. Information available to Baykeeper indicates that SW-2 on the Main Terminal collects storm water runoff from the piers and main storage/loading areas and then discharges storm water from the Levin Facility to Santa Fe Channel and/or Lauritzen Canal. Information available to Baykeeper indicates that SW-3 through SW-7 collect drainage from the northern portion of the Main Terminal via twenty-six (26) catch basins prior to discharging storm water from the Levin Facility to Lauritzen Canal. Information available to Baykeeper indicates that NO. PARR SW-12 located within the North Parr Yard discharges storm water from the Levin Facility to the City of Richmond municipal storm drainage system, which follows Eighth Street prior to discharging into the Parr Canal. Information available to Baykeeper indicates that SO. PARR SW-10 and SO. PARR SW-11 discharge storm water from the South Parr Yard on the Levin Facility to the City of Richmond storm sewer, which then discharges to the Parr Canal.

Information available to Baykeeper indicates that a truck route, leading out to Wright Avenue from the Levin Facility, is also a discharge point from the Levin Facility (referred to herein as "Discharge 11"). Storm water discharges from Discharge 11 to drop inlets to the storm drain system along Wright Avenue and South Fourth Street, which ultimately discharge to San Francisco Bay. Information available to Baykeeper indicates that oil, grease, fuel, metal shavings, and other pollutants are discharged from the Levin Facility via Discharge 11.

Finally, information available to Baykeeper indicates that polluted storm water and non-storm water discharge directly to Receiving Waters from each uncovered bulk material storage area. For example, fugitive dust and other pollutants from uncovered bulk material storage piles are discharged directly to Receiving Waters via air deposition. Levin Facility Owners and/or Operators fail to identify these direct discharge points from the Levin Facility. All discharge points ultimately discharge pollutants to the Receiving Waters.

The Levin Facility Owners and/or Operators have not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources, to prevent the exposure of pollutants to storm water, and to prevent the subsequent discharge of polluted storm water from the Levin Facility during rain events. Consequently, during rain events, storm water carries pollutants from the Levin Facility's uncovered operations areas,

Notice of Violation and Intent to File Suit

June 5, 2012

Page 8 of 20

uncovered piles, contaminated ground and floors, equipment, staging areas, sorting areas, shipping and receiving areas, parking lot, and other sources into the storm sewer system on the Levin Facility, which flows into Santa Fe Channel, Lauritzen Canal, and/or Parr Canal to San Francisco Bay. Levin Facility Owners' and/or Operators' failure to adequately develop and/or implement required BMPs has also caused the illegal discharge of non-storm water from the Levin Facility to Receiving Waters. These illegal discharges negatively impact Baykeeper's members' use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters, and by posing risks to human health and aquatic life.

### **III. Violations of the Clean Water Act and the Storm Water Permit**

In California, any person that discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); Storm Water Permit, Fact Sheet at VII.

#### **A. Discharges of Non-Storm Water from the Levin Facility in Violation of Discharge Prohibition A(1) and/or Unpermitted Discharges**

Discharge Prohibition A(1) of the Storm Water Permit prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States.

Information available to Baykeeper indicates that non-storm water discharges from the Levin Facility directly to the Receiving Waters – waters of the United States – in violation of Discharge Prohibition A(1). For example, direct non-storm water discharges from the Levin Facility occur each time fugitive dust and other pollutants are deposited directly into the Receiving Waters from uncovered bulk storage areas containing, among other items, petroleum coke, metallurgical coke, coal, aggregates, scrap metal, and/or bauxite via air deposition.

Each time the Levin Facility Owners and/or Operators discharge non-storm water in violation of Discharge Prohibition A(1) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). These violations are ongoing and will continue each time the Levin Facility Owners and/or Operators discharge non-storm water to Receiving Waters from uncovered bulk storage areas. Baykeeper will include additional violations when information becomes available. The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

In the alternative, discharges of fugitive dust and other pollutants from the Levin Facility to Receiving Waters are unpermitted discharges to waters of the United States in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). *See* Discharge Prohibition A(1). Each time the Levin Facility Owners and/or Operators discharge pollutants to waters of the United States without a permit in violation of Section 301(a) of the Clean Water Act is a separate and distinct violation. These violations are ongoing and will continue each time the Levin

Notice of Violation and Intent to File Suit

June 5, 2012

Page 9 of 20

Facility Owners and/or Operators discharge pollutants to Receiving Waters from uncovered bulk storage areas without a permit. Baykeeper will include additional violations when information becomes available. The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

**B. Discharges of Polluted Storm Water from the Levin Facility in Violation of Discharge Prohibition A(2) of the Storm Water Permit**

Discharge Prohibition A(2) of the Storm Water Permit prohibits storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Pollution is defined as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (1) the waters for beneficial uses or (2) facilities which serve these beneficial uses; pollution may include “contamination.” Cal. Water Code § 13050(*l*). Nuisance is defined as anything that (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; and (3) occurs during, or as a result of, the treatment or disposal of wastes. Cal. Water Code § 13050(*m*).

Storm water sampling at the Levin Facility demonstrates that storm water discharges contain concentrations of pollutants that cause or threaten to cause pollution, contamination, or nuisance in violation of Discharge Prohibition A(2). For example, Levin Facility Owners and/or Operators discharge violations of the Storm Water Permit described in sections III.C., III.D., and III.E. below cause or threaten to cause pollution, contamination, or nuisance by discharging polluted storm water containing elevated concentrations of pollutants, including, but not limited to, pesticides, benzene and benzene compounds, MTBE, copper, PCBs, toluene, vanadium, lead and lead compounds, nickel compounds, zinc, aluminum, or iron in violation of Discharge Prohibition A(2). *See, e.g.*, Attachment A. These discharges are injurious to health of the surrounding community, including Baykeeper members, that uses and enjoys San Francisco Bay, as many of these pollutants are known to cause cancer, birth defects, developmental, or reproductive harm, and can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters.

Information available to Baykeeper indicates that the storm water discharges from the Levin Facility violate Discharge Prohibition A(2) of the Storm Water Permit during and/or following every significant rain event.<sup>5</sup> Levin Facility Owners’ and/or Operators’ discharge violations of the Storm Water Permit are identified in Attachment A and Attachment B. Each time the Levin Facility Owners and/or Operators discharge polluted storm water in violation of

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<sup>5</sup> A significant rain event is an event that produces storm water runoff, which according to the United States Environmental Protection Agency occurs with 0.1 inches or more of precipitation. *See* United States Environmental Protection Agency, NPDES Storm Water Sampling Guidance Document, July 1992. Days with precipitation 0.1 inches or greater at the Levin Facility are reported by NOAA’s National Climatic Data Center at the Richmond station, <http://www7.ncdc.noaa.gov/IPS/coop/coop.html>.

Notice of Violation and Intent to File Suit

June 5, 2012

Page 10 of 20

Discharge Prohibition A(2) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). These violations are ongoing and will continue each time the Levin Facility Owners and/or Operators discharge polluted storm water to the Receiving Waters. Baykeeper will include additional violations when information becomes available. The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

**C. Discharges of Polluted Storm Water from the Levin Facility in Violation of Effluent Limitation B(1) of the Storm Water Permit**

Effluent Limitation (B)(1) requires that storm water discharges from facilities subject to storm water effluent limitations guidelines in Federal regulations (40 C.F.R. Subchapter N) shall not exceed the specified effluent limitations. As the Levin Facility is classified under SIC 4491, and as information available to Baykeeper indicates that industrial activities at the Levin Facility include cleaning rail tank cars transporting chemical and petroleum cargos, storm water discharges from the Levin Facility are required to comply with federal effluent limitations at 40 C.F.R. § 442.21 (“Federal Effluent Limitations”). The parameters regulated under 40 C.F.R. § 442.21 include: biological oxygen demand (“BOD”); TSS; oil and grease; fluoranthene; phenanthrene; and pH. *See also* 40 C.F.R. §§ 442.22; 442.23.

Storm water sampling at the Levin Facility demonstrates that storm water discharges contain concentrations of pollutants above the applicable federal effluent limits. For example, on March 18, 2011, a storm water sample from the Levin Facility had a TSS concentration of 222 mg/L. The federal daily maximum for TSS is 58 mg/L, and the monthly average effluent limit for TSS is 26 mg/L. 40 C.F.R. § 442.21. Accordingly, the Levin Facility discharged storm water containing a concentration of TSS approximately four (4) times the daily maximum, and 8.5 times higher than the allowable monthly limit.

Information available to Baykeeper indicates that the storm water discharges from the Levin Facility violate Effluent Limitation B(1) of the Storm Water Permit during and/or following every significant rain event.<sup>6</sup> Levin Facility Owners’ and/or Operators’ discharge violations of the Storm Water Permit are identified in Attachment A and Attachment B. These discharge violations are ongoing and will continue each time the Levin Facility Owners and/or Operators discharge polluted storm water in exceedance of federal effluent limitations. Baykeeper will update the number and dates of violation when additional information and data becomes available. Each time the Levin Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation (B)(1) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33

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<sup>6</sup> A significant rain event is an event that produces storm water runoff, which according to the United States Environmental Protection Agency occurs with 0.1 inches or more of precipitation. *See* United States Environmental Protection Agency, NPDES Storm Water Sampling Guidance Document, July 1992. Days with precipitation 0.1 inches or greater at the Levin Facility are reported by NOAA’s National Climatic Data Center at the Richmond station, <http://www7.ncdc.noaa.gov/IPS/coop/coop.html>.

Notice of Violation and Intent to File Suit

June 5, 2012

Page 11 of 20

U.S.C. §1311(a). The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

**D. Discharges of Polluted Storm Water from the Levin Facility in Violation of Effluent Limitation B(3) of the Storm Water Permit**

Effluent Limitation (B)(3) of the Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve best available technology economically achievable (“BAT”) for toxic pollutants<sup>7</sup> and best conventional pollutant control technology (“BCT”) for conventional pollutants.<sup>8</sup> The Federal Effluent Limitations define application of BAT for fluoranthene phenanthrene, and application of BCT for BOD, TSS, oil and grease, and pH as numeric effluent limitations.<sup>9</sup> A discharge of storm water which exceeds the Federal Effluent Limitations is a failure to achieve BAT/BCT as required by Effluent Limitation B(3) of the Storm Water Permit. Further, EPA Benchmarks are relevant and objective standards for evaluating whether a permittee’s BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the Storm Water Permit.<sup>10</sup>

Storm water sampling at the Levin Facility demonstrates that storm water discharges contain concentrations of pollutants above the Federal Effluent Limitations and EPA Benchmarks. *See, e.g.*, Attachment A. For example, on May 25, 2011 a storm water sample taken at the Levin Facility from discharge point SW-2 contained a concentration of TSS at 158 mg/L, 2.7 times the daily maximum effluent limit for TSS; on March 18, 2011 a storm water sample taken from storm water discharge point SW-1 contained a concentration of TSS at 222 mg/L, 3.8 times the daily maximum effluent limit for TSS. On January 18, 2010 a storm water sample taken from discharge location SW-2 contained a pH concentration of 2.3 SU, 2.6 times lower than the federal minimum effluent limit. On May 25, 2011 a storm water sample taken at the Levin Facility from discharge point SW-2 contained a concentration of lead at 0.11 mg/L, approximately 1.5 times the EPA Benchmark for lead.<sup>11</sup> A storm water sample taken at the Levin Facility on October 13, 2009 from discharge point SW-1 contained a concentration of zinc at 0.772 mg/L, approximately 6.5 times higher than the EPA Benchmark for zinc. Data available to Baykeeper indicate hundreds of sample results exceeding the EPA Benchmarks. *See* Attachment A. The repeated and significant exceedances of EPA Benchmarks demonstrate that the Levin Facility Owners and/or Operators have failed to develop and/or implement required BMPs at the Levin Facility that achieve compliance with the BAT/BCT standards.

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<sup>7</sup> Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

<sup>8</sup> Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

<sup>9</sup> BAT is defined at 40 C.F.R. § 442.23. BCT is defined at 40 C.F.R. § 442.22.

<sup>10</sup> *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 (“Multi-Sector Permit”), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

<sup>11</sup> EPA Benchmarks for certain pollutants, including copper and zinc, are hardness dependent. *See Multi-Sector Permit*, Fact Sheet at 101-102.

Notice of Violation and Intent to File Suit

June 5, 2012

Page 12 of 20

Regional Board and other publicly available documents establish that BAT/BCT for the Levin Facility is full enclosure of all uncovered bulk material storage areas. The Levin Facility Owners and/or Operators have failed and continue to fail to develop and/or implement required BMPs to prevent the exposure of storm water to pollutants, and to prevent discharges of polluted storm water from the Levin Facility in violation of Effluent Limitation B(3) of the Storm Water Permit.

Information available to Baykeeper indicates that Levin Facility Owners and/or Operators have also failed and continue to fail to develop, implement, and/or revise BMPs for operation and maintenance of the Superfund upland remediation area. For example, the SWPPP includes no references to BMPs specifically addressing the concrete cap located on the Main Terminal, though information available to Baykeeper indicates that there are cracks and/or signs of erosion in the concrete. Erosion and cracking of the concrete cap can result in the exposure of pollutants, such as DDT, to storm water which then discharges from the Levin Facility to Receiving Waters in violation of Effluent Limitation B(3) of the Storm Water Permit.

Information available to Baykeeper indicates that the storm water discharges from the Levin Facility violate Effluent Limitation B(3) of the Storm Water Permit during and/or following every significant rain event.<sup>12</sup> Levin Facility Owners' and/or Operators' discharge violations of the Storm Water Permit are identified in Attachment A and Attachment B. These discharge violations are ongoing and will continue each time the Levin Facility Owners and/or Operators discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Baykeeper will update the number and dates of violation when additional information and data becomes available. Each time the Levin Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation (B)(3) of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

**E. Discharges of Polluted Storm Water in Violation of Receiving Water Limitations C(1) and C(2) of the Storm Water Permit**

Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface water or groundwater that adversely impact human health or the environment. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit and the Clean Water Act. Receiving Water Limitation C(2) of the Storm Water Permit prohibits storm

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<sup>12</sup> A significant rain event is an event that produces storm water runoff, which according to the United States Environmental Protection Agency occurs with 0.1 inches or more of precipitation. *See* United States Environmental Protection Agency, NPDES Storm Water Sampling Guidance Document, July 1992. Days with precipitation 0.1 inches or greater at the Levin Facility are reported by NOAA's National Climatic Data Center at the Richmond station, <http://www7.ncdc.noaa.gov/IPS/coop/coop.html>.

## Notice of Violation and Intent to File Suit

June 5, 2012

Page 13 of 20

water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable WQS.<sup>13</sup> Discharges that contain pollutants in excess of an applicable WQS violate Receiving Water Limitation C(2) of the Storm Water Permit and the Clean Water Act.<sup>14</sup>

Available data demonstrates the storm water discharges from the Levin Facility contain elevated concentrations of pollutants such as lead, copper, and zinc, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Storm water sampling at the Levin Facility also demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the CTR WQS for copper is 0.009 mg/L and a sample of the storm water discharge from the Levin Facility on March 18, 2011 contained copper at a concentration of 0.19 mg/L, 21 times the WQS. The CTR WQS for lead is 0.0025 mg/L, and a sample taken at the Levin Facility on May 25, 2011 contained lead at a concentration of 0.11 mg/L, 44 times the WQS; a sample taken on March 18, 2011 contained a concentration of 0.24 mg/L, 96 times the WQS; and a sample taken on November 3, 2008 contained a concentration of 0.101 mg/L, 40.4 times the WQS. Finally, the CTR WQS for zinc is 0.12 mg/L, and a sample taken at the Levin Facility on May 25, 2011 contained a concentration of 0.41 mg/L, 3.4 times the WQS; a sample taken on March 18, 2011 contained a concentration of 0.91 mg/L, 7.6 times the WQS; and a sample taken on January 13, 2011 contained a concentration of 0.38 mg/L, 3 times the WQS.

Information available to Baykeeper indicates that discharges of polluted storm water from the Levin Facility to Receiving Waters cause or contribute to a violation of Estuary Plan WQS for sediments. For example, in violation of the Estuary Plan WQS for human health, storm water discharging from the Levin Facility contains, or likely contains in significant amounts, pollutants that bioaccumulate in aquatic life at levels harmful to human health, including DDT. Polluted storm water from the Levin Facility discharges to the Lauritzen Canal, which is adjacent to San Francisco Bay, and it is established that any fish caught from the Lauritzen Canal and some fish from San Francisco Bay are unsafe for human consumption due to bioaccumulation of pollutants such as DDT.<sup>15</sup> Further, EPA reported in 2011 that sediment data show an apparent increase in DDT concentrations in the Lauritzen Canal.<sup>16</sup> Fifteen (15) acres of marine sediment in the Lauritzen Canal is currently listed as a Superfund site for DDT contamination.

Information available to Baykeeper indicates that the storm water discharges from the Levin Facility violate Receiving Water Limitations C(1) and/or C(2) during and/or following

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<sup>13</sup> Water Quality Standards include pollutant concentration levels determined by the State Water Resources Control Board and the EPA to be protective of the Beneficial Uses of the receiving waters. Discharges above Water Quality Standards contribute to the impairment of the receiving waters' Beneficial Uses. Applicable Water Quality Standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR").

<sup>14</sup> WQS for certain pollutants, including copper and zinc, are hardness dependent. *See* 40 C.F.R. § 131.38.

<sup>15</sup> <http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/vwsoalphabetic/United+Heckathorn+Co.?OpenDocument>;  
[http://www.oehha.ca.gov/fish/nor\\_cal/2011SFbay.html](http://www.oehha.ca.gov/fish/nor_cal/2011SFbay.html).

<sup>16</sup> <http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/3dc283e6c5d6056f88257426007417a2/8776aab538fe809e8825791f005d4f84!OpenDocument>.

Notice of Violation and Intent to File Suit

June 5, 2012

Page 14 of 20

every significant rain event.<sup>17</sup> Levin Facility Owners' and/or Operators' discharge violations of the Storm Water Permit are identified in Attachment A and Attachment B. These discharge violations are ongoing and will continue each time contaminated storm water is discharged in violation of the Receiving Water Limitations of the Storm Water Permit. Baykeeper will update the number and dates of violation when additional information becomes available. Each time discharges of storm water from the Levin Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). Each time discharges of storm water from the Levin Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

**F. Failure to Implement and/or Revise an Adequate Storm Water Pollution Prevention Plan**

Section A(1) and Provision E(2) of the Storm Water Permit requires dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. 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 from the Levin Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Storm Water Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9). The SWPPP must also be revised as necessary to ensure compliance with the Storm Water Permit. *Id.*, Sections A(9) and A(10).

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other things, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system(s), structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity (*see* Section A(4)); a list of significant materials handled and stored at the site (*see* Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities; a description of significant spills and leaks, a list of all non-storm water discharges and their sources; and a description of locations where soil erosion

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<sup>17</sup> A significant rain event is an event that produces storm water runoff, which according to the United States Environmental Protection Agency occurs with 0.1 inches or more of precipitation. *See* United States Environmental Protection Agency, NPDES Storm Water Sampling Guidance Document, July 1992. Days with precipitation 0.1 inches or greater at the Levin Facility are reported by NOAA's National Climatic Data Center at the Richmond station, <http://www7.ncdc.noaa.gov/IPS/coop/coop.html>.

Notice of Violation and Intent to File Suit

June 5, 2012

Page 15 of 20

may occur (*see* Section A(6)). Sections A(7) and A(8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

Information available to Baykeeper indicates that the Levin Facility Owners and/or Operators have been conducting and continue to conduct operations at the Levin Facility with an inadequately developed and/or implemented SWPPP. The current SWPPP for the Levin Facility fails to include an adequate site map. The site map included with the Levin Facility SWPPP provides no description of storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity in violation of Section A(4) of the Storm Water Permit.

In violation of Sections A(5) and A(6) of the Storm Water Permit, the current SWPPP fails to include an adequate: (1) list of significant materials handled and stored at the site; (2) description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities; (3) description of significant spills and leaks; (4) list of all non-storm water discharges and their sources; and (5) description of locations where soil erosion may occur. For example, the SWPPP fails to list scrap metals as a significant material handled at the Levin Facility though Levin Facility Owners and/or Operators handled approximately 257,434 metric tons of scrap metal in 2007-2008, and 315,306 metric tons in 2008-2009 and 2009-2010. The SWPPP fails to provide an adequate description of potential pollutant sources for pollutants such as DDT, though the Levin Facility is located on the United Heckathorn Superfund site contaminated by DDT; in fact, the SWPPP makes no mention of the fact that the Levin Facility is located on a superfund site. The SWPPP provides no description of non-storm water discharges resulting from air deposition of fugitive dust from uncovered bulk material storage piles. And the SWPPP fails to describe locations where soil erosion may occur though information available to Baykeeper indicates that cracks and/or erosion of the concrete cap has occurred or may occur.

In violation of Sections A(7) through A(9) and Provision E(2) of the Storm Water Permit, Levin Facility Owners and/or Operators have failed and continue to fail to revise, evaluate, assess, or modify the SWPPP as necessary to develop and implement adequate BMPs, and to develop and/or implement a SWPPP that contains adequate BMPs to prevent the exposure of pollutant sources to storm water and adequate BMPs to prevent the subsequent discharge of polluted storm water from the Levin Facility. For example, Baykeeper's review of Regional Board documents indicates that Levin Facility Owners and/or Operators most recent SWPPP submitted to the Regional Board is dated June 2003. However, since June 2003, polluted storm water has discharged from the Levin Facility on hundreds of occasions evidencing the inadequacy of existing BMPs at the Levin Facility. *See* Attachment A and Attachment B. Levin Facility Owners' and/or Operators' site inspection have also put Levin Facility Owners and/or Operators on notice that existing BMPs established under the 2003 SWPPP have failed to prevent storm water exposure to pollutants.

Notice of Violation and Intent to File Suit

June 5, 2012

Page 16 of 20

Every day the Levin Facility Owners and/or Operators operate the Levin Facility with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Levin Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least June 5, 2007. These violations are ongoing, and Baykeeper will include additional violations when information becomes available. The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

**G. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate Monitoring and Reporting Program ("M&RP") by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* Storm Water Permit, Section B(2). The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and are evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Dischargers must also revise the M&RP to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4).

Sections B(3) through B(16) of the Storm Water Permit set forth the M&RP requirements. Sections B(5), B(6), and B(7) of the Storm Water Permit require dischargers to visually observe and collect samples of storm water discharges from all locations where storm water is discharged that represent the quality and quantity of the storm water discharges. The Levin Facility Owners and/or Operators are required to collect samples from each discharge location at the Levin Facility during the first hour of discharge from the first storm event of the wet season, and from all discharge locations during at least one other storm event in the same wet season. *See id.* Storm water samples shall be analyzed for TSS, pH, specific conductance, total organic carbon or oil and grease, and toxic chemicals and other pollutants that are likely to be present in significant quantities in the discharges. *Id.*, Section B(5)(c). The Levin Facility is a marine bulk terminal classified as SIC Code 4491, and therefore storm water discharges from the Levin Facility must also be analyzed for iron, lead, zinc, and aluminum. *Id.*; *see also* Storm Water Permit, Table D, Sector Q. And discharges from the Levin Facility must be sampled for parameters specifically required by the Regional Board, i.e., pesticides. *Id.* Finally, as industrial activity at the Levin Facility includes cleaning of rail tank cars transporting chemical and petroleum cargoes, Levin Facility Owners and/or Operators are required to analyze storm water samples for fluoranthene and phenanthrene. *Id.*, Section B(6); 40 C.F.R. § 442.21.

Information available to Baykeeper indicates that the Levin Facility Owners and/or Operators have been conducting operations at the Levin Facility with an inadequately developed and/or implemented M&RP. For example, in violation of Storm Water Permit Sections B(5) and

Notice of Violation and Intent to File Suit

June 5, 2012

Page 17 of 20

B(6) Levin Facility Owners and/or Operators have failed to analyze storm water samples for BOD, fluoranthene, and phenanthrene. Also in violation of Storm Water Permit Section B(5), Levin Facility Owners and/or Operators have failed to collect samples from all discharge locations during the first hour of the first storm event of the wet season because, for example, no samples were collected on October 4, 2008 though the significant rain event that occurred on October 4, 2008 was the first storm event of the 2008-2009 wet season. In violation of Storm Water Permit Section B(7), the M&RP for the Levin Facility also fails to demonstrate that storm water sampling for pesticides, such as DDT, is representative of pollutants from the Levin Facility because the M&RP includes no description of the relation between the monitoring locations and the United Heckathorn Superfund site. Also in violation of Storm Water Permit Section B(7) Levin Facility Owners and/or Operators fail to sample storm water discharges from all discharge locations, such as discharges directly from facility storage piles to Receiving Waters. Further, in violation of Storm Water Permit Sections B(7) and B(14), sampling results from each monitoring location listed in Levin's M&RP are not listed in Levin's Annual Storm Water reports, and/or the monitoring locations have changed without revision to the M&RP or SWPPP. Baykeeper's review of Regional Board documents indicates that the most recent M&RP for the Levin Facility is dated June 2003. Thus, the Levin Facility Owners and/or Operators have been and continue to be in violation of the Storm Water Permit for failing to adequately develop, implement and revise the M&RP.

The Levin Facility Owners' and/or Operators' failure to conduct sampling, monitoring, and reporting as required by the Storm Water Permit demonstrates that they have failed to develop, implement and/or revise an M&RP that complies with the requirements of Section B and Provision E(3) of the Storm Water Permit. Every day that the Levin Facility Owners and/or Operators conduct operations in violation of the specific monitoring and reporting requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Levin Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least June 5, 2007. These violations are ongoing, and Baykeeper will include additional violations when information becomes available. The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

#### **H. Failure to Comply with the Storm Water Permit's Reporting Requirements**

Section B(14) of the Storm Water Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not perform any activities required, and other information specified in Section B(13).

Since at least July 1, 2007 the Levin Facility Owners and/or Operators have failed to submit Annual Reports that comply with the Storm Water Permit reporting requirements, including filing incomplete Annual Reports that do not provide the required information. For

Notice of Violation and Intent to File Suit

June 5, 2012

Page 18 of 20

example, the Annual Reports for the 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011 Wet Seasons indicate that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; (3) all storm water discharge points were sampled as required; (4) no non-storm water discharges occurred; and (5) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Baykeeper, including a review of the Regional Board's files and the Levin Facility storm water sampling data, indicates that the Levin Facility Owners' and/or Operators' certification is erroneous. The Levin Facility Owners and/or Operators have not developed and/or implemented required BMPs, or revised the SWPPP. These failures result in the ongoing discharge of storm water containing pollutant levels in violation of the Storm Water Permit limitations, and prohibited non-storm water.

Finally, the Storm Water Permit requires a permittee whose discharge exceeds receiving WQS to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards. Storm Water Permit, Receiving Water Limitations C(3) and C(4). Information available to Baykeeper indicates that the Levin Facility Owners and/or Operators have failed to submit the reports required by Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. As such, the Levin Facility Owners and/or Operators are in daily violation of this requirement of the Storm Water Permit.

Each of the failures to report as required discussed above is a violation of the Storm Water Permit, and indicates a continuous and ongoing failure to comply with the Storm Water Permit's reporting requirements. Every day the Levin Facility Owners and/or Operators operate the Levin Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Levin Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least June 5, 2007. Baykeeper will include additional violations when information becomes available. The Levin Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 5, 2007.

#### **IV. Relief and Penalties Sought for Violations of the Clean Water Act**

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of a notice of intent to file suit letter. These provisions of law authorize civil penalties of up to \$32,500 per day per violation for all Clean Water Act violations between March 15, 2004 and January 12, 2009, and \$37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, Baykeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. §1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33

Notice of Violation and Intent to File Suit

June 5, 2012

Page 19 of 20

U.S.C. § 1365(d), Baykeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

**V. Conclusion**

Upon expiration of the 60-day notice period, Baykeeper will file a citizen suit under Section 505(a) of the Clean Water Act for the Levin Facility Owners' and/or Operators' violations of the Storm Water Permit. During the 60-day notice period, however, Baykeeper is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions please contact Baykeeper. Please direct all communications to Baykeeper's legal counsel:

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Sincerely,



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Jason Flanders, Program Director  
San Francisco Baykeeper

Notice of Violation and Intent to File Suit

June 5, 2012

Page 20 of 20

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**Attachment A: Table of Storm Water Sampling Data at the Levin Facility  
Demonstrating Storm Water Permit and Clean Water Act Violations**

<b>No.</b>	<b>Sampling Location</b>	<b>Sampling Date</b>	<b>Parameter</b>	<b>Value</b>	<b>Units</b>	<b>Storm Water Discharge Prohibition/Effluent Limitation/Receiving Water Limitation Violated</b>
1.	SW-1	5/25/2011	Aluminum Total	1.8	mg/L	A(2); B(3); C(1); C(2)
2.	SW-1	5/25/2011	Iron Total	5.5	mg/L	A(2); B(3); C(1); C(2)
3.	SW-1	5/25/2011	Lead Total	0.094	mg/L	A(2); B(3); C(1); C(2)
4.	SW-1	5/25/2011	Zinc Total	0.41	mg/L	A(2); B(3); C(1); C(2)
5.	SW-2	5/25/2011	Aluminum Total	2.7	mg/L	A(2); B(3); C(1); C(2)
6.	SW-2	5/25/2011	Iron Total	8.6	mg/L	A(2); B(3); C(1); C(2)
7.	SW-2	5/25/2011	Lead Total	0.11	mg/L	A(2); B(3); C(1); C(2)
8.	SW-2	5/25/2011	Zinc Total	0.42	mg/L	A(2); B(3); C(1); C(2)
9.	SW-2	5/25/2011	Electrical Conductivity @ 25 Deg. C	1510	umhos/cm	A(2); B(3); C(1); C(2)
10.	SW-2	5/25/2011	Total Suspended Solids (TSS)	158	mg/L	A(2); B(1); B(3);C(1); C(2)
11.	SW-1	3/18/2011	Aluminum Total	4.4	mg/L	A(2); B(3); C(1); C(2)
12.	SW-1	3/18/2011	Iron Total	15	mg/L	A(2); B(3); C(1); C(2)
13.	SW-1	3/18/2011	Lead Total	0.24	mg/L	A(2); B(3); C(1); C(2)
14.	SW-1	3/18/2011	Zinc Total	0.91	mg/L	A(2); B(3); C(1); C(2)
15.	SW-1	3/18/2011	Total Suspended Solids (TSS)	222	mg/L	A(2); B(1); B(3); C(1); C(2)
16.	SW-2	3/18/2011	Aluminum Total	9.5	mg/L	A(2); B(3); C(1); C(2)
17.	SW-2	3/18/2011	Iron Total	35	mg/L	A(2); B(3); C(1); C(2)
18.	SW-2	3/18/2011	Chemical Oxygen Demand (COD)	190	mg/L	A(2); B(3); C(1); C(2)
19.	SW-2	3/18/2011	Copper Total	0.19	mg/L	A(2); B(3); C(1); C(2)
20.	SW-2	3/18/2011	Lead Total	0.72	mg/L	A(2); B(3); C(1); C(2)
21.	SW-2	3/18/2011	Zinc Total	1.9	mg/L	A(2); B(3); C(1); C(2)
22.	SW-2	3/18/2011	Total Suspended Solids (TSS)	516	mg/L	A(2); B(1); B(3); C(1); C(2)
23.	S. PARR SW-11	3/18/2011	Aluminum Total	1.2	mg/L	A(2); B(3); C(1); C(2)
24.	S. PARR SW-11	3/18/2011	Iron Total	3	mg/L	A(2); B(3); C(1); C(2)
25.	S. PARR SW-11	3/18/2011	Chemical Oxygen Demand (COD)	3200	mg/L	A(2); B(3); C(1); C(2)
26.	S. PARR SW-11	3/18/2011	Zinc Total	0.12	mg/L	A(2); B(3); C(1); C(2)
27.	S. PARR SW-11	3/18/2011	Total Suspended Solids (TSS)	9530	mg/L	A(2); B(1); B(3); C(1); C(2)
28.	S. PARR SW-12	3/18/2011	Iron Total	1.3	mg/L	A(2); B(3); C(1); C(2)
29.	S. PARR SW-12	3/18/2011	Zinc Total	0.091	mg/L	A(2); B(3); C(1); C(2)

No.	Sampling Location	Sampling Date	Parameter	Value	Units	Storm Water Discharge Prohibition/Effluent Limitation/Receiving Water Limitation Violated
30.	SW-2	1/13/2011	Aluminum Total	3.1	mg/L	A(2); B(3); C(1); C(2)
31.	SW-2	1/13/2011	Iron Total	7	mg/L	A(2); B(3); C(1); C(2)
32.	SW-2	1/13/2011	Zinc Total	0.38	mg/L	A(2); B(3); C(1); C(2)
33.	SW-2	1/13/2011	Electrical Conductivity @ 25 Deg. C	239	umhos/cm	A(2); B(3); C(1); C(2)
34.	SW-3	1/13/2011	Electrical Conductivity @ 25 Deg. C	2440	umhos/cm	A(2); B(3); C(1); C(2)
35.	SW-4	1/13/2011	Electrical Conductivity @ 25 Deg. C	224	umhos/cm	A(2); B(3); C(1); C(2)
36.	SW-2	1/13/2011	Total Suspended Solids (TSS)	97	mg/L	A(2); B(1); B(3); C(1); C(2)
37.	SW-4	1/27/2010	Zinc Total	0.103	mg/L	A(2); B(3); C(1); C(2)
38.	SW-1	1/18/2010	Zinc Total	0.154	mg/L	A(2); B(3); C(1); C(2)
39.	SW-1	1/18/2010	Iron Total	3.16	mg/L	A(2); B(3); C(1); C(2)
40.	SW-1	1/18/2010	Aluminum Total	1.97	mg/L	A(2); B(3); C(1); C(2)
41.	SW-2	1/18/2010	Zinc Total	0.11	mg/L	A(2); B(3); C(1); C(2)
42.	SW-2	1/18/2010	pH	2.3	SU	A(2); B(1); B(3); C(1); C(2)
43.	S. PARR SW-10	1/18/2010	Iron Total	1.42	mg/L	A(2); B(3); C(1); C(2)
44.	S. PARR SW-10	1/18/2010	Electrical Conductivity @ 25 Deg. C	445	umhos/cm	A(2); B(3); C(1); C(2)
45.	S. PARR SW-11	1/18/2010	Electrical Conductivity @ 25 Deg. C	226	umhos/cm	A(2); B(3); C(1); C(2)
46.	SW-1	1/18/2010	Total Suspended Solids (TSS)	59	mg/L	A(2); B(1); B(3); C(1); C(2)
47.	SW-1	12/11/2009	Zinc Total	0.187	mg/L	A(2); B(3); C(1); C(2)
48.	SW-1	12/11/2009	Iron Total	1.07	mg/L	A(2); B(3); C(1); C(2)
49.	SW-2	12/11/2009	Zinc Total	0.24	mg/L	A(2); B(3); C(1); C(2)
50.	SW-2	12/11/2009	Iron Total	2	mg/L	A(2); B(3); C(1); C(2)
51.	SW-2	12/11/2009	Electrical Conductivity @ 25 Deg. C	217	umhos/cm	A(2); B(3); C(1); C(2)
52.	S. PARR SW-10	12/11/2009	Iron Total	1.18	mg/L	A(2); B(3); C(1); C(2)
53.	S. PARR SW-10	12/11/2009	Electrical Conductivity @ 25 Deg. C	449	umhos/cm	A(2); B(3); C(1); C(2)
54.	S. PARR SW-11	12/11/2009	Electrical Conductivity @ 25 Deg. C	31900	umhos/cm	A(2); B(3); C(1); C(2)

No.	Sampling Location	Sampling Date	Parameter	Value	Units	Storm Water Discharge Prohibition/Effluent Limitation/Receiving Water Limitation Violated
55.	N. PARR SW-12	12/11/2009	Electrical Conductivity @ 25 Deg. C	234	umhos/cm	A(2); B(3); C(1); C(2)
56.	SW-2	12/11/2009	Total Suspended Solids (TSS)	69	mg/L	A(2); B(1); B(3); C(1); C(2)
57.	SW-1	10/13/2009	Zinc Total	0.772	mg/L	A(2); B(3); C(1); C(2)
58.	SW-1	10/13/2009	Iron Total	4.8	mg/L	A(2); B(3); C(1); C(2)
59.	SW-1	10/13/2009	Aluminum Total	1.79	mg/L	A(2); B(3); C(1); C(2)
60.	SW-2	10/13/2009	Zinc Total	0.334	mg/L	A(2); B(3); C(1); C(2)
61.	SW-2	10/13/2009	Iron Total	1.97	mg/L	A(2); B(3); C(1); C(2)
62.	SW-2	10/13/2009	Total Suspended Solids (TSS)	230	mg/L	A(2); B(1); B(3); C(1); C(2)
63.	SW-1	10/13/2009	Total Suspended Solids (TSS)	70	mg/L	A(2); B(1); B(3); C(1); C(2)
64.	N. PARR SW-12	10/13/2009	Total Suspended Solids (TSS)	78	mg/L	A(2); B(1); B(3); C(1); C(2)
65.	S. PARR SW-10	10/13/2009	Iron Total	1.17	mg/L	A(2); B(3); C(1); C(2)
66.	S. PARR SW-10	10/13/2009	Electrical Conductivity @ 25 Deg. C	463	umhos/cm	A(2); B(3); C(1); C(2)
67.	S. PARR SW-11	10/13/2009	Electrical Conductivity @ 25 Deg. C	1210	umhos/cm	A(2); B(3); C(1); C(2)
68.	S. PARR SW-11	10/13/2009	pH	2.66	SU	A(2); B(1); B(3); C(1); C(2)
69.	N. PARR SW-12	10/13/2009	Zinc Total	0.198	mg/L	A(2); B(3); C(1); C(2)
70.	N. PARR SW-12	10/13/2009	Iron Total	3.37	mg/L	A(2); B(3); C(1); C(2)
71.	N. PARR SW-12	10/13/2009	Aluminum Total	1.99	mg/L	A(2); B(3); C(1); C(2)
72.	S. PARR SW-11	2/6/2009	Electrical Conductivity @ 25 Deg. C	45300	umhos/cm	A(2); B(3); C(1); C(2)
73.	SW-2	2/6/2009	Electrical Conductivity @ 25 Deg. C	915	umhos/cm	A(2); B(3); C(1); C(2)
74.	SW-2	2/6/2009	Zinc Total	0.0974	mg/L	A(2); B(3); C(1); C(2)
75.	S. PARR SW-11	2/6/2009	Chemical Oxygen Demand (COD)	126	mg/L	A(2); B(3); C(1); C(2)
76.	SW-1	2/6/2009	Zinc Total	0.278	mg/L	A(2); B(3); C(1); C(2)
77.	SW-1	2/6/2009	Iron Total	1.04	mg/L	A(2); B(3); C(1); C(2)
78.	S. PARR SW-11	11/3/2008	Iron Total	3.91	mg/L	A(2); B(3); C(1); C(2)
79.	S. PARR SW-11	11/3/2008	Aluminum Total	6.91	mg/L	A(2); B(3); C(1); C(2)
80.	SW-1	11/3/2008	Zinc Total	0.362	mg/L	A(2); B(3); C(1); C(2)
81.	SW-1	11/3/2008	Iron Total	2	mg/L	A(2); B(3); C(1); C(2)

No.	Sampling Location	Sampling Date	Parameter	Value	Units	Storm Water Discharge Prohibition/Effluent Limitation/Receiving Water Limitation Violated
82.	SW-1	11/3/2008	Aluminum Total	0.825	mg/L	A(2); B(3); C(1); C(2)
83.	SW-2	11/3/2008	Chemical Oxygen Demand (COD)	232	mg/L	A(2); B(3); C(1); C(2)
84.	SW-2	11/3/2008	Total Suspended Solids (TSS)	128	mg/L	A(2); B(1); B(3); C(1); C(2)
85.	S. PARR SW-11	11/3/2008	Total Suspended Solids (TSS)	65	mg/L	A(2); B(1); B(3); C(1); C(2)
86.	SW-2	11/3/2008	Electrical Conductivity @ 25 Deg. C	384	umhos/cm	A(2); B(3); C(1); C(2)
87.	SW-2	11/3/2008	Lead Total	0.101	mg/L	A(2); B(3); C(1); C(2)
88.	SW-2	11/3/2008	Zinc Total	0.6	mg/L	A(2); B(3); C(1); C(2)
89.	SW-2	11/3/2008	Iron Total	5.03	mg/L	A(2); B(3); C(1); C(2)
90.	SW-2	11/3/2008	Aluminum Total	1.5	mg/L	A(2); B(3); C(1); C(2)
91.	S. PARR SW-11	11/3/2008	Electrical Conductivity @ 25 Deg. C	8530	umhos/cm	A(2); B(3); C(1); C(2)
92.	SW-2	1/3/2008	Total Suspended Solids (TSS)	230	mg/L	A(2); B(1); B(3); C(1); C(2)
93.	SW-1	1/3/2008	Total Suspended Solids (TSS)	65	mg/L	A(2); B(1); B(3); C(1); C(2)
94.	SW-2	1/3/2008	Lead Total	0.17	mg/L	A(2); B(3); C(1); C(2)
95.	SW-2	1/3/2008	Zinc Total	0.65	mg/L	A(2); B(3); C(1); C(2)
96.	SW-2	1/3/2008	Iron Total	9.7	mg/L	A(2); B(3); C(1); C(2)
97.	SW-2	1/3/2008	Aluminum Total	4	mg/L	A(2); B(3); C(1); C(2)
98.	SW-1	1/3/2008	Zinc Total	0.3	mg/L	A(2); B(3); C(1); C(2)
99.	SW-1	1/3/2008	Iron Total	3.9	mg/L	A(2); B(3); C(1); C(2)
100.	SW-1	1/3/2008	Aluminum Total	2.3	mg/L	A(2); B(3); C(1); C(2)
101.	SW-2	10/12/2007	Total Suspended Solids (TSS)	110	mg/L	A(2); B(1); B(3); C(1); C(2)
102.	SW-1	10/12/2007	Total Suspended Solids (TSS)	61	mg/L	A(2); B(1); B(3); C(1); C(2)
103.	SW-2	10/12/2007	Electrical Conductivity @ 25 Deg. C	230	umhos/cm	A(2); B(3); C(1); C(2)
104.	SW-2	10/12/2007	Zinc Total	0.17	mg/L	A(2); B(3); C(1); C(2)
105.	SW-2	10/12/2007	Iron Total	2	mg/L	A(2); B(3); C(1); C(2)
106.	SW-2	10/12/2007	Aluminum Total	1	mg/L	A(2); B(3); C(1); C(2)
107.	SW-1	10/12/2007	Zinc Total	0.31	mg/L	A(2); B(3); C(1); C(2)
108.	SW-1	10/12/2007	Iron Total	1.1	mg/L	A(2); B(3); C(1); C(2)

**Attachment B: Table of Alleged Dates of Storm Water Permit and Clean Water Act Violations September 2007 to March 2012 for the Levin Facility**

<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
9/22/07	1/3/08	1/2/09	1/12/10	1/2/11	1/20/12
10/12/07	1/4/08	1/22/09	1/17/10	1/12/11	1/21/12
11/10/07	1/5/08	2/5/09	1/18/10	1/13/11	1/23/12
11/11/07	1/6/08	2/6/09	1/20/10	1/30/11	2/7/12
12/4/07	1/7/08	2/9/09	1/21/10	2/16/11	2/13/12
12/6/07	1/8/08	2/11/09	1/22/10	2/17/11	2/15/12
12/7/07	1/10/08	2/13/09	1/23/10	2/19/11	2/29/12
12/17/07	1/21/08	2/14/09	1/25/10	2/24/11	3/1/12
12/18/07	1/22/08	2/15/09	1/26/10	2/25/11	3/13/12
12/20/07	1/23/08	2/17/09	1/27/10	3/2/11	3/14/12
12/28/07	1/24/08	2/22/09	1/30/10	3/6/11	3/15/12
12/29/07	1/25/08	2/23/09	2/5/10	3/14/11	3/16/12
	1/26/08	2/24/09	2/6/10	3/15/11	3/17/12
	1/27/08	2/26/09	2/9/10	3/16/11	3/24/12
	1/28/08	3/1/09	2/12/10	3/18/11	3/25/12
	1/29/08	3/2/09	2/22/10	3/19/11	3/27/12
	1/31/08	3/3/09	2/23/10	3/20/11	3/28/12
	2/1/08	3/4/09	2/24/10	3/23/11	3/31/12
	2/2/08	3/5/09	2/26/10	3/24/11	
	2/3/08	3/15/09	2/27/10	3/25/11	
	2/19/08	3/16/09	3/2/10	3/26/11	
	2/20/08	3/22/09	3/3/10	4/9/11	
	2/21/08	4/7/09	3/10/10	4/13/11	
	2/22/08	4/8/09	3/12/10	4/21/11	
	2/23/08	5/2/09	3/25/10	5/16/11	
	2/24/08	5/3/09	3/31/10	5/25/11	
	3/15/08	5/5/09	4/1/10	5/31/11	
	4/23/08	9/16/09	4/2/10	6/4/11	
	10/4/08	10/13/09	4/3/10	6/28/11	
	10/31/08	10/15/09	4/4/10	6/29/11	
	11/1/08	10/19/09	4/5/10	9/4/11	
	11/2/08	11/21/09	4/11/10	9/5/11	
	11/3/08	12/11/09	4/12/10	9/6/11	
	11/4/08	12/12/09	4/20/10	10/4/11	
	12/14/08	12/14/09	4/27/10	10/5/11	
	12/19/08	12/16/09	4/28/10	10/6/11	

<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
	12/21/08	12/21/09	5/10/10	11/6/11	
	12/25/08	12/30/09	5/18/10	11/12/11	
			5/25/10	11/26/11	
			5/26/10		
			5/27/10		
			9/13/10		
			9/27/10		
			11/7/10		
			11/10/10		
			11/20/10		
			11/21/10		
			11/23/10		
			11/26/10		
			12/3/10		
			12/4/10		
			12/7/10		
			12/8/10		
			12/13/10		
			12/18/10		
			12/19/10		
			12/21/10		
			12/26/10		
			12/29/10		