

1 ANTHONY M. BARNES (Bar No. 199048)  
2 Email: amb@atalawgroup.com  
3 ERICA A. MAHARG (Bar No. 279396)  
4 Email: eam@atalawgroup.com  
5 KENYA S. ROTHSTEIN (Bar No. 340854)  
6 Email: ksr@atalawgroup.com  
7 AQUA TERRA AERIS (ATA) LAW GROUP  
8 8 Rio Vista Ave.  
9 Oakland, CA 94611  
10 Telephone: 917-371-8293

11 [Additional counsel p. 2]

12 *Attorneys for Plaintiff*

13 LOS ANGELES WATERKEEPER

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 LOS ANGELES WATERKEEPER, a  
17 California non-profit association,

18 Plaintiff,

19 v.

20 UNION PACIFIC RAILROAD  
21 COMPANY, a Delaware corporation,

22 Defendants.

Case No.:

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

1 Barak J. Kamelgard (Bar No. 298822)  
2 Email: Barak@lawwaterkeeper.org  
3 Benjamin A. Harris (Bar No. 313193)  
4 Email: ben@lawwaterkeeper.org  
5 Erina Kwon (Bar No. 235079)  
6 Email: erina@lawwaterkeeper.org  
7 LOS ANGELES WATERKEEPER  
8 360 E. 2nd Street Suite 250  
9 Los Angeles, CA 90012  
10 Phone: (310) 394-6162

11 WILLIAM CARLON (Bar No. 305739)  
12 Email: william@carlonlaw.com  
13 LAW OFFICE OF WILLIAM CARLON  
14 437 Post Street  
15 Napa, CA 94559  
16 Tel: (530) 514-4115

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1           **Los Angeles Waterkeeper (“LA Waterkeeper” or “Plaintiff”), by and**  
2 **through its counsel, hereby alleges the following upon information and belief:**

3           **I. JURISDICTION AND VENUE**

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

10           2.       Pursuant to 40 C.F.R. § 135.2(a)(2), on September 12, 2024, LA  
11 Waterkeeper issued a 60-day notice letter (the “Notice Letter”) to Defendant Union  
12 Pacific Railroad Company Chief Executive Officer VJ Vena, and Agent for Service  
13 of Process CT Corporation System as the responsible owners, officers, and/or  
14 operators of the Facilities located at: 1) 2442 E. Carson St., Long Beach CA, 90810,  
15 (“Dolores Facility”); 2) 17225 Arenth Ave., City of Industry, CA 91745 (“City of  
16 Industry Facility”); 3) 8636 Sorensen St., Santa Fe Springs, CA 90670 (“Valla  
17 Facility”); 4) 2401 E. Sepulveda Blvd., Long Beach, CA 90810 (“ICTF Facility”)  
18 (collectively, the “Facilities”).<sup>1</sup>

19           3.       The Notice Letter was also sent to the U.S. Attorney General, Acting  
20 Administrator of the United States Environmental Protection Agency (“EPA”), the  
21 Acting Administrator of EPA Region IX, the Executive Director of the State Water  
22 Resources Control Board (“State Board”), and the Executive Officer of the Regional  
23 Water Quality Control Board, Los Angeles Region, (“Regional Board”) as required  
24 by Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The Notice Letter is  
25 attached hereto as **Exhibit A** and is fully incorporated herein by reference.

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<sup>1</sup> The Facilities are fully described in Section V below.

1           4.     The Notice Letter informed Defendant of its ongoing violations of  
2 substantive and procedural requirements of the CWA, 33 U.S.C. § 1251 et seq. and  
3 California’s General Industrial Storm Water Permit, National Pollution Discharge  
4 Elimination System (“NPDES”) General Permit No. CAS000001 Water Quality  
5 Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-DWQ  
6 incorporating: 1) Federal Sufficiently Sensitive Test Method Ruling; 2) Total  
7 Maximum Daily Load (“TMDL”) Implementation Requirements; and 3) Statewide  
8 Compliance Options Incentivizing On-Site or Regional Storm Water Capture and  
9 Use, and as subsequently amended by Order No. 2018-0028-DWQ incorporating  
10 TMDL effluent limits (effective July 1, 2020) (hereafter the “Storm Water Permit” or  
11 “General Permit”) and the Clean Water Act at the industrial facilities with the  
12 following Waste Discharger Identification Numbers (“WDID”):

- 13           • City of Industry - 4 19I004578
- 14           • Dolores - 4 19I013943
- 15           • ICTF - 4 19I013944
- 16           • Valla Yard - 4 19I028582

17           5.     The Notice Letter informed Defendant of Plaintiff’s intent to file suit  
18 against Defendant to enforce the Storm Water Permit and the Clean Water Act.

19           6.     More than sixty (60) days have passed since both the Notice Letter was  
20 served on the Defendant and the State and Federal agencies. Plaintiff is informed and  
21 believes, and in turn alleges, that neither the EPA nor the State of California has  
22 commenced or is diligently prosecuting an action to redress the violations alleged in  
23 the Notice Letter and in this complaint. (*See* 33 U.S.C. § 1365(b)(1)(B).)

24           7.     This action is not barred by any prior administrative penalty under  
25 Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

26           8.     Venue is proper in the Central District of California pursuant to Section  
27 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations  
28 are located within this judicial district.

1 9. Plaintiff seeks relief for Defendant’s substantive and procedural  
2 violations of the Storm Water Permit and the Clean Water Act resulting from  
3 industrial activities at the Facilities.

4 **II. INTRODUCTION**

5 10. With every significant rainfall event, hundreds of millions of gallons of  
6 polluted rainwater, originating from industrial operations such as the Facilities  
7 referenced herein, pour into the storm drains and local waterways. The consensus  
8 among regulatory agencies and water quality specialists is that storm water pollution  
9 accounts for more than half of the total pollution entering marine and river  
10 environments each year. These surface waters, known as Receiving Waters, are  
11 ecologically sensitive areas. Although pollution and habitat destruction have  
12 drastically diminished once abundant and varied fisheries, these waters are still  
13 essential habitat for dozens of fish and bird species as well as macro-invertebrate and  
14 invertebrate species. Storm water and non-storm water contain sediment, heavy  
15 metals, such as aluminum, iron, chromium, copper, lead, mercury, nickel, and zinc, as  
16 well as high concentrations of nitrate and nitrite, and other pollutants. Exposure to  
17 polluted storm water harms the special aesthetic and recreational significance that the  
18 surface waters have for people in the surrounding communities. The public’s use of  
19 the surface waters exposes many people to toxic metals and other contaminants in  
20 storm water and non-storm water discharges. Non-contact recreational and aesthetic  
21 opportunities, such as wildlife observation, are also impaired by polluted discharges  
22 to the Receiving Waters.

23 11. Heavy metals, including copper, zinc, and lead that accumulate in  
24 lakes, oceans, rivers and streams threaten the environment and can instigate health  
25 problems and genetic changes in aquatic life, birds and other animals dependent on  
26 these waterbodies. These metals in water cannot be easily metabolized by aquatic  
27 organisms and can become enriched in organs such as the liver and kidney. Studies  
28 show that heavy metals can enter aquatic animals through their gills or during feeding

1 and bind with substances in the bodies of wildlife. High concentrations of total  
2 suspended solids (“TSS”) degrade optical water quality by reducing water clarity and  
3 decreasing light available to support photosynthesis. TSS has been shown to alter  
4 predator-prey relationships (for example, turbid water may make it difficult for fish to  
5 hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms.  
6 TSS can also be harmful to aquatic life because numerous pollutants, including  
7 metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher  
8 concentrations of TSS result in higher concentrations of toxins associated with those  
9 sediments. Inorganic sediments, including settleable matter and suspended solids,  
10 have been shown to negatively impact species richness, diversity, and total biomass  
11 of filter feeding aquatic organisms on bottom surfaces. Storm water discharged with  
12 high pH can damage the gills and skin of aquatic organisms and cause death at levels  
13 above 10 standard units. The pH scale is logarithmic, and the solubility of a substance  
14 varies as a function of the pH of a solution. A one-whole-unit change in SU  
15 represents a tenfold increase or decrease in ion concentration. If the pH of water is  
16 too high or too low, the aquatic organisms living within it will become stressed or  
17 die.

18       12. This complaint seeks a declaratory judgment, injunctive relief, the  
19 imposition of civil penalties, and the award of costs, including attorney and expert  
20 witness fees, for Defendant’s substantive and procedural violations of the Storm  
21 Water Permit and the Clean Water Act resulting from Defendant’s operations at the  
22 Facilities.

23       13. Plaintiff specifically alleges violations regarding Defendant’s discharge  
24 of pollutants from the Facilities into waters of the United States; violations of the  
25 monitoring, reporting, and best management practice requirements; and violations of  
26 other procedural and substantive requirements of the Storm Water Permit and the  
27 Clean Water Act, are ongoing and continuous.

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1 **III. PARTIES**

2 **A. Los Angeles Waterkeeper**

3 14. LA Waterkeeper is a non-profit 501(c)(3) public benefit corporation  
4 organized under the laws of the State of California. LA Waterkeeper maintains an  
5 office at 360 E. 2nd Street, Suite 250, Los Angeles, California 90012.

6 15. LA Waterkeeper’s members live and/or recreate in and around Los  
7 Angeles. LA Waterkeeper is dedicated to the preservation, protection, and defense of  
8 the environment, wildlife, and natural resources of local surface waters. To further  
9 these goals, LA Waterkeeper actively seeks federal and state agency implementation  
10 of the Clean Water Act and, where necessary, directly initiates enforcement actions  
11 on behalf of itself and others.

12 16. LA Waterkeeper members work, own homes and live in Los Angeles  
13 County and use and enjoy the waters near the Facilities, including the Coyote Creek,  
14 San Jose Creek, the San Gabriel River, Alamitos Bay, Dominguez Channel Estuary,  
15 Los Angeles and Long Beach Harbor, San Pedro Bay, and Pacific Ocean (the  
16 “Receiving Waters”). LA Waterkeeper members also use and enjoy the bordering  
17 parks, beaches, shorelines, pathways, golf courses, and athletic fields. They enjoy and  
18 use other connected waterways to bike, boat, kayak, bird watch, ride horses, view  
19 wildlife, hike, walk, run, fish, surf, swim, sail, and recreate. LA Waterkeeper  
20 members engage in scientific study through pollution and habitat monitoring and  
21 restoration activities in and along all these waters.

22 17. Discharges of polluted storm water and non-storm water from the  
23 Facilities degrade water quality and harm aquatic life in the Receiving Waters and  
24 impair LA Waterkeeper’s members use and enjoyment of those waters. The unlawful  
25 discharge of pollutants from the Facilities requires LA Waterkeeper to expend its  
26 limited resources to study and combat pollution from the Facilities.

27 18. The violations of the Storm Water Permit and Clean Water Act at the  
28 Facilities are ongoing and continuous, including but not limited to Defendant’s

1 discharge of polluted storm water from the Facilities. Thus, the interests Plaintiff's  
2 members have been, are being, and will continue to be adversely affected by  
3 Defendant's failure to comply with the Storm Water Permit and the Clean Water Act.

4 19. Continuing commission of the acts and omissions alleged above will  
5 irreparably harm Plaintiff and its members, for which they have no plain, speedy or  
6 adequate remedy at law.

7 20. The interests of LA Waterkeeper's members have been, are being, and  
8 will continue to be adversely affected by Defendant's failure to comply with the  
9 Clean Water Act and the Storm Water Permit. The relief sought herein will redress  
10 the harm to Plaintiff caused by Defendant's activities.

11 **B. The Owners and/or Operators of the Facilities**

12 21. Plaintiff is informed and believes, and thereon alleges, that Union  
13 Pacific Railroad Company maintains its principal place of business at 1400 Douglas  
14 Street, Omaha, NE 68179.

15 22. Plaintiff is informed and believes, and thereon alleges, that Union  
16 Pacific Railroad Company is the owner of the properties used by the Facilities.

17 23. Plaintiff is informed and believes, and thereon alleges, that Union  
18 Pacific Railroad is the owner and operator of the Facilities.

19 24. Plaintiff is informed and believes, and thereon alleges, that Union  
20 Pacific Railroad was formed in Delaware and is registered in California.

21 25. Plaintiff is informed and believes, and thereon alleges, that the name  
22 and address of the Agent for Service is CT Corporation System, 330 N. Brand Blvd.,  
23 Suite 700, Glendale, CA 91203.

24 26. Plaintiff is informed and believes, and thereon alleges, that the Chief  
25 Executive Officer of Union Pacific Railroad Company is V J Vena.

26 27. Plaintiff is informed and believes, and thereon alleges, that Michael  
27 Villa-Real is the Manager Environmental Field Ops of Union Pacific Railroad  
28 Company.



1 28. LA Waterkeeper refers to Defendant Union Pacific Railroad, and their  
2 management herein as the “Owners/Operators” of the Facilities.

3 **IV. STATUTORY BACKGROUND**

4 **A. The Clean Water Act**

5 29. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits  
6 the discharge of any pollutant into waters of the United States unless the discharge  
7 complies with various enumerated sections of the CWA. Among other things, Section  
8 301(a) prohibits discharges not authorized by, or in violation of, the terms of a  
9 National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant  
10 to Section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

11 30. Section 402(p) of the CWA establishes a framework for regulating  
12 municipal and industrial storm water discharges under the NPDES program. (33  
13 U.S.C. § 1342(p).) States with approved NPDES permit programs are authorized by  
14 Section 402(p) to regulate industrial storm water discharges through individual  
15 permits issued to dischargers and/or through the issuance of a single, statewide  
16 general permit applicable to all industrial storm water dischargers. (33 U.S.C. §  
17 1342.)

18 31. Section 301(b) of the Clean Water Act requires that all point source  
19 dischargers, including those discharging polluted storm water, must achieve  
20 technology-based effluent limitations by utilizing Best Available Technology  
21 Economically Achievable (“BAT”) for toxic and nonconventional pollutants and the  
22 Best Conventional Pollutant Control Technology (“BCT”) for conventional  
23 pollutants. (*See* 33 U.S.C. § 1311(b).)

24 32. The Clean Water Act requires point source discharges of pollutants to  
25 navigable waters be regulated by an NPDES permit. (33 U.S.C. §§ 1311(a), 1342.;  
26 *see* 40 C.F.R. § 122.26(c)(1).)

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1           33.       The “discharge of a pollutant” means, among other things, “any  
2 addition of any pollutant to navigable waters from any point source.” (33 U.S.C. §  
3 1362(12); *see* 40 C.F.R. § 122.2.)

4           34.       The term “pollutant” includes “dredged spoil, solid waste, incinerator  
5 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological  
6 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand,  
7 cellar dirt and industrial, municipal, and agricultural waste discharged into water.”  
8 (33 U.S.C. § 1362(6); *see* 40 C.F.R. § 122.2.)

9           35.       The term “point source” means any “discernible, confined and discrete  
10 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit,  
11 well, discrete fissure, container, rolling stock, concentrated animal feeding operation,  
12 or vessel or other floating craft, from which pollutants are or may be discharged.” (33  
13 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2.)

14           36.       “Navigable waters” means “the waters of the United States.” (33  
15 U.S.C. 1362(7); 33 CFR § 328.3.)

16           37.       Section 505(a)(1) and Section 505(f) of the Clean Water Act provide  
17 for citizen enforcement actions against any “person” who is alleged to be in violation  
18 of an “effluent standard or limitation . . . or an order issued by the Administrator or a  
19 State with respect to such a standard or limitation.” (*See* 33 U.S.C. §§ 1365(a)(1) and  
20 1365(f).)

21           38.       The Defendant is a “person[s]” within the meaning of Section 502(5)  
22 of the Clean Water Act, 33 U.S.C. § 1362(5).

23           39.       An action for injunctive relief is authorized under Section 505(a) of the  
24 CWA, (33 U.S.C. § 1365(a).)

25           40.       Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the  
26 Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each  
27 separate violation of the CWA occurring after November 2, 2015, commencing five  
28

1 years prior to the date of Notice of Violation and Intent to File Suit subjects  
2 Defendant to a penalty of up to \$66,712 per day per violation.

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

6 **B. California's Storm Water Permit**

7 42. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows each state to  
8 administer its own EPA-approved NPDES permit program for regulating the  
9 discharge of pollutants, including discharges of polluted storm water. States with  
10 approved NPDES permit programs are authorized by Section 402(b) to regulate  
11 industrial storm water discharges through individual NPDES permits issued to  
12 dischargers and/or through the issuance of a statewide general NPDES permit  
13 applicable to all industrial storm water dischargers. (*See* 33 U.S.C. § 1342(b).)

14 43. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the  
15 Administrator of the EPA has authorized California to issue NPDES permits,  
16 including general NPDES permits. California has designated the State Board and the  
17 Regional Boards to administer its NPDES program. (*City of Rancho Cucamonga v.*  
18 *Regional Water Quality Control Bd.*, (2006) 135 Cal. App. 4th 1377, 1380-81.) In  
19 California, the State Board is charged with regulating pollutants to protect  
20 California's water resources. (*See* Cal. Water Code § 13001.) The Storm Water  
21 Permit is a statewide general NPDES permit issued by the State Board pursuant to  
22 Section 402 of the CWA, 33 U.S.C. §§ 1342(b), (p), and 40 C.F.R § 123.25.  
23 Violations of the Storm Water Permit are also violations of the CWA. (Storm Water  
24 Permit, Section XXI(A).)

25 44. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt  
26 Water Quality Standards, including water quality objectives and beneficial uses for  
27 navigable waters of the United States. 33 U.S.C. § 1313(a). The CWA prohibits  
28 discharges from causing or contributing to a violation of such state Water Quality

1 Standards. (*See* 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. §  
2 122.44(d)(1).)

3 45. The State Board elected to issue a statewide general permit for  
4 industrial discharges. The State Board issued the Storm Water Permit on or about  
5 November 19, 1991, modified the Storm Water Permit on or about September 17,  
6 1992, and reissued the Storm Water Permit on or about April 17, 1997, pursuant to  
7 Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

8 46. On July 1, 2015, the current Storm Water Permit became effective and  
9 was issued as NPDES General Permit No. CAS000001 State Water Resources  
10 Control Board Water Quality Order No. 2014-0057-DWQ. (Storm Water Permit,  
11 Section I(A) (Finding 4).)

12 47. On November 6, 2018, the State Board amended the Storm Water  
13 Permit with Order No. 2015-0122-DWQ, incorporating: 1) Federal Sufficiently  
14 Sensitive Test Method Ruling; 2) TMDL Implementation Requirements; and 3)  
15 Statewide Compliance Options Incentivizing On-Site or Regional Storm Water  
16 Capture and Use (“2018 Permit Amendment”).

17 48. On July 1, 2020, the State Board subsequently amended the Storm  
18 Water Permit with Order No. 2018-0028-DWQ, incorporating TMDL effluent limits  
19 (“2020 Permit Amendment”).

20 49. In order to discharge storm water lawfully in California, industrial  
21 dischargers must secure coverage under the Storm Water Permit and comply with its  
22 terms or obtain and comply with an individual NPDES permit. (Storm Water Permit,  
23 Section I.A (Findings 8, 12).) Prior to beginning industrial operations, dischargers are  
24 required to apply for coverage under the Storm Water Permit by submitting a Notice  
25 of Intent to Comply with the Terms of the Storm Water Permit to Discharge Storm  
26 Water Associated with Industrial Activity (“NOI”) to the State Board. (Storm Water  
27 Permit, Section I.A (Finding 17), Section II.B.)  
28

1           **C. The Storm Water Permit’s Discharge Prohibitions, Effluent**  
2           **Limitations, and Receiving Water Limitations**

3           50.       The Storm Water Permit contains certain absolute prohibitions. The  
4 Storm Water Permit prohibits the direct or indirect discharge of materials other than  
5 storm water (“non-storm water discharges”), which are not otherwise authorized by  
6 an NPDES permit, to the waters of the United States. (Storm Water Permit, Discharge  
7 Prohibition III(B).)

8           51.       Effluent Limitations Section V(A) of the Storm Water Permit requires  
9 dischargers to reduce or prevent pollutants associated with industrial activity in storm  
10 water discharges through the implementation of Best Available Technology  
11 Economically Achievable (“BAT”) for toxic or non-conventional pollutants, and Best  
12 Conventional Pollutant Control Technology (“BCT”) for conventional pollutants.  
13 Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc,  
14 among others. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include  
15 biological oxygen demand, TSS, oil and grease (“O&G”), pH, and fecal coliform.

16           52.       Discharge Prohibition III(C) of the Storm Water Permit prohibits storm  
17 water discharges that cause or threaten to cause pollution, contamination, or nuisance.

18           53.       Under the CWA and the Storm Water Permit, dischargers must employ  
19 Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce or  
20 eliminate storm water pollution. 33 U.S.C. § 1311(b). (Storm Water Permit, Section  
21 V(A).) EPA has developed benchmark levels (“Benchmarks”) that are objective  
22 guidelines to evaluate whether a permittee’s BMPs achieve compliance with the  
23 BAT/BCT standards. (*See* Final National Pollutant Discharge Elimination System  
24 (NPDES) General Permit for Storm Water Discharges from Industrial Activities  
25 (“Multi-Sector Permit”), 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); Multi-Sector  
26 Permit, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector Permit, 65 Fed.  
27 Reg. 64,746, 64,766-67 (Oct. 30, 2000).)

1           54.       The 2015 Multi-Sector Permit parameter Benchmarks, among others,  
2 are as follows: TSS—100 mg/L; aluminum—0.75 mg/L; nitrate plus nitrite as  
3 nitrogen (“N+N”)—0.68 mg/L; ammonia—2.14 mg/L; lead—0.082 mg/L  
4 (freshwater)/0.21 mg/L (saltwater); cadmium—0.0021 mg/L (freshwater)/0.04 mg/L  
5 (saltwater); cyanide—0.022 mg/L; copper—0.014 mg/L (freshwater)/0.0048 mg/L  
6 (saltwater); zinc—0.12 mg/L (freshwater)/0.09 mg/L (saltwater); iron—1.0 mg/L;  
7 pH—6.0-9.0 s.u.; biological oxygen demand—30 mg/L; chemical oxygen demand—  
8 120 mg/L; arsenic—0.15 mg/L; magnesium—0.064 mg/L; nickel—0.47 mg/L;  
9 selenium—0.005 mg/L; and silver—0.0032 mg/L.<sup>2</sup>

10           55.       The EPA’s most recent, 2021 Multi-Sector Permit parameter  
11 Benchmarks for the following parameters, among others, are as follows: TSS—100  
12 mg/L; aluminum—1.1 mg/L; N+N—0.68 mg/L; ammonia—2.14 mg/L; lead—0.082  
13 mg/L (freshwater)/0.21 mg/L (saltwater); cadmium—0.0018 mg/L (freshwater)/0.033  
14 mg/L (saltwater); cyanide—0.022 mg/L; copper—0.00519 mg/L (freshwater)/0.0048  
15 mg/L (saltwater); zinc—0.12 mg/L (freshwater)/0.09 mg/L (saltwater); pH—6.0-9.0  
16 s.u.; biological oxygen demand—30 mg/L; chemical oxygen demand—120 mg/L;  
17 arsenic—0.15 mg/L; nickel—0.47 mg/L; selenium—0.0031 mg/L; and silver—  
18 0.0032 mg/L.

19           56.       The Storm Water Permit contains Numeric Action Levels (“NALs”)  
20 that generally mirror the 2008 EPA Benchmark Values. (*See* Storm Water Permit,  
21 Section I(M)(Finding 62).) Annual NALs, not accounting for water hardness, for the  
22 following parameters are: TSS—100 mg/L; copper—0.0332 mg/L; zinc—0.26 mg/L;  
23 nickel—1.02 mg/L; lead—0.262 mg/L; cyanide—0.022 mg/L; iron—1.0 mg/L;  
24 N+N—0.68 mg/L; O&G—15 mg/L; aluminum—0.75 mg/L; biological oxygen  
25 demand—30 mg/L; and chemical oxygen demand—120 mg/L. Storm Water Permit,  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The 2015 and 2021 Multi-Sector Permit parameter benchmarks for cadmium, nickel, silver, and zinc are dependent on water hardness where discharged into freshwater. The benchmark value listed herein is based on a hardness of 100 mg/L.

1 Table 2 at 47. Instantaneous Maximum NALs, for the following parameters are:  
2 pH—6.0 – 9.0 s.u.; TSS—400mg/L; O&G—25mg/L. (*Id.*)

3 57. An annual NAL exceedance occurs when the average of all the  
4 analytical results for a parameter from samples taken within a reporting year exceeds  
5 the annual NAL value for that parameter.

6 58. An instantaneous maximum NAL exceedance occurs when two (2) or  
7 more analytical results from samples taken for any single parameter within a  
8 reporting year exceed the instantaneous maximum NAL value or are outside of the  
9 instantaneous maximum NAL range for pH. (Stormwater Permit Section XII.A.)

10 59. Receiving Water Limitation Section VI(B) of the Storm Water Permit  
11 prohibits storm water discharges from adversely impacting human health or the  
12 environment.

13 60. Discharges with pollutant levels that exceed levels known to adversely  
14 impact aquatic species and the environment are violations of the Storm Water  
15 Permit’s Receiving Water Limitation. (Storm Water Permit, Section VI(B).)

16 61. Receiving Water Limitation Section VI(A) of the Storm Water Permit  
17 prohibit storm water discharges that cause or contribute to an exceedance of any  
18 “applicable Water Quality Standard in a Statewide Water Quality Control Plan or the  
19 applicable Regional Board’s Basin Plan.”

20 62. Water Quality Standards (“WQS”) are pollutant concentration levels  
21 determined by the State Board, the various Regional Boards, and the EPA to be  
22 protective of the beneficial uses of the waters that receive polluted discharges.

23 63. The State of California regulates water quality through the State Board  
24 and the nine Regional Boards. Each Regional Board maintains a separate Water  
25 Quality Control Plan which contains WQS for water bodies within its geographic  
26 area.

27 64. The State Water Quality Control Board, Los Angeles Region, has  
28 issued the Water Quality Control Plan for the Los Angeles Region (“the Basin Plan”)

1 to establish water quality objectives, implementation plans for point and non-point  
2 source discharges, prohibitions, and to further statewide plans and policies. The Basin  
3 Plan sets forth water quality objectives for dissolved metals such as aluminum,  
4 arsenic, and mercury. (Basin Plan, Table 3-8.) The Basin Plan states that the waters  
5 shall not receive sediment, settleable materials, or suspended materials that cause  
6 nuisance or adversely affect the waters' beneficial uses. (*Id.* at 3-44.) The Basin Plan  
7 also provides that "Toxic pollutants shall not be present at levels that will  
8 bioaccumulate in aquatic life to levels which are harmful to aquatic life or human  
9 health." (*Id.* at 3-29.)

10 65. The Basin Plan's WQS also requires a narrower pH range of 6.5 – 8.5  
11 pH units for inland surface waters such as San Jose Creek, Coyote Creek, and the San  
12 Gabriel River and its watershed, as well as for bays and estuaries such as Dominguez  
13 Channel Estuary, Alamitos Bay, and San Pedro Bay.

14 66. Pursuant to the Clean Water Act Section 303(d) list of impaired  
15 waterbodies, the following waterbodies that receive industrial stormwater discharges  
16 from the Facilities are impaired as follows:

- 17 • Reach 1 of San Jose Creek is impaired for toxicity, pH, total dissolved  
18 solids, ammonia, and indicator bacteria;
- 19 • Reach 3 of the San Gabriel River is impaired for indicator bacteria;
- 20 • Reach 2 of the San Gabriel River is impaired for cyanide, lead, and  
21 temperature;
- 22 • North Fork of Coyote Creek is impaired for indicator bacteria and  
23 selenium;
- 24 • Coyote Creek is impaired for copper (dissolved), indicator bacteria, iron,  
25 malathion, pH, and toxicity;
- 26 • Reach 1 of the San Gabriel River is impaired for pH and temperature;
- 27 • San Gabriel Estuary is impaired for copper, dioxin, indicator bacteria,  
28 nickel, and dissolved oxygen;



- 1 • Alamitos Bay is impaired for indicator bacteria and dissolved oxygen;
- 2 • San Pedro Bay near/off shore zones is impaired for chlordane, PCBs,
- 3 total DDT (sum of 4,4'- and 2,4'- isomers of DDT, DDE, and DDD), and
- 4 toxicity;
- 5 • Dominguez Channel Estuary is impaired for dieldrin, benthic community
- 6 effects, toxicity, chlordane, DDT, benzo(a)pyrene, benzo(a)anthracene,
- 7 chlordane, chrysene (c1-c4), copper, lead, phenanthrene, PCBs, pyrene,
- 8 zinc, and indicator bacteria;
- 9 • Los Angeles/Long Beach Inner Harbor is impaired for benthic
- 10 community effects, benzo(a)pyrene, chrysene (C1-C4), copper, DDT,
- 11 PCBs, toxicity, and, zinc; and;
- 12 • Los Angeles/Long Beach Outer Harbor is impaired for DDT, PCBs, and
- 13 toxicity.

14 67. The Basin Plan specifies potential, intermittent and existing beneficial  
15 uses for each of the Receiving Waters herein, including municipal and domestic  
16 supply, warm freshwater habitat, wildlife habitat, and rare, threatened, or endangered  
17 species. (Basin Plan, Table 2-1.)

18 68. Surface waters that cannot support the Beneficial Uses of those waters  
19 listed in the Basin Plan are designated as impaired water bodies pursuant to Section  
20 303(d) of the Clean Water Act, 33 U.S.C. §1313(d).

21 69. The Receiving Waters are impaired, and Defendant's discharges of  
22 pollutants above the WQS contributes to the continued impairment of the receiving  
23 water's beneficial uses

24 70. In addition, EPA has promulgated WQS for toxic priority pollutants in  
25 all California water bodies ("California Toxics Rule" or "CTR"), which apply to the  
26 Receiving Waters, unless expressly superseded by the Basin Plan. (40 C.F.R. §  
27 131.38.) The CTR sets forth lower numeric limits for zinc and other pollutants; CTR  
28 criteria can be as low as, copper (0.013 mg/L) and zinc (0.12 mg/L) in freshwater

1 surface waters with water hardness calculation of 50 mg/L.<sup>3</sup> For saltwater there are  
2 lower standards for copper (0.0048 mg/L) and zinc (0.09 mg/L) under the CTR.

3 71. The CTR includes further numeric criteria set to protect human health  
4 and the environment in the State of California. (See Establishment of Numeric  
5 Criteria for Priority Toxic Pollutants for the State of California Factsheet, EPA-823-  
6 00-008 (April 2000), available at: <https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criteria-priority-toxic-pollutants-state>.)

8 72. Discharges with pollutant levels in excess of the CTR criteria, the  
9 Basin Plan, and/or other applicable WQS are violations of the Storm Water Permit's  
10 Receiving Water Limitations. (*See* Storm Water Permit, Section VI(A).)

11 **D. The Storm Water Permit's Numeric Effluent Limitations**

12 73. Effective July 1, 2020, the Storm Water Permit establishes numeric  
13 effluent limitations ("NELs") for facilities that discharge storm water associated with  
14 industrial activities into water bodies that have approved TMDLs set forth in Storm  
15 Water Permit, Attachment E. TMDLs in place for pollutants discharged from  
16 industrial facilities to the Los Angeles River and its tributaries include nitrogen and  
17 metals. (Storm Water Permit, Attachment E, Table E-1.)

18 74. Discharges from the Valla Facility are subject to the Coyote Creek and  
19 its tributaries TMDL requirements, which include the following NELs: copper  
20 (0.027 mg/L), lead (0.106 mg/L), and zinc (0.158 mg/L). (Storm Water Permit,  
21 Attachment E, Table E-2.) Applicable NELS for the City of Industry Facility relating  
22 to the San Gabriel River Reach 2 or its tributaries include lead (0.166 mg/L). (*Id.*)  
23 For the Dominguez Channel Estuary, San Pedro Bay, and the Greater Los  
24 Angeles/Long Beach Harbor waters, the NELs do not come into effect until 2032.  
25 However, the Permit establishes the following interim requirements, effective July 1,  
26

27  
28 <sup>3</sup> The CTR numeric limits, or "criteria," are expressed as dissolved metal concentrations in the CTR, but the Storm Water Permit requires permittees to report their sample results as total metal concentrations. (*See* Storm Water Permit, Attachment H at ¶ 18.)

1 2020: for the Los Angeles/Long Beach Harbor waters and San Pedro Bay,  
2 instantaneous maximum TNALs for copper (0.0058 mg/L); 4, 4' DDT (5.9x10<sup>-7</sup>  
3 mg/L); lead (0.221 mg/L); PCBs (1.7 x10<sup>-7</sup> mg/L); and zinc (0.095 mg/L). (*Id.*)

4 75. An exceedance of an NEL constitutes a violation of the General Permit.  
5 (General Permit, Attachment C at 5.) An NEL exceedance occurs when two (2) of  
6 more analytical results from samples taken for any single parameter within a  
7 reporting year exceed the instantaneous maximum NEL value listed in Table E-2 of  
8 Attachment E to the General Permit. (*Id.*)

9 76. A Discharger that is notified by a Regional Board or who determines the  
10 discharge is causing or contributing to an exceedance of a water quality standard  
11 must comply with the Water Quality Based Corrective Actions in Section XX.B of  
12 the General Permit and report to the Regional Board regarding same. (*See* General  
13 Permit Section XX.B.) A discharger who violates an NEL must also comply with the  
14 Water Quality Based Corrective Actions of the Permit. (*See* General Permit Sections  
15 V(C), VII(A)(1), VII(E) and Attachment E.)

16 **E. The Storm Water Permit's Storm Water Pollution Prevention Plan**  
17 **Requirements**

18 77. Dischargers must develop and implement a Storm Water Pollution  
19 Prevention Plan ("SWPPP") at the time industrial activities begin. (Storm Water  
20 Permit, Sections I(I) (Finding 54) and X(B).) The SWPPP must identify and evaluate  
21 sources of pollutants associated with industrial activities that may affect the quality of  
22 storm water and authorized non-storm water discharges from the Facilities. (Storm  
23 Water Permit, Section X(G).) The SWPPP must identify and implement site-specific  
24 BMPs to reduce or prevent pollutants associated with industrial activities in storm  
25 water and authorized non-storm water discharges. (Storm Water Permit, Section  
26 X(H).) The SWPPP must include BMPs that achieve pollutant discharge reductions  
27 attainable via BAT and BCT. (Storm Water Permit, Sections I(D) (Finding 32) and  
28 X(C).)

1           78.       The SWPPP must include: a narrative description and summary of all  
2 industrial activity, potential sources of pollutants, and potential pollutants; a site map  
3 indicating the storm water conveyance system, associated points of discharge,  
4 direction of flow, areas of actual and potential pollutant contact, including the extent  
5 of pollution-generating activities, nearby water bodies, and pollutants control  
6 measures; a description of storm water management practices; a description of the  
7 BMPs to be implemented to reduce or prevent pollutants in storm water discharges  
8 and authorized non-storm water discharges; the identification and elimination of non-  
9 storm water discharges; the location where significant materials are being shipped,  
10 stored, received, and handled, as well as the typical quantities of such materials and  
11 the frequency with which they are handled; a description of dust and particulate-  
12 generating activities; and a description of individuals and its current responsibilities  
13 for developing and implementing the SWPPP. (Storm Water Permit, Section X.)

14           79.       The Site Map shall include the following information: the facility  
15 boundary; storm water drainage areas within the facility boundary; portions of any  
16 drainage area impacted by discharges from surrounding areas and flow direction of  
17 each drainage area; on-facility surface water bodies; areas of soil erosion; location(s)  
18 of nearby water bodies (such as rivers, lakes, wetlands, etc.); location(s) of municipal  
19 storm drain inlets that may receive the facility's industrial storm water discharges and  
20 authorized Non-Storm Water Discharges (NSWDs); locations of storm water  
21 collection and conveyance systems and associated points of discharge, and direction  
22 of flow; any structural control measures (that affect industrial storm water discharges  
23 authorized NSWDs, and run-on); all impervious areas of the facility, including paved  
24 areas, buildings, covered storage areas, or other roofed structures; locations where  
25 materials are directly exposed to precipitation; locations where significant spills or  
26 leaks identified have occurred; areas of industrial activity subject to this General  
27 Permit; all storage areas and storage tanks; shipping and receiving areas; fueling  
28 areas; vehicle and equipment storage/maintenance areas; material handling and

1 processing areas; waste treatment and disposal areas; dust or particulate generating  
2 areas; cleaning and material reuse areas; and, any other areas of industrial activity  
3 which may have potential pollutant sources. (Storm Water Permit, Attachment D.)

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

9 81. The Storm Water Permit requires the discharger to evaluate the  
10 SWPPP on an annual basis and revise it as necessary to ensure compliance with the  
11 Storm Water Permit. (Storm Water Permit, Section X(A)-(B).) The Storm Water  
12 Permit also requires that the discharger conduct an annual comprehensive site  
13 compliance evaluation that includes a review of all visual observation records,  
14 inspection reports and sampling and analysis results, a visual inspection of all  
15 potential pollutant sources for evidence of, or the potential for, pollutants entering the  
16 drainage system, a review and evaluation of all BMPs to determine whether the  
17 BMPs are adequate, properly implemented and maintained, or whether additional  
18 BMPs are needed, and a visual inspection of equipment needed to implement the  
19 SWPPP. (Storm Water Permit, Section X(B) and Section XV.)

20 82. The SWPPP and site maps must be assessed annually and revised as  
21 necessary to ensure accuracy and effectiveness. (Storm Water Permit, Sections I(J)  
22 (Finding 55) and X(B)(1).) Significant SWPPP revisions must be certified and  
23 submitted by the discharger via the State Board's electronic database, called the  
24 Storm Water Multiple Application & Report Tracking System ("SMARTS") within  
25 30 days. (Storm Water Permit, Section X(B)(2).) Dischargers are required to submit  
26 revisions to the SWPPP that are determined to not be significant every three (3)  
27 months in the reporting year. (Id. at Section X(B)(3); Storm Water Permit, Fact  
28 Sheet, Section II(I)(1).)

1           **F. The Storm Water Permit’s Monitoring Implementation Program**  
2           **Requirements**

3           83.       The Storm Water Permit requires facility operators to develop and  
4 implement a Monitoring Implementation Plan (“MIP”). (Storm Water Permit  
5 Sections X(I) and XI(A)–(D).) The MIP must ensure that storm water discharges  
6 comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water  
7 Limitations specified in the Storm Water Permit. (Storm Water Permit Section XI.)  
8 The MIP must ensure that practices at the Facilities to prevent or reduce pollutants in  
9 storm water and authorized non-storm water discharges are evaluated and revised to  
10 meet changing conditions at the Facilities, including revision of the SWPPP. (*Id.*)

11           84.       Further objectives of the MIP are to ensure that BMPs have been  
12 adequately developed and implemented, revised if necessary, and to ensure that storm  
13 water and non-storm water discharges comply with the Storm Water Permit’s  
14 Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations.  
15 (Storm Water Permit, Section XI.)

16           85.       The MIP aids in the implementation and revision of the SWPPP and  
17 measures the effectiveness of BMPs to prevent or reduce pollutants in storm water  
18 discharges. (*Id.*)

19           86.       The Storm Water Permit requires facility operators to monitor and  
20 sample storm water discharges to ensure that the facility is complying with the terms  
21 of the permit. (Storm Water Permit, Sections I(J) (Findings 55–56) and XI.)

22           87.       Section XI(A)(4) of the Storm Water Permit requires that the MIP  
23 shall be revised as necessary to ensure compliance with the Storm Water Permit.

24           88.       Section XI(A) of the Storm Water Permit requires dischargers to  
25 conduct monthly visual observations of storm water discharges.

26           89.       Section XI(A)(2) of the Storm Water Permit requires dischargers to  
27 document the presence of any floating and suspended materials, O&G, discolorations,  
28 turbidity, or odor in the discharge, and the source of any pollutants in storm water

1 discharges from the facility. Dischargers are required to maintain records of  
2 observations, observation dates, discharge locations observed, and responses taken to  
3 reduce or prevent pollutants from contacting storm water discharges. (See Storm  
4 Water Permit, Section XI(A)(3).) The Storm Water Permit also requires dischargers  
5 to revise the SWPPP as necessary to ensure that BMPs are effectively reducing  
6 and/or eliminating pollutants at the facility. (Storm Water Permit, Section X(B)(1).)

7 90. The Storm Water Permit requires dischargers to visually observe and  
8 collect samples of storm water discharges from all locations where storm water is  
9 discharged. (Storm Water Permit, Section XI(B)(4).)

10 91. Section XI(B)(1) of the Storm Water Permit requires sampling if a  
11 precipitation event produces a discharge for at least one drainage area, and it is  
12 preceded by forty-eight (48) hours with no discharge from any drainage area  
13 (“Qualifying Storm Event” or “QSE”).

14 92. Section XI(B)(2) of the Storm Water Permit requires dischargers to  
15 collect and analyze storm water samples from two (2) QSEs within the first half of  
16 each reporting year (July 1 to December 31), and two (2) QSEs within the second half  
17 of each reporting year (January 1 to June 30).

18 93. Section XI(B)(6) of the Storm Water Permit requires dischargers to  
19 analyze storm water samples for TSS, O&G, pH, and additional parameters identified  
20 by the discharger on a facility-specific basis that serve as indicators of the presence of  
21 all industrial pollutants identified in the pollutant source assessment, additional  
22 applicable industrial parameters related to receiving waters with 303(d) listed  
23 impairments or approved TMDLs, and additional parameters required by the  
24 Regional Water Board.

25 94. All facilities are required to sample storm water for TSS, O&G, and  
26 pH. Union Pacific’s Facilities operate under Standard Industrial Classification Code  
27 (“SIC”) Code 4011—railroads, line haul operating. All four of Union Pacific  
28 Facilities must also sample and analyze additional parameters identified on a facility-

1 specific basis to reflect a facilities' pollutant source assessment, as required by the  
2 Storm Water Permit and the Regional Board, and additional parameters related to  
3 receiving waters with 303(d) listed impairments. (Storm Water Permit, Section  
4 XI(B)(6).)

5 95. The City of Industry Facility only samples for TSS, O&G, and pH  
6 despite the City of Industry SWPPP noting that metals are a potential pollutant at  
7 certain industrial drainage areas at the Facility; the Dolores Facility only samples for  
8 TSS, O&G, and pH despite the Dolores Industry SWPPP noting that metals are a  
9 potential pollutant at certain industrial drainage areas at the Facility; the IFTC  
10 Facility samples for TSS, O&G, pH, and copper; and the Valla Facility samples for  
11 TSS, O&G, pH, copper, and zinc.

12 96. Section XVI of the Storm Water Permit requires dischargers to submit  
13 an annual report with a Compliance Checklist that indicates whether a Discharger  
14 complies with, and has addressed all applicable requirements of the permit, an  
15 explanation for any non-compliance of requirements within the reporting year, as  
16 indicated in the Compliance Checklist, an identification, including page numbers  
17 and/or Sections, of all revisions made to the SWPPP within the reporting year, and  
18 the date(s) of the Annual Evaluation.

19 **G. Exceedance Response Action Requirements**

20 97. When the 2015 Permit became effective on July 1, 2015, all permittees  
21 were in "Baseline status." (See 2015 Permit, Section XII(B).) A permittee's Baseline  
22 status for any given parameter changes to "Level 1 status" if sampling results indicate  
23 a NAL exceedance for that same parameter. (See Storm Water Permit, Section  
24 XII(C).)

25 98. Level 1 status commences on July 1 following the reporting year  
26 during which the exceedance(s) occurred. (See Storm Water Permit, Section XII(C).)  
27 By October 1 following commencement of Level 1 status, permittees are required to:  
28 complete an evaluation, with the assistance of a Qualified Industrial Stormwater



1 Practitioner (“QISP”), of the industrial pollutant sources at the facility that are or may  
2 be related to the NAL exceedance(s); and identify in the evaluation the corresponding  
3 BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to  
4 prevent future NAL exceedances and to comply with the requirements of the Storm  
5 Water Permit. (See Storm Water Permit Section XII(C)(1)(a)-(c).)

6 99. Although the evaluation may focus on the drainage areas where the  
7 NAL exceedance(s) occurred, all drainage areas shall be evaluated. (See Storm Water  
8 Permit, Section XII(C)(1)(c).)

9 100. Based upon this Level 1 status evaluation, the permittee is required to,  
10 as soon as practicable but no later than January 1 following commencement of Level  
11 1 status, revise the SWPPP as necessary and implement any additional BMPs  
12 identified in the evaluation, certify and submit via SMARTS a Level 1 Exceedance  
13 Response Action (“ERA”) Report prepared by a QISP that includes a summary of the  
14 Level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any  
15 additional BMPs for each parameter that exceeded an NAL. (See Storm Water  
16 Permit, Section XII(C)(2)(a)(i)-(ii).)

17 101. The permittee in Level 1 status must also certify and submit via  
18 SMARTS the QISP’s identification number, name, and contact information  
19 (telephone number, e-mail address) no later than January 1 following commencement  
20 of Level 1 status. (See Storm Water Permit, Section XII(C)(2)(a)(iii).)

21 102. A permittee’s Level 1 status for a parameter will return to Baseline  
22 status once a Level 1 ERA Report has been completed, all identified additional BMPs  
23 have been implemented, and results from four (4) consecutive qualified storm events  
24 that were sampled subsequent to BMP implementation indicate no additional NAL  
25 exceedances for that parameter. (See Storm Water Permit, Section XII(C)(2)(b).)

26 103. A permittee’s Level 1 status for any given parameter shall change to  
27 Level 2 status if sampling results indicate an NAL exceedance for that same  
28 parameter while the Discharger is in Level 1. Level 2 status commences on July 1

1 following the reporting year during which the NAL exceedance(s) occurred. (See  
2 Storm Water Permit, Section XII(D).)

3 104. A Discharger in Level 2 status shall submit a Level 2 ERA Action Plan  
4 prepared by a QISP that addresses each new Level 2 NAL exceedance by January 1  
5 following the reporting year during which the NAL exceedances occurred. On  
6 January 1 of the reporting year following the submittal of the Level 2 ERA Action  
7 Plan, a Discharger shall certify and submit a Level 2 ERA Technical Report prepared  
8 by a QISP to SMARTS. (*See*, Storm Water Permit, Section XII(D).)

9 **V. STATEMENT OF FACTS**

10 **A. The City of Industry Facility Site Description, Industrial Activities,  
11 and Pollutant Sources**

12 105. Defendant Union Pacific operates the City of Industry Facility located  
13 at 17225 Arenth Ave., City of Industry, CA 91748. The City of Industry Facility’s  
14 primary industrial purposes are as a rail line maintenance and fueling yard, and  
15 transportation corridor; the Facility operates under SIC Code 4011 (railroads, line-  
16 haul operating). The site is 119-acres; however, Union Pacific asserts that industrial  
17 activities occur within only 8 acres of the Facility within eight designated regulated  
18 areas under the Storm Water Permit.<sup>4</sup> The City of Industry Facility SWPPP lists the  
19 operating hours as 24 hours per day, seven (7) days per week.

20 106. Pursuant to the City of Industry Facility SWPPP, industrial storm water  
21 runoff from the Facility discharges to the City of Industry Municipal Separate Storm  
22 Sewer System (“MS4”) before discharging to San Jose Creek.

23  
24  
25  
26 <sup>4</sup> At this time, LA Waterkeeper does not have sufficient information to confirm or deny that  
27 regulated areas at the City of Industry Facility are limited to 8 acres. The eight designated areas of  
28 industrial activity are: Area 1 - Locomotive Service Track; Area 2 - Intermodal Chassis Repair  
Area; Area 3 - Intermodal Crane and Truck Repair Area; Area 4 - Intermodal Fueling Area; Area  
4A - Wastewater Treatment Plant; Area 5A - TTX Car Repair Area; Area 7A - Roadability Lane;  
and Area 7B – Intermodal Hostler Maintenance Area.

1 107. Industrial activities at the City of Industry Facility include truck and  
2 trailer repairs; locomotive maintenance and repair and TTX<sup>5</sup> railcar maintenance and  
3 repair including wheel replacement, frame servicing and servicing air lines; fueling of  
4 equipment and vehicles; scrap metal storage, storage of industrial materials and  
5 waste; fueling railroad locomotives; loading fuel into tanker trucks to transport fuel to  
6 locomotives; vehicle washing; vehicle and other maintenance; crane servicing,  
7 repairs, and steam cleaning; transport of materials at the City of Industry Facility;  
8 waste storage; vehicle fueling; and waste water collection and treatment.

9 108. The industrial areas and associated activities generate and release  
10 pollutants at the City of Industry Facility which are discharged into storm water.

11 109. Pollutants of concern from the industrial activities and areas at the City  
12 of Industry Facility include metals, pH, TSS, and O&G. These pollutants are subject  
13 to accumulation and tracking to other areas of the City of Industry Facility or offsite  
14 and are ultimately discharged in storm water. Pollutant accumulation and tracked  
15 pollutants are caused by the industrial activities discussed above.

16 110. The City of Industry SWPPP states that storm water from regulated  
17 areas discharges to San Jose Creek from four outfalls labeled SW-01A, SW-07, SW-  
18 09, and SW-10 and identifies four sampling locations as SW-01, SW-03, SW-04, and  
19 SW-09A. Three of the sampling locations—SW-01, SW-03, and SW-04—are said to  
20 eventually discharge from the same SW-01A located near to Area 4 and Area 4A,  
21 while the SW-09A outfall is located within Area 2. Sampling locations SW-01, SW-  
22 03 and SW-04 appear to include storm water from Area 3 and Area 4.<sup>6</sup> Sampling  
23 location SW-09A appears to include storm water from Area 2 which houses most  
24 repair operations. Storm water from outfalls such as SW-07, SW-09, and SW-10 are  
25 not sampled for industrial pollutants. Storm water discharging from the outfalls listed  
26 above enters San Jose Creek.

27 \_\_\_\_\_  
28 <sup>5</sup> TTX Company provides railcars and related freight car management, maintenance and repair.

<sup>6</sup> The City of Industry SWPPP and SWPPP map are detailed, complicated and difficult to decipher.

1 111. The City of Industry Facility SWPPP indicates in a Materials Inventory  
2 at Table 3-1, that metals are present and a potential pollutant at certain industrial  
3 drainage areas at the Facility, but the City of Industry Facility does not sample storm  
4 water for metals.

5 112. The City of Industry Facility discharges industrial storm water into San  
6 Jose Creek, which flows into San Gabriel River, which flows to into Alamitos Bay,  
7 San Pedro Bay, and ultimately into the Pacific Ocean, all waters of the United States  
8 within the meaning of the Clean Water Act.

9 **B. The Dolores Facility Site Description, Industrial Activities, and**  
10 **Pollutant Sources**

11 113. Defendant Union Pacific operates the Dolores Facility located at 2442  
12 Carson Street, Long Beach, CA 90810. The Dolores Facility primarily operates as a  
13 locomotive repair and fueling facility and is classified under SIC Code 4011  
14 (railroads, line-haul operating). The Dolores Facility SWPPP, updated in June 2021,  
15 states that the Dolores Facility conducts regulated industrial activities on 4.5 acres of  
16 the 25-acre site and lists the operating hours as 24 hours per day, seven (7) days per  
17 week. The Dolores Facility NOI lists the site size as four (4) acres with all four (4)  
18 acres exposed to storm water.

19 114. The Dolores Facility SWPPP states that industrial storm water runoff  
20 from the Dolores Facility discharges to the City of Long Beach MS4 before  
21 eventually flowing to the Dominguez Channel Estuary, located approximately one-  
22 half mile south of the Facility.

23 115. Industrial activities at the Dolores Facility include locomotive and  
24 vehicle repairs, locomotive and vehicle fuel transfers and storage, locomotive and  
25 vehicle fueling, locomotive washing, materials storage and handing, vehicle  
26 maintenance, and container loading and unloading.

27 116. These industrial areas and associated activities generate and release  
28 pollutants at the Dolores Facility, which are discharged into storm water.

1 117. Pollutants of concern from the industrial activities and areas at the  
2 Dolores Facility include metals, pH, TSS and O&G. These pollutants are subject to  
3 accumulation and tracking to other areas of the Dolores Facility or offsite and are  
4 ultimately discharged in storm water.

5 118. The Dolores Facility SWPPP describes storm water carrying pollutants  
6 generated by industrial activities discharging to the MS4 from two drainage areas  
7 from two discharge points, SW-01 and SW-02. The SWPPP also notes that non-  
8 industrial storm water from the Dolores Facility is discharged at SW-03. LA  
9 Waterkeeper does not have sufficient evidence to conclude that industrial activities  
10 do not contribute to storm water discharges at SW-03.

11 119. The Dolores Facility SWPPP indicates in a Materials Inventory at  
12 Table 3-1, that metals are present and a potential pollutant at certain industrial  
13 drainage areas at the Facility, but metals are not tested in storm water samples taken  
14 at the Dolores Facility.

15 120. Pollutants of concern from industrial activities and areas at the Dolores  
16 Facility are subject to tracking by transfer of industrial materials at the Facility, and  
17 by loading, unloading and storage of industrial materials, vehicle, forklift, and rail car  
18 traffic and use of heavy industrial equipment. Industrial activities at the Dolores  
19 Facility release pollutants which are discharged in storm water including metals, pH  
20 and TSS.

21 121. The Dolores Facility discharges industrial storm water to the MS4  
22 which flows to the Dominguez Channel Estuary, the Los Angeles and Long Beach  
23 Harbors, San Pedro Bay and ultimately to the Pacific Ocean. The Dominguez  
24 Channel Estuary, the Los Angeles and Long Beach Harbors, San Pedro Bay, and the  
25 Pacific Ocean are Waters of the United States under the Clean Water Act.

26 **C. ICTF Facility Description, Industrial Activities, and Pollutant Sources**

27 122. Defendant Union Pacific operates the ICTF Facility located at 2401 E.  
28 Sepulveda Blvd., Long Beach, CA 90810. The ICTF Facility's primary industrial

1 purpose is to conduct railroad repair, maintenance, and fueling; the Facility operates  
2 under SIC Code 4011 (railroads, line-haul operating). The ICTF Facility SWPPP, last  
3 updated August 2022, states that the site is approximately 277-acres with the Facility  
4 conducting regulated activities on 5- acres (Area 1, Area 1B, Area 2, Area 5, and  
5 DTL Fueling Areas), while the NOI lists the site at 150 acres with 95 acres exposed  
6 to storm water. Pursuant to the ICTF Facility SWPPP the Facility operates 24 hours  
7 per day Tuesday through Saturday and 6am to 12am Sunday and Monday.

8 123. The ICTF Facility SWPPP notes that the Facility discharges industrial  
9 storm water to the City of Long Beach MS4 which then flows to the Dominguez  
10 Channel Estuary less than a quarter of a mile from the IFTC Facility. The ICTF  
11 Facility operates under SIC Code 4011 (railroads, line-haul operating) and pursuant  
12 to the SWPPP is used as the relay point between the ports and major railyards near  
13 downtown Los Angeles for the transfer of intermodal containers.

14 124. Industrial activities conducted at the ICTF Facility include container  
15 loading and unloading, crane service and maintenance, material storage and handling,  
16 vehicle maintenance, and locomotive and vehicle fueling.

17 125. The industrial areas and associated industrial activities at the ICTF  
18 Facility generate and release pollutants which are discharged with storm water from  
19 the Facility.

20 126. Pollutants of concern from the industrial activities and areas the  
21 Facility include metals, pH, TSS, and O&G. These pollutants are subject to  
22 accumulation and tracking to other areas of the ICTF Facility or offsite and are  
23 ultimately discharged in storm water.

24 127. The ICTF SWPPP describes storm water generated by industrial  
25 activities discharging from two (2) locations at SW-01 and SW-02. Five other storm  
26 water discharge locations: SW-03, SW-04, SW-05, SW-06, and SW-07, are identified  
27 as discharging storm water from areas of the ICTF Facility classified as non-  
28

1 industrial.<sup>7</sup> SW-01 is described as a Vortex sampler at the northwest corner of the  
2 Facility near East 22nd Street. The sampler captures storm water flowing southwest  
3 from the Car Repair Storage (MSH-1) and Vehicle Maintenance Building (VM-1).  
4 This area discharges to the north into the vegetated area at the northern edge of the  
5 site and into the MS4. SW-02 is described as a Vortex sampler in the northern part of  
6 the Facility capturing flows from the Intermodal Crane Maintenance Area (VM-2)  
7 and MSH-3 when then discharge at SW-02 to the MS4. Storm water samplers are  
8 installed at SW-03, SW-0410, SW-05, SW-06, and SW-07. However, because the  
9 SWPPP indicates these locations drain areas that are non-industrial, Union Pacific  
10 does not currently monitor or sample these locations. The IFTC Facility discharges  
11 industrial storm water to the MS4 which flows to the Dominguez Channel Estuary,  
12 the Los Angeles and Long Beach Harbors, San Pedro Bay and ultimately to the  
13 Pacific Ocean, all waters of the United States within the meaning of the Clean Water  
14 Act.

15 **D. Valla Facility Description, Industrial Activities, and Pollutant Sources**

16 128. Defendant Union Pacific operates the Valla Facility located at 8636  
17 Sorensen Avenue, Santa Fe Springs, California 90670. The Valla Facility's primary  
18 industrial purposes are locomotive fueling and intermodal freight transfers and the  
19 Facility operates under SIC Code 4011 (railroads, line-haul operating). According to  
20 Valla Facility's SWPPP, last updated in February 2024, 0.25 acres of the 28 acres of  
21 the site are used for industrial activities regulated by the General Permit.<sup>8</sup> The Valla  
22 Facility NOI lists the site size as 28 acres with 0.25 acres of the Facility exposed to  
23 industrial storm water. Pursuant to the Valla Facility SWPPP, the Facility operates 24  
24 hours per day, seven days per week.

25  
26  
27 <sup>7</sup> At this time, LA Waterkeeper does not have sufficient information to confirm or deny that  
regulated areas at the City of Industry Facility are limited to only two (2) discharge points.

28 <sup>8</sup> At this time, LA Waterkeeper is unable to determine if industrial activities at the Valla Facility  
that should be regulated under the Permit are limited to 0.25 acres of the Facility.

1 129. The Valla Facility SWPPP notes that the Facility discharges industrial  
2 storm water directly to the MS4 drain inlet on Sorenson Avenue, which then flows to  
3 Coyote Creek North Fork, on to Coyote Creek, and then into the San Gabriel River.

4 130. Industrial activities at the Valla Facility include fuel dispensing, fuel  
5 delivery, fuel transfer and loading and unloading freight for transfer, and material  
6 handling and storage.

7 131. The industrial areas and associated industrial activities at the Valla  
8 Facility generate and release pollutants which are discharged with storm water from  
9 the Facility.

10 132. Pollutants of concern from the industrial activities and areas at the  
11 Valla Facility include metals, TSS, pH, and O&G. These pollutants are subject to  
12 accumulation and tracking to other areas of the Valla Facility or offsite and are  
13 ultimately discharged in storm water. Pollutant accumulation and tracked pollutants  
14 are caused by the industrial activities discussed above.

15 133. According to the Valla Facility SWPPP, five catch basins surround  
16 the DTL area, and the area is sloped to direct storm water to one of the five catch  
17 basins. There is one sampling location at the site, SW-01, which receives  
18 commingled storm water from the DTL fueling area and loading and unloading area.  
19 The Valla Facility samples for copper and zinc. The Valla Facility has been notified  
20 by the Regional Board to upgrade and improve BMPs at the Valla Facility to  
21 eliminate repeat NEL exceedances.

22 134. The Valla Facility discharges industrial storm water carrying pollutants  
23 to the Coyote Creek North Fork which flows into the Coyote Creek, and then to the  
24 San Gabriel River, Alamitos Bay, San Pedro Bay, and ultimately to the Pacific  
25 Ocean. These waterbodies are waters of the United States within the meaning of the  
26 Clean Water Act.

27  
28



1 **E. Receiving Waters**

2 **i. Coyote Creek, San Jose Creek, San Gabriel River, Alamitos Bay,**  
3 **and San Pedro Bay**

4 135. LA Waterkeeper’s members utilize the Receiving Waters for  
5 recreation, scientific study through pollution and habitat monitoring and restoration  
6 activities. LA Waterkeeper monitors the water quality, insect populations, and habitat  
7 at multiple locations in the San Gabriel River, Alamitos Bay, San Pedro Bay, and the  
8 Pacific Ocean.

9 136. The San Jose and Coyote Creeks flow to the San Gabriel River. The  
10 San Gabriel River watershed provides critical habitat for species, including many that  
11 are endangered, threatened, rare, and endemic to Southern California. These species  
12 include flora and fauna, the Santa Ana sucker, the San Gabriel slender salamander,  
13 and include one of the largest runs of steelhead trout in southern California and the  
14 largest remaining population of arroyo chub.

15 **ii. The Dominguez Channel Estuary and the Los Angeles and Long**  
16 **Beach Inner and Outer Harbors, San Pedro Bay, and the Pacific**  
17 **Ocean**

18 137. LA Waterkeeper’s members utilize the Receiving Waters for  
19 recreation, scientific study through pollution and habitat monitoring and restoration  
20 activities. LA Waterkeeper monitors the water quality, insect populations, and habitat  
21 at multiple locations in the Dominguez Channel Estuary, Los Angeles/Long Beach  
22 Harbor, San Pedro Bay and the Pacific Ocean.

23 138. The Dominguez Channel is a waterway of historical and natural  
24 significance with a watershed comprised of approximately 110 square miles in the  
25 southern portion of Los Angeles County. Today, most of the watershed’s total area is  
26 developed for residential and industrial use. The Dominguez Channel watershed  
27 contains a network of storm drains and smaller flood control channels and extends  
28 from the Los Angeles International Airport to the Harbor and drains large portions of

1 Inglewood, Hawthorne, El Segundo, Gardena, Lawndale, Redondo Beach, Torrance,  
2 Carson and Los Angeles. LA Waterkeeper is dedicated to the restoration of the  
3 watershed by limiting pollution in the waterways to encourage the health of the local  
4 ecosystem.

5 139. Dominguez Channel Estuary empties into the Los Angeles Inner  
6 Harbor at the Port of Los Angeles and flows to the outer harbor and the Pacific  
7 Ocean. The surrounding areas include San Pedro, and areas that were formerly  
8 wetlands but are now occupied by ports, a cruise terminal, restaurants, hotels, parks,  
9 fish markets and industrial operations. Ample recreational opportunities exist in and  
10 around the outer harbor, including fishing, walking, bicycling, and boating. The  
11 harbor provides habitat for an abundant variety of aquatic and bird species and other  
12 wildlife.

#### 13 **F. The Facilities' Storm Water Permit Coverage**

14 140. SMARTS lists the current WDID numbers for Union Pacific's four  
15 facilities as follows:

- 16 • City of Industry Facility- 4 19I004578
- 17 • Dolores Facility - 4 19I013943
- 18 • ICTF Facility - 4 19I013944
- 19 • Valla Facility - 4 19I028582

20 141. SMARTS lists coverage under the Storm Water Permit as "Active" for  
21 all four (4) facilities.

22 142. Via search of the SMARTS database, Plaintiff obtained the Facility  
23 SWPPP for each of the Facilities.

24 143. Plaintiff is informed and believes, and thereon alleges, that Defendant  
25 has operated with inadequately developed or implemented SWPPPs in violation of  
26 Storm Water Permit requirements since at least September 12, 2019. Defendant failed  
27 to evaluate the effectiveness of its BMPs and to revise its SWPPPs as necessary,  
28 resulting in the Facilities' unlawful effluent limitation violations.

1 144. Plaintiff is informed and believes, and thereon alleges, that the  
2 Facilities' Owners/Operators failed to implement any additional BMPs as required by  
3 the Storm Water Permit. As such, the Owners and/or Operators are in daily violation  
4 of this requirement of the Storm Water Permit.

5 145. Plaintiff is informed and believes, and thereon alleges, that the  
6 Facilities' Owners/Operators have failed to implement BMPs that achieve  
7 compliance with Storm Water Permit or the CWA.

8 146. Plaintiff is informed and believes, and thereon alleges, that pollutants  
9 associated with the Facilities include, but are not limited to: zinc, pH, TSS, N+N, and  
10 O&G, copper, iron, aluminum, and other metals.

11 147. Plaintiff is informed and believes, and thereon alleges, that Defendant  
12 failed to implement the minimum BMPs required by the Storm Water Permit,  
13 including good housekeeping requirements; preventive maintenance requirements;  
14 spill and leak prevention and response requirements; material handling and waste  
15 management requirements; erosion and sediment controls; employee training and  
16 quality assurance; and record keeping. (Storm Water Permit, Sections X(H)(1)(a)–  
17 (g).) The BMPs that are described in the Facilities' SWPPPs are insufficient to  
18 prevent the NAL, CTR and Benchmark exceedances for constituents listed above. As  
19 evidenced by the sample results, the current BMPs at the Facilities are inefficient, and  
20 the Facilities' Monitoring Implementation Plans need improvement.

21 148. Plaintiff is informed and believes, and thereon alleges, that the  
22 Facilities have further failed to implement advanced BMPs necessary to reduce or  
23 prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT  
24 standards, including: exposure minimization BMPs; containment and discharge  
25 reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to  
26 comply with the General Permit's effluent limitations. (Storm Water Permit X.H.2.)  
27 Plaintiff is informed and believes that the most recent BMPs are not sufficient as  
28 Defendant still has exceedances in the 2023-2024 reporting year for each Facility.

1 149. Plaintiff is informed and believes, and thereon alleges, that Defendant  
2 has failed to collect sufficient storm water samples for analyses, in violation of the  
3 Storm Water Permit, since at least September 12, 2019.

4 150. Plaintiff is informed and believes, and thereon alleges, that storm water  
5 discharges containing excess levels of TSS, copper, zinc, O&G, and pH occur each  
6 time storm water discharges from Facility in violation of the Storm Water Permit  
7 Sections III(C)–(D) and VI(A)–(B).

8 151. Plaintiff is informed and believes, and thereon alleges, that the repeated  
9 and significant exceedances of NALs, CTR, and Benchmark Levels demonstrate that  
10 the Owners/Operators have failed and continue to fail to develop and/or implement  
11 BMPs to prevent the exposure of pollutants to storm water and to prevent discharges  
12 of polluted storm water and non-storm water from the Facility.

13 152. Plaintiff is informed and believes, and thereon alleges, that the  
14 Owners/Operators have failed and continue to fail to evaluate the effectiveness of its  
15 BMPs and adequately revise the Facility SWPPP, despite repeated and significant  
16 concentrations of pollutants in Facility’s storm water discharges. Further, Defendant  
17 failed to update the Facility's training programs or implement other changes in  
18 response to events that required revisions or altered practices.

19 153. Plaintiff is informed and believes, and thereon alleges, that pollutants,  
20 including, but not limited to those referenced herein, have been and continue to be  
21 tracked throughout the Facility’s operation areas.

22 154. Plaintiff is informed and believes, and thereon alleges, that the  
23 Owners’/Operators’ failure to properly address pollutant sources and pollutants result  
24 in the exposure of pollutants associated with its industrial activities to precipitation,  
25 and this results in discharges of polluted storm water from the Facility into the  
26 Receiving Waters in violation of the Storm Water Permit and/or the CWA.

27  
28

1           **G. Storm Water Discharges from the Facilities**

2           155. As discussed above and as detailed in the Facilities’ SWPPPs, the  
3 Valla Yard Facility discharges to Coyote Creek and the City of Industry Facility  
4 discharges to San Jose Creek; both creeks flow into the San Gabriel River, which  
5 flows into Alamitos Bay, San Pedro Bay, and ultimately into the Pacific Ocean. The  
6 ICTF Facility and Dolores Facility discharge to the Dominguez Channel Estuary,  
7 which flows to the Los Angeles and Long Beach Harbors, San Pedro Bay and  
8 ultimately to the Pacific Ocean.

9           156. The discharge points are described above in section V.A-D for each of  
10 the Facilities.

11           157. Plaintiff is informed and believes, and thereon alleges, that the  
12 Facilities have self-reported NAL exceedances from the Facility over the past five (5)  
13 reporting years and would have had more exceedances had it conducted the requisite  
14 sampling.

15           158. Plaintiff is informed and believes, and thereon alleges, that the Valla  
16 Facility has continued NEL exceedances over the past three (3) reporting years.

17           159. Defendant has reported at least eight exceedances of applicable  
18 standards for zinc (all of which were above the NEL); twenty-five exceedance of  
19 applicable standards for copper (five of which are above the NEL); fifty-five  
20 exceedances of applicable standards for pH; twenty-three exceedances of applicable  
21 standards for total suspended solids (thirteen of which were above the instantaneous  
22 maximum NAL; and five exceedances of applicable standards for O&G with all five  
23 over the instantaneous maximum NAL.

24           **H. The Facilities’ Storm Water Discharges to the Receiving Waters**  
25           **Contain Elevated Levels of Pollutants**

26           160. Plaintiff is informed and believes, and thereon alleges, that pollutants  
27 from the Facilities’ storm water discharges to the Coyote Creek, San Jose Creek, the  
28 San Gabriel River, Alamitos Bay, San Pedro Bay, Dominguez Channel Estuary, the

1 Los Angeles and Long Beach Harbors, all which ultimately flow into the Pacific  
2 Ocean.

3 161. Plaintiff is informed and believes, and thereon alleges, that the  
4 Owners'/Operators' failure to properly address these pollutants and its sources results  
5 in the exposure of pollutants to precipitation, which carries these pollutants with  
6 storm water flows into Coyote Creek, San Jose Creek, the San Gabriel River,  
7 Alamitos Bay, San Pedro Bay, Dominguez Channel Estuary, the Los Angeles and  
8 Long Beach Harbors, all which ultimately flow into the Pacific Ocean.

9 162. Storm water discharges containing pollutants including, but not limited  
10 to, heavy metals such as zinc, copper, and iron adversely affect the aquatic  
11 environment.

12 163. The City of Industry and the Dolores Facilities do not sample for  
13 metals and the ICTF Facility has only sampled for copper despite conducting  
14 activities that generate metal pollutants as indicated on their respective SWPPPs. LA  
15 Waterkeeper is informed and believes that had these Facilities adequately sampled for  
16 metals, they would have had exceedances. Based on information and belief described  
17 in the Facilities' SWPPP, the Facilities should all sample for copper and zinc.

18 164. Samples of storm water discharges collected at the Facilities contain  
19 pollutants including zinc, copper, pH, TSS, and O&G in excess of levels known to  
20 adversely impact aquatic species and the environment, federal regulations, WQS,  
21 Benchmarks, and/or the CTR in violation of the Storm Water Permit's Effluent  
22 Limitations and Receiving Water Limitations.

23 165. Plaintiff is informed and believes, and thereon alleges, that during  
24 and/or after every significant rain event (a rain event of 0.1 inches or more will  
25 generally produce storm water runoff from industrial facilities) at the Facilities since  
26 September 12, 2019, through the present, Defendant discharged and continues to  
27 discharge storm water from the Facilities that contains concentrations of pollutants at  
28

1 levels that violate the prohibitions and limitations set forth in the Storm Water Permit,  
2 the technology-based Effluent Limitations, the Benchmarks, CTR, and/or the WQS.

3 **I. Defendant’s Violations of the Storm Water Permit’s Sampling,**  
4 **Reporting, and Monitoring Implementation Plan Requirements**

5 166. Plaintiff is informed and believes, and thereon alleges, that Defendant  
6 failed and continues to fail to develop an adequate Monitoring Implementation Plan  
7 (“MIP”) for industrial operations at the Facilities that complies with Section XI of the  
8 Storm Water Permit.

9 167. Plaintiff is informed and believes, and thereon alleges, that Defendant  
10 failed and continues to fail to revise the MIP for the Facilities as necessary to ensure  
11 compliance with the Storm Water Permit in violation of Section XI of the Storm  
12 Water Permit.

13 168. Plaintiff is informed and believes, and thereon alleges, that Defendant  
14 failed and continues to fail to implement the MIP at the Facilities, in violation of  
15 Section XI of the Storm Water Permit.

16 169. Plaintiff is informed and believes, and thereon alleges, that Defendant  
17 failed and continues to fail to collect or analyze sufficient storm water samples at the  
18 Facilities, in violation of Section XI of the Storm Water Permit.

19 170. Plaintiff is informed and believes, and thereon alleges, that the  
20 sampling points are not representative of the pollution at the Facilities as much of the  
21 stormwater does not flow to the sampling points.

22 171. Plaintiff is informed and believes, and thereon alleges, that since  
23 Defendant failed and continues to fail to collect sufficient and consistent storm water  
24 samples, such as the instances described in the paragraphs above, the documented  
25 exceedances are not a true representation of the exceedances discharged by the  
26 Facilities. If Defendant was collecting and analyzing sufficient stormwater samples,  
27 there would be a greater number of documented exceedances.

28

1 172. Plaintiff is informed and believes, and thereon alleges, that Defendant  
2 failed and continues to fail to adequately revise the MIP for the Facilities as necessary  
3 to ensure compliance with the Storm Water Permit in violation of Section XI of the  
4 Storm Water Permit.

5 173. Plaintiff is informed and believes, and thereon alleges, that the  
6 Owners/Operators of the Facilities consistently fail to prepare, implement, and report  
7 on its Water Quality Based Corrective Actions as required by the Storm Water  
8 Permit.

9 174. Plaintiff is informed and believes, and thereon alleges, that the  
10 Owners/Operators of the Facilities have consistently failed and continue to fail to  
11 report any noncompliance with the Storm Water Permit at the time that the Annual  
12 Report is submitted.

13 175. Plaintiff is informed and believes, and thereon alleges, that the  
14 Owners/Operators did not report their non-compliance as required by the Storm  
15 Water Permit.

16 176. Plaintiff is informed and believes, and thereon alleges, that the  
17 Owners/Operators of the Facilities fail to collect sufficient storm water samples  
18 during QSEs.

19 177. Based on information available to Plaintiff, it is informed and believes,  
20 and thereon alleges, that the BMPs proffered as implemented in the Facilities SWPPP  
21 are insufficient and ineffective in reducing pollutants to levels compliant with the  
22 Storm Water Permit and/or the CWA.

23 178. Plaintiff is informed and believes, and thereon alleges, that Defendant  
24 failed to submit accurate Annual Reports to the Regional Board for the past five (5)  
25 reporting years in violation of Section XVI of the Storm Water Permit.

26 179. The Valla Facility entered ERA Level 2 for copper during the 2022-  
27 2023 reporting year. In response to these exceedances, the only BMP identified in the  
28 Technical Report was the installation of a CleanWay catch basin filter at SW-01. The



1 same single BMP was included in the February 19, 2024, Corrective Action Report.  
2 This BMP was installed on July 20, 2023. Yet, on March 6, 2024, the Valla Facility  
3 reported another sample above the NEL exceedance threshold of zinc and on July 26,  
4 2024, the Regional Board issued a Notice of Repeat NEL Exceedances.

5 180. The December 22, 2023, ERA Level 2 Technical Report for the City of  
6 Industry Facility's exceedances of TSS only identifies increasing the frequency of  
7 sweeping and replacement of integrated sediment filters as recommended BMPs. As  
8 evidenced by subsequent exceedances for TSS at this Facility, these recommended  
9 BMPs were inadequate.

10 181. The Dolores and ICTF Facilities have not been revised since June 2021  
11 and August 2022, respectively, despite numerous exceedances of applicable water  
12 quality standards since each revision

13 **VI. CLAIMS FOR RELIEF**

14 **FIRST CAUSE OF ACTION**

15 **Discharges of Contaminated Storm Water in Violation of**  
16 **the Storm Water Permit's Effluent Limitations and the Clean Water Act.**  
17 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

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

20 183. Plaintiff is informed and believes, and thereon alleges, that Defendant  
21 failed and continues to fail to reduce or prevent pollutants associated with industrial  
22 activities at the Facilities from discharging from the Facilities through  
23 implementation of BMPs that achieve BAT/BCT.

24 184. Plaintiff is informed and believes, and thereon alleges, that discharges  
25 of storm water containing levels of pollutants that do not achieve compliance with  
26 BAT/BCT standards from the Facilities occur every time storm water discharges  
27 from the Facilities. Defendant's failure to develop and/or implement BMPs that  
28 achieve the pollutant discharge reductions attainable via BAT or BCT at the Facilities

1 is a violation of the Storm Water Permit and the CWA. (See Storm Water Permit,  
2 Sections I(D) (Finding 32)V(A); 33 U.S.C. § 1311(b).)

3 185. The Owners/Operators violate and will continue to violate the Storm  
4 Water Permit's Effluent Limitations each and every time storm water containing  
5 levels of pollutants that do not achieve BAT/BCT standards discharges from the  
6 Facilities.

7 186. Plaintiff is informed and believes, and thereon alleges, that the  
8 Owners'/Operators' violations of Effluent Limitations of the Storm Water Permit and  
9 the CWA are ongoing and continuous.

10 187. Each day, since at least September 12, 2019, that the Owners/Operators  
11 discharge storm water containing pollutants in violation of the Storm Water Permit is  
12 a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

13 188. By committing the acts and omissions alleged above, the  
14 Owners/Operators are subject to an assessment of civil penalties for each and every  
15 violation of the CWA occurring from September 12, 2019, to the present, pursuant to  
16 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. §  
17 19.4.

18 189. An action for injunctive relief is authorized by CWA Section 505(a),  
19 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above  
20 would irreparably harm Plaintiff, Plaintiff's members, and the citizens of the State of  
21 California, for which harm Plaintiff have no plain, speedy, or adequate remedy at  
22 law.

23 190. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)  
24 because an actual controversy exists as to the rights and other legal relations of the  
25 Parties.

26 191. WHEREFORE, Plaintiff prays for judgment against Defendant as set  
27 forth hereafter.

28

**SECOND CAUSE OF ACTION**

**Violation of Section 301(a) of the Clean Water Act by Discharging Contaminated Storm Water in Violation of the Storm Water Permit's Numeric Effluent Limitations.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

192. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

193. Plaintiff is informed and believes, and thereon alleges, that Defendants failed and continue to fail to comply with the Storm Water Permit's Numeric Effluent Limitations.

194. Plaintiff is informed and believes, and thereon alleges, that Defendants violate, and will continue to violate the Storm Water Permit's Numeric Effluent Limitations each day that storm water discharges from the Facility. (Storm Water Permit, Section V(C).)

195. Plaintiff is informed and believes, and thereon alleges, that Defendants violated the Effluent Limitations of the Storm Water Permit and the Clean Water Act within the applicable statute of limitations, and such violations are ongoing and continuous.

196. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts and omissions described herein constitute violations of individual terms of the Storm Water Permit, compliance with which is required to lawfully discharge pollutants to waters of the United States.

197. Plaintiff alleges that its members have been harmed by Defendants' acts and omissions described herein and have standing to bring this suit.

198. Each and every violation of the Storm Water Permit Effluent Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

199. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties for each and every violation of the

1 CWA occurring from July 16, 2019, to the present, pursuant to Sections 309(d) and  
2 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

3 200. An action for injunctive relief is authorized by CWA Section  
4 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions  
5 alleged above would irreparably harm Plaintiff and the citizens of the State of  
6 California, for which Plaintiff has no plain, speedy, or adequate remedy at law.

7 201. An action for declaratory relief is authorized by 28 U.S.C. §  
8 2201(a) because an actual controversy exists as to the rights and other legal relations  
9 of the Parties.

10 202. WHEREFORE, Plaintiff prays for judgment against Defendants  
11 as set forth hereafter.

12  
13 **THIRD CAUSE OF ACTION**  
14 **Defendant's Discharges of Contaminated Storm Water in Violation of the Storm**  
15 **Water Permit's Receiving Water Limitations and the Clean Water Act.**  
16 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

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

19 204. Plaintiff is informed and believes, and thereon alleges, that discharges  
20 of storm water containing levels of pollutants that adversely impact human health  
21 and/or the environment from the Facilities occur each time storm water discharges  
22 from the Facilities.

23 205. Plaintiff is informed and believes, and thereon alleges, that storm water  
24 containing levels of pollutants that cause or contribute to exceedances of water  
25 quality standards, including but not limited to standards set forth in the applicable  
26 Basin Plan, has discharged and continues to discharge from the Facilities each time  
27 storm water discharges from the Facilities.

28 206. The Owners/Operators violate and will continue to violate the Storm  
Water Permit's Receiving Water Limitations each and every time storm water

1 containing levels of pollutants that adversely impact human health and/or the  
2 environment, and that cause or contribute to exceedances of WQS discharges from  
3 the Facilities.

4 207. Plaintiff is informed and believes, and thereon alleges, that the  
5 Owners'/Operators' violations of Receiving Water Limitations of the Storm Water  
6 Permit and the CWA are ongoing and continuous.

7 208. Each and every violation of the Storm Water Permits' Receiving Water  
8 Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33  
9 U.S.C. § 1311(a).

10 209. By committing the acts and omissions alleged above, the  
11 Owners/Operators are subject to an assessment of civil penalties for each and every  
12 violation of the CWA occurring from September 12, 2019, to the present, pursuant to  
13 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. §  
14 19.4.

15 210. An action for injunctive relief under the Clean Water Act is authorized  
16 by Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and  
17 omissions alleged above would irreparably harm Plaintiff, Plaintiff's members, and  
18 the citizens of the State of California, for which harm they have no plain, speedy, or  
19 adequate remedy at law.

20 211. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)  
21 because an actual controversy exists as to the rights and other legal relations of the  
22 Parties.

23 212. WHEREFORE, Plaintiff prays for judgment against Defendant as set  
24 forth hereafter.

25  
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28

**FOURTH CAUSE OF ACTION**

**Defendant’s Failure to Adequately Develop, Implement, and/or Revise a Storm Water Pollutant Prevention Plan in Violation of the Storm Water Permit and the Clean Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

213. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

214. Plaintiff is informed and believes, and thereon alleges, that the Owners/Operators have failed and continue to fail to develop an adequate SWPPPs for the Facilities, in violation of the Storm Water Permit.

215. Plaintiff is informed and believes, and thereon alleges, that the Owners/Operators have failed and continue to fail to adequately implement a SWPPP for the Facilities, in violation of the Storm Water Permit.

216. Plaintiff is informed and believes, and thereon alleges, that Owners/Operators have failed and continue to fail to adequately revise the SWPPPs for the Facilities, in violation of the Storm Water Permit.

217. The Owners/Operators have been in violation of the Storm Water Permit at the Facilities every day from September 12, 2019, to the present.

218. The Owners’/Operators’ violations of the Storm Water Permit and the CWA at the Facilities are ongoing and continuous.

219. The Owners/Operators will continue to be in violation of the Storm Water Permit and the CWA each and every day the Owners/Operators fail to adequately develop, implement, and/or revise the SWPPPs for the Facilities.

220. Each and every violation of the Storm Water Permit’s SWPPP requirements at the Facilities is a separate and distinct violation of the CWA.

221. By committing the acts and omissions alleged above, the Owners/Operators are subject to an assessment of civil penalties for each and every violation of the CWA occurring from September 12, 2019, to the present, pursuant to

1 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. §  
2 19.4.

3 222. An action for injunctive relief under the CWA is authorized by Section  
4 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and  
5 omissions alleged above would irreparably harm Plaintiff, their members, and the  
6 citizens of the State of California, for which harm they have no plain, speedy, or  
7 adequate remedy at law.

8 223. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)  
9 because an actual controversy exists as to the rights and other legal relations of the  
10 Parties.

11 224. WHEREFORE, Plaintiff prays for judgment against Defendant as set  
12 forth hereafter.

13 **FIFTH CAUSE OF ACTION**

14 **Defendant's Failure to Adequately Develop, Implement, and/or Revise a**  
15 **Monitoring and Reporting Plan in Violation of the Storm Water Permit and the**  
16 **Clean Water Act.**

17 **U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

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

20 226. Plaintiff is informed and believes, and thereon alleges, that the  
21 Owners/Operators have failed and continue to fail to develop an adequate MIP for the  
22 Facilities, in violation of the Storm Water Permit.

23 227. Plaintiff is informed and believes, and thereon alleges, that the  
24 Owners/Operators have failed and continue to fail to adequately implement an MIP  
25 for the Facilities, in violation of the Storm Water Permit.

26 228. Plaintiff is informed and believes, and thereon alleges, that the  
27 Owners/Operators have failed and continue to fail to adequately revise an MIP for the  
28 Facilities, in violation of the Storm Water Permit.

1           229.    The Owners/Operators have been in violation of the Storm Water  
2 Permit’s monitoring requirements at the Facilities every day from September 12,  
3 2019, to the present.

4           230.    The Owners’/Operators’ violations of its Storm Water Permit’s  
5 monitoring requirements and the CWA at the Facilities are ongoing and continuous.

6           231.    The Owners/Operators will continue to be in violation of Section XI of  
7 the Storm Water Permit, and the CWA each and every day they fail to adequately  
8 develop, implement, and/or revise an MIP for the Facilities.

9           232.    Each and every violation of the Storm Water Permit’s MIP  
10 requirements at the Facilities is a separate and distinct violation of the CWA.

11           233.    By committing the acts and omissions alleged above, the  
12 Owners/Operators are subject to an assessment of civil penalties for each and every  
13 violation of the CWA occurring from September 12, 2019, to the present, pursuant to  
14 Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. §  
15 19.4.

16           234.    An action for injunctive relief under the CWA is authorized by Section  
17 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and  
18 omissions alleged above would irreparably harm Plaintiff, their members, and the  
19 citizens of the State of California, for which harm they have no plain, speedy, or  
20 adequate remedy at law.

21           235.    An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)  
22 because an actual controversy exists as to the rights and other legal relations of the  
23 Parties.

24           236.    WHEREFORE, Plaintiff prays for judgment against Defendant as set  
25 forth hereafter.

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**SIXTH CAUSE OF ACTION**  
**Defendant’s Failure to Report as Required by the Storm Water Permit in  
Violation of the Storm Water Permit and the  
Clean Water Act.**  
**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

237. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

238. Section XVI of the Storm Water Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section XVI of the Permit requires that the Annual Report include a compliance checklist that indicates that a discharger complies with and has addressed all applicable requirements of the Permit, an affirmation of visual observations and sampling results, an identification and explanation of any non-compliance, an identification of all revisions made to the SWPPP within the reporting year, and the date of the Annual Evaluation. Storm Water Permit, Section XVI. Laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required are also reporting requirements throughout the reporting year and are typically uploaded into the SMARTS portal.

239. The Permit also requires a permittee whose discharges violate the Storm Water Permit’s Receiving Water Limitations or water quality standards, such as, NALs, TMDLs, TMDL-Specific Numeric Action Levels to implement additional BMPs or other control measures that are tailored to that Facilities in order to attain compliance with the receiving water limitation. A Discharger that is notified by a Regional Board or who determines the discharge is causing or contributing to an exceedance of a water quality standard must comply with the Water Quality Based Corrective Actions in Section XX(B) of the Permit and report to the Regional Board regarding same. (See Storm Water Permit, Section XX(B).)

240. Plaintiff is informed and believes, and thereon alleges, that the Owners/Operators have failed to accurately report their non-compliance with the

1 Storm Water Permit and correctly report storm water sampling analysis compliance  
2 in the Facilities' Annual Reports. As such, Defendant is in daily violation of the  
3 Storm Water Permit.

4 241. Further, Defendant repeatedly failed to submit required ERA Level 1  
5 and/or Level 2 Reports, despite entering into those levels for various constituents. As  
6 such, Defendant is in daily violation of the Storm Water Permit Section XII.

7 242. The Facilities Owners/Operators have been in violation of Sections  
8 XII, XVI and XX of the Storm Water Permit since at least September 12, 2019.

9 243. The Owners'/Operators' violations of the reporting requirements of the  
10 Storm Water Permit and the CWA are ongoing and continuous.

11 244. By committing the acts and omissions alleged above, the  
12 Owners/Operators of the Facilities are subject to an assessment of civil penalties for  
13 each and every violation of the CWA occurring from September 12, 2019, to the  
14 present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d),  
15 1365, and 40 C.F.R. § 19.4.

16 245. An action for injunctive relief under the CWA is authorized by Section  
17 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and  
18 omissions alleged above would irreparably harm Plaintiff, its members, and the  
19 citizens of the State of California, for which harm they have no plain, speedy, or  
20 adequate remedy at law.

21 246. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)  
22 because an actual controversy exists as to the rights and other legal relations of the  
23 Parties.

24 247. WHEREFORE, Plaintiff prays for judgment against Defendant as set  
25 forth hereafter.

26 **VII. RELIEF REQUESTED**

27 248. Wherefore, Plaintiff respectfully requests that this Court grant the  
28 following relief:

1           **a.**     A Court order declaring Defendant to have violated and to be in  
2 violation of Sections 301(a) and (b) and 402 of the Clean Water Act, 33 U.S.C. §§  
3 1311(a) and (b) and 1342, for its unlawful discharges of pollutants from the  
4 Facilities in violation of a permit issued pursuant to Section 402(p) of the CWA,  
5 33 U.S.C. § 1342(p), for failing to meet effluent standards limitations which  
6 include BAT/BCT requirements, and for failing to comply with the substantive  
7 and procedural requirements of the Storm Water Permit and the CWA;

8           **b.**     A Court order enjoining Defendant from violating the substantive  
9 and procedural requirements of the Storm Water Permit and Sections 301(a) and  
10 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342;

11           **c.**     A Court order assessing civil monetary penalties for each violation  
12 of the CWA occurring on or after November 2, 2015, of \$66,712 per day, as  
13 permitted by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for  
14 Inflation, 40 C.F.R. § 19.4;

15           **d.**     A Court order awarding Plaintiff its reasonable costs of suit,  
16 including attorney, witness, expert, and consultant fees, as permitted by Section  
17 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d); and

18           **e.**     Any other relief as this Court may deem appropriate.  
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20 DATED: November 18, 2024

Respectfully submitted,

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22  
23 /s/ Anthony M. Barnes

Anthony M. Barnes

Erica A. Maharg

William Carlon

Kenya S. Rothstein

Attorneys for Plaintiff  
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