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SEATTLE, WASHINGTON 98112
(206) 860-2883, FAX (206) 860-4187

RECEIVED ON:
S. Conaery ORC
AUG 14 2017
EPA Region 10
Office of the Regional Administrator

RECEIVED
AUG 15 2017
U.S. EPA REGION 10
Office Of Regional Counsel

August 10, 2017

Via Certified Mail – Return Receipt Requested
Scott Pruitt
Administrator
U.S. EPA
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W., Mailcode 1101A
Washington, DC 20460

Via Certified Mail – Return Receipt Requested
Attorney General – Citizen Suit Coordinator
Environmental and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Via Certified Mail – Return Receipt Requested
Michelle Pirzadeh, Acting Administrator
U.S. EPA Region 10
1200 Sixth Ave., Suite 900
Seattle WA 98101

Re: *Puget Soundkeeper Alliance, RE Sources for Sustainable Communities v. Cargill, Inc.*, W.D. Wash. No. 2:17-cv-01188

Dear Honorable Civil Servants,

Enclosed is a copy of the complaint filed Tuesday August 8, 2017 in the Western District of Washington in the above-named Clean Water Act citizen suit. This notice is provided to you pursuant to 40 C.F.R. 135.4.

Sincerely,

SMITH & LOWNEY, P.L.L.C.

By: _____
Richard Smith
Katherine Brennan

Richard A. Smith, WSBA #21788
Katherine E. Brennan, WSBA #51247
SMITH & LOWNEY, PLLC
2317 East John Street
Seattle, Washington 98112
(206) 860-2883

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE and RE SOURCES FOR SUSTAINABLE COMMUNITIES, Plaintiffs, v. CARGILL, INC., D/B/A CARGILL ANIMAL NUTRITION, D/B/A FERNDALE GRAIN, Defendant.	)	COMPLAINT

I. INTRODUCTION

1. This action is a citizen suit brought under Section 505 of the Clean Water Act ("CWA") as amended, 33 U.S.C. § 1365. Plaintiffs Puget Soundkeeper Alliance and RE Sources for Sustainable Communities seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys' and expert witnesses' fees, for Defendant Cargill, Inc.'s repeated and ongoing violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and the terms and conditions of its National Pollutant

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Discharge Elimination System ("NPDES") permit authorizing discharges of pollutants from Defendant's Ferndale, Washington facility to navigable waters.

II. JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over Plaintiffs' claims under Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Sections 309(d) and 505(a) and (d) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a) and (d), authorize the relief Plaintiffs request.

3. Under Section 505 (b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Plaintiffs notified Defendant of Defendant's violations of the CWA and of Plaintiffs' intent to sue under the CWA by letter dated May 24, 2017. A copy of the Notice Letter is attached to this complaint as Exhibit 1. The allegations in the Notice Letter are incorporated herein by this reference. Plaintiffs notified the Defendant's Registered Agent, the Administrator of the United States Environmental Protection Agency ("USEPA"), the Administrator of USEPA Region 10, and the Director of the Washington Department of Ecology ("WDOE") of its intent to sue Defendant by mailing copies of the Notice Letter to these officials on May 24, 2017.

4. More than sixty days have passed since the notice letter was served and the violations complained of in the notice letter identified *infra* are continuing or are reasonably likely to continue to occur. Defendant is in violation of its NPDES permit and the CWA. Neither the USEPA nor the WDOE has commenced any action constituting diligent prosecution to redress these violations.

5. The source of the violations complained of is located in Whatcom County, Washington, within the Western District of Washington, and venue is therefore appropriate in the Western District of Washington pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), and 28 U.S.C. § 1391(b).

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III. PARTIES

6. Plaintiffs, Puget Soundkeeper Alliance and RE Sources for Sustainable Communities, are suing on behalf of themselves and their member(s).

7. Plaintiff Puget Soundkeeper Alliance is a non-profit corporation registered in the State of Washington. Puget Soundkeeper Alliance is dedicated to protecting and preserving Puget Sound by tracking down and stopping toxic pollution entering its waters. Plaintiff Puget Soundkeeper Alliance is a membership organization and has at least one member who is injured by Defendant's violations.

8. Plaintiff RE Sources for Sustainable Communities promotes sustainable communities and protects the health of northwestern Washington's people and ecosystems through application of science, education, advocacy and action. Their vision is to help people in northwestern Washington live satisfying lives in accord with the ecosystem they depend on. Plaintiff RE Sources for Sustainable Communities is a membership organization and has at least one member who is injured by Defendant's violations.

9. Plaintiffs have representational standing to bring this action. Plaintiffs' members are reasonably concerned about the effects of discharges of pollutants, including stormwater from Defendant's facility, on aquatic species and wildlife that Plaintiff's members observe, study, and enjoy. Plaintiffs' members are further concerned about the effects of discharges from Defendant's facility on human he alth. In addition, discharges from Defendant's facility lessen Plaintiffs' members' aesthetic enjoyment of nearby areas. Plaintiffs have members who live, work, fish, and recreate around use Shell Creek (a/k/a Schell Ditch, Schell Creek) and waters to which the Schell Ditch basin is tributary, including Shell Marsh and the Lummi (Red) River, Lummi Bay, Puget Sound, and near Defendant's facility. These members are affected by

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Defendant's discharges. As a result of the excess discharge of pollutants, Plaintiffs' members use these areas less than they otherwise would, and these areas' uses are impaired. Plaintiffs' members' concerns about the effects of Defendant's discharges are aggravated by Defendant's failure to record and timely report information about its discharges and pollution controls. The recreational, scientific, economic, aesthetic and/or health interest of Plaintiffs and their members have been, are being, and will be adversely affected by Defendant's violations of the CWA. The relief sought in this lawsuit can redress the injuries to these interests.

10. Plaintiffs have organizational standing to bring this action. Plaintiffs have been actively engaged in a variety of educational and advocacy efforts to improve water quality and to address sources of water quality degradation in the waters of Northwest Washington, including Puget Sound and its tributaries. Defendant has failed to fulfill monitoring, recordkeeping, reporting and planning requirements, among others, necessary for compliance with its NPDES permits and the CWA. As a result, Plaintiffs are deprived of information necessary to properly serve its members by providing information and taking appropriate action, and Plaintiffs' efforts to educate and advocate for greater environmental protection for the benefit of its members are obstructed. Plaintiffs and the public are deprived of information that influences members of the public to become members of Plaintiffs' organizations, thereby reducing Plaintiffs' membership numbers. Thus, Plaintiffs' organizational interests have been adversely affected by Defendant's violations. These injuries are fairly traceable to Defendant's violations and redressable by the Court.

11. Defendant is a Delaware corporation authorized to conduct business in the State of Washington.

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12. Defendant owns and operates a dairy feed storage and manufacturing facility located at or about 5744 3rd Ave, Ferndale, Washington (the "Ferndale Facility").

IV. LEGAL BACKGROUND

13. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person, unless in compliance with the provisions of the CWA. Section 301(a) prohibits, inter alia, such discharges not authorized by, or in violation of, the terms of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

14. The State of Washington has established a federally approved state NPDES program administered by the WDOE. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch. 173-220. This program was approved by the Administrator of the USEPA pursuant to 33 U.S.C. § 1342(b).

15. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the WDOE has repeatedly issued Industrial Stormwater General Permits. The General Permit, in its various iterations since its first issuance in 1993 containing comparable requirements, authorizes those that obtain coverage under the General Permit to discharge stormwater associated with industrial activity, a pollutant under the CWA, and other pollutants contained in the stormwater to the waters of the State subject to certain terms and conditions. The prior permit was issued by Ecology on October 21, 2009, effective January 1, 2010, modified May 16, 2012, effective July 1, 2012, and expired January 1, 2015; the current iteration was issued on December 3, 2014, effective January 2, 2015 (the "General Permit").

16. The General Permit imposes certain terms and conditions on those covered thereby, including monitoring and sampling of discharges, reporting and recordkeeping requirements, as well as restrictions on the quality of stormwater discharges. To reduce and

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eliminate pollutant concentrations in stormwater discharges, the General Permit requires, among other things, that permittees develop and implement best management practices ("BMPs") and a Stormwater Pollution Prevention Plan ("SWPPP"), and apply all known and reasonable methods of prevention, control, and treatment ("AKART") to discharges. When a Permittee's stormwater discharge exceeds benchmark values for concentrations of certain pollutants (and action levels for concentrations of certain pollutants in a previous version of the General Permit), the General Permit requires the Permittee to complete the applicable Level 1, 2, or 3 corrective action requirements. The specific terms and conditions of the General Permit are described in detail in the Notice Letter, attached hereto as Exhibit 1 and incorporated herein by this reference.

V. FACTS

The Affected Community & Environment

17. Waters within the Schell Ditch basin, including Jordan Creek (downstream of the Schell Marsh), are listed on WDOE's 303(d) list of impaired waterbodies for several pollutant parameters, including bacteria and dissolved oxygen.

18. Waters within the Lummi Bay watershed, particularly Jordan Creek and the Lummi River, do not support their designated uses because of increased fecal coliform densities, increased temperatures, low dissolved oxygen levels, and/or pH levels.

19. The vicinity of the Facility, Shell Creek, Schell Marsh, Lummi River, Lummi Bay, and Puget Sound are used by the citizens of Washington and visitors, as well as at least one of Plaintiffs' members, for recreational activities, including boating, biking, fishing and nature watching. Plaintiffs' member(s) also derive(s) aesthetic benefits from the receiving waters. Plaintiffs and their members' enjoyment of these activities and waters is diminished by the

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polluted state of the receiving waters, shorelines, and the nearby areas, and by Defendant's contributions to such polluted state.

Ferndale Facility

20. Pursuant to Condition S2 of the General Permit, Defendant filed with the WDOE an Application for General Permit to Discharge Stormwater Associated with Industrial Activity. WDOE granted Defendant coverage under the General Permit for Defendant's Ferndale Facility under Permit Number WAR000355.

21. Defendant's Ferndale Facility is engaged in industrial activity, including grain storage and dairy feed manufacturing, and discharges stormwater associated with industrial activity and other pollutants to Shell Creek.

22. Defendant discharges stormwater from the Ferndale Facility in excess of the General Permit benchmarks each day during which there is 0.1 inch or greater precipitation, including the days on which it collected samples identified in Table 1:

Table 1

Quarter in which Sample Collected	Turbidity Concentration (Benchmark 25 NTU)	Zinc (Benchmark 117 ug/L)	Copper (Benchmark 14 ug/L)
1Q 2010	4.8	**125**	6
2Q 2010	9.6	**419**	10
3Q2010	2.6	**233**	8.6
4Q 2010	11.2	**238**	14
1Q 2011	A	**533**	A
2Q 2011	A	**883**	A
3Q 2011	**31**	**935**	E*
1Q 2012	18	**386**	A
2Q 2012	A	**279**	A
4Q 2012	14.6	**155.5**	13.15
1Q 2013	7.2	**721**	13
2Q 2013	11.6	**375**	11.95

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3Q 2013	12.8	**443.5**	**28.3**
4Q 2013	4.4	**175**	7.9
1Q 2014	6.2	**294**	8.8
2Q 2014	11	**479**	6.7
3Q 2014	11	**381**	6.2
4Q 2014	**28**	**387**	11.4
1Q 2015	16	**530**	9.1
3Q 2015	**31**	**457**	12.4
4Q 2015	15.05	**121**	8.68
1Q 2016	5.7	**160**	2.9
3Q 2016	23	**190**	9.4
4Q 2016	19.5	**185**	11.65
1Q 2017	13	**250**	10

Bold = Benchmark exceedance
A = Consistent Attainment claimed; however, Plaintiffs dispute whether defendant qualified for consistent attainment for these samples.
E = Analysis Not Complete / Not Conducted / Not Reported
E* = A "No Discharge" was reported for one parameter but a sample was collected and tested for another parameter.

23. The Permits require Defendant's monitoring to be representative of discharges from the facility. The stormwater monitoring data provided in Table 1 reflects the stormwater monitoring results that Defendant has submitted to the WDOE.

24. Defendant has violated the General Permit and Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, by discharging pollutants from its Ferndale Facility in violation of an NPDES Permit. In particular and among the other violations described in the Notice Letter attached as Exhibit 1, Defendant has caused or contributed to violations of water quality standards for zinc, turbidity, and copper in Schell Ditch drainage basin, including every day Defendant discharged pollutant concentrations in excess of the General Permit benchmarks.

25. Defendant's exceedances of the benchmark values indicate that Defendant is failing to apply AKART to its discharges and/or is failing to implement an adequate SWPPP and BMPs. Upon information and belief, Defendant violated the Permits by not developing,

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modifying, and/or implementing BMPs and a SWPPP in accordance with the requirements of the Permits and by not applying AKART to discharges from the facility. These requirements and Defendant's violations thereof are described in detail in sections I and II of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference.

26. Defendant has violated the monitoring requirements of the Permits. The monitoring requirements and Defendant's violations thereof are described in section III of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference, and include but are not limited to: failure to collect quarterly samples at each distinct point of discharge offsite except for substantially identical outfalls, specifically discharge from the south paved area of the lot (named "Area A" on some facility maps) to the storm system downstream of the sampled discharge site and discharge from the lot to the east of the facility to the storm system along Second Street from January 1, 2012 to present (as required by Conditions S3.B.5.b and S4.B.2.c of the Permits); failure to analyze quarterly samples including pH and Copper in Q1 2012, Turbidity, pH, and Copper in Quarter 2 2012, pH in Quarters 2, 3, and 4, 2013, pH in quarters 1, 2, 3, and 4, 2014, pH in Quarter 1, 2015 (as required by Condition S4.B of the permits); failure to monitor for parameters required for food and kindred products (as required by Condition S5.B and Table 3 of the Permits), including the requisite sampling, analyzing, and reporting, for each quarter since Quarter 1, 2012; and failure to comply with visual monitoring requirements (as required by Condition S7.A of the Permits), including preparing monthly inspection reports containing the required information from January, 2012, to present.

27. Defendant has not conducted and/or completed the corrective action responses as required by the Permits for exceedances of turbidity, copper, and zinc. Defendants have also failed to continue to operate and maintain source control and treatment BMPs related to

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corrective actions implemented for zinc prior to the Defendant's current ISGP. These requirements of the Permits and Defendant's violations thereof are described in section IV of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference.

28. Defendant has violated Condition S9.B of the Permit, which requires Defendant to submit an accurate and complete annual report to WDOE no later than May 15th of each year that includes specific information. Defendant has violated these requirements. For example, Defendant violated this condition by failing to include all of the required information in the annual reports it submitted for years 2012, 2013, 2014, 2015, and 2016.

29. Upon information and belief, Defendant has failed to comply with recording and record keeping requirements of the Permits. These requirements and Defendant's violations thereof are described in section VII of the Notice Letter, attached hereto as Exhibit 1, and are incorporated herein by this reference.

30. Upon information and belief, Defendant has failed to comply with the permit requirement to notify Ecology of changes or updates to sample locations, discharge points, and/or outfalls b submitting an "Industrial Stormwater General Permit Discharge/Sample Point Update form" to Ecology by changing its sample location A and discontinuing the use of Discharge Point B without requesting a Modification of Coverage or submitting the referenced form.

31. Defendant triggered Level 1 corrective action requirements for each benchmark exceedance identified in Table 1 but failed to complete each and every Level 1 corrective action.

32. Discharges from Defendant's Ferndale Facility, including discharges of zinc, turbidity, and copper, contribute to the ecological impacts that result from the polluted state of Schell Ditch and Schell Marsh, and to Plaintiffs' and its members' injuries resulting therefrom.

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33. Defendant has benefited economically as a consequence of its violations and its failure to implement stormwater management improvements at the Facility.

34. Defendant's violations of the CWA at the Facility degrade the environment and the water quality of the receiving water bodies.

35. Defendant's violations at the Facility were avoidable had Defendant been diligent in overseeing facility operations and maintenance.

36. Defendant has a history of significant violations at the Facility, similar to those alleged herein.

37. A significant penalty should be imposed against Defendant pursuant to the penalty factors set forth in 33 U.S.C. § 1319(d).

38. Defendant is a profitable business enterprise. Defendant can afford to pay a significant penalty and such penalty is required to meet the deterrence goals of the Clean Water Act's penalty factors and to disgorge Defendant of the economic advantage it has received through its avoidance of expenditures necessary for compliance, including but not limited to laboratory costs, costs for implementation of best management practices, and operational costs for maintenance of best management practices.

V. CAUSE OF ACTION

39. The preceding paragraphs and the allegations in the Notice Letter are incorporated herein.

40. Defendant has violated the General Permit.

41. Defendant's violations of the General Permit described herein and in the Notice Letter constitute violations of sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342,

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and violations of "effluent standard(s) or limitation(s)" as defined by section 505, 33 U.S.C. § 1365.

42. On information and belief, the violations committed by Defendant are ongoing or are reasonably likely to continue to occur. Any and all additional violations of the General Permit and the CWA which occur after those described in Plaintiffs' Notice Letter but before a final decision in this action should be considered continuing violations subject to this Complaint.

43. Without the imposition of appropriate civil penalties and the issuance of an injunction, Defendant is likely to continue to violate the General Permit and the CWA to the further injury of Plaintiffs, their member(s), and others.

44. A copy of this Complaint is being served upon the Attorney General of the United States and the Administrator of the USEPA as required by 33 U.S.C. § 1365(c)(3).

VI. RELIEF REQUESTED

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

A. Issue a declaratory judgment that Defendant has violated and continues to be in violation of the General Permit, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342;

B. Enjoin Defendant from operating the Facility in a manner that results in further violations of the General Permit, and the CWA;

C. Order Defendant to immediately implement a plan for achieving compliance with the CWA at the Facility, and to provide Plaintiffs with a copy of the plan;

D. Order Defendant to allow Plaintiffs to participate in the development and implementation of Defendant's plan to achieve compliance with the CWA;

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E. Order Defendant to provide Plaintiff, for a period beginning on the date of the Court's Order and running for three years after Defendant achieves compliance with all of the conditions of the General Permit, with copies of all reports and other documents which Defendant submits to the USEPA or to the WDOE regarding Defendant's coverage under the General Permit at the Facility at the time it is submitted to these authorities;

F. Order Defendant to take specific actions to remediate the environmental harm caused by its violations;

G. Order Defendant to pay civil penalties of $37,500.00 per day of violation for each violation committed by Defendant through November 2, 2015, and $52,414 per day thereafter, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a), and 40 C.F.R. § 19;

H. Award Plaintiffs its litigation expenses, including reasonable attorneys' and expert witness fees, as authorized by Section 505(d) of the CWA, 33 U.S.C. § 1365(d), and any other applicable authorization; and

I. Award such other relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED this 7th day of August, 2017.

SMITH & LOWNEY, PLLC
By: *_/s/ Richard A. Smith_*
Richard A. Smith WSBA No. 21788
By: *_/s/ Katherine E. Brennan_*
Katherine E. Brennan, WSBA No. 51247

Attorneys for Plaintiff
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Seattle, WA 98112
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EXHIBIT 1

SMITH & LOWNEY, P.L.L.C.
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May 24, 2017

Via Certified Mail - Return Receipt Requested

James Dahl
Production Operations Manager
Cargill, Inc
PO Box 39
Ferndale, WA 98248-0039

Re: **NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND REQUEST FOR COPY OF STORMWATER POLLUTION PREVENTION PLAN**

Dear Managing Agent:

We represent Puget Soundkeeper Alliance ("Soundkeeper"), 130 Nickerson Street, Suite 107, Seattle, WA 98109, (206) 297-7002, and RE Sources for Sustainable Communities ("RE Sources"), 2309 Meridian St., Bellingham, WA 98225, (360) 733-8307. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days notice of Soundkeeper and RE Sources' intent to file a citizen suit against Cargill Inc, ("Cargill") also doing business as "Cargill Animal Nutrition" and "Ferndale Grain," under section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below. This letter is also a request for a copy of the complete and current stormwater pollution prevention plan ("SWPPP") required by Cargill's National Pollution Discharge Elimination System ("NPDES") permit.

Cargill's discharge of stormwater associated with industrial activity was first authorized by Washington's Industrial Stormwater General Permit issued by the Washington Department of Ecology ("Ecology") in the 1990's. Cargill was covered by the Washington Industrial Stormwater General Permit issued by Ecology on October 21, 2009, effective January 1, 2010, modified May 16, 2012, effective July 1, 2012, and expiring on January 1, 2015, under National Pollutant Discharge Elimination System Permit No. WAR000355 (the "2010 Permit"). Ecology granted Cargill coverage under the current iteration of the ISGP, issued by Ecology on December 3, 2014, effective January 2, 2015, and set to expire on December 31, 2019 (the "2015 Permit") and maintains the same permit number, WAR000355.

Cargill has violated and continues to violate the CWA (see Sections 301 and 402 of the CWA, 33 USC §§ 1311 and 1342) and the terms and conditions of the 2010 Permit and the 2015 Permit (collectively, the "Permits") with respect to operations of, and discharges of stormwater and pollutants from, its facility located at or about 5744 3rd Ave, Ferndale, WA

98248 (the "facility") as described herein, to Shell (also known as "unnamed" and "Schell") ditch, and/or Schell Creek, and/or the City of Ferndale Municipal Separate Storm Sewer System ("MS4"), and/or the Second Street ditch. The facility subject to this notice includes any contiguous or adjacent properties owned or operated by Cargill.

I. COMPLIANCE WITH STANDARDS.

A. Violations of Water Quality Standards.

Condition S10.A of the Permits prohibit discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA and Washington's efforts to protect clean water. In particular, water quality standards represent the U.S. Environmental Protection Agency ("EPA") and Ecology's determination, based on scientific studies, of the thresholds at which pollution starts to cause significant adverse effects on fish or other beneficial uses. For each water body in Washington, Ecology designates the "beneficial uses" that must be protected through the adoption of water quality standards.

A discharger must comply with both narrative and numeric criteria water quality standards. WAC 173-201A-010; WAC 173-201A-510 ("No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter."). Narrative water quality standards provide legal mandates that supplement the numeric criteria. Furthermore, the narrative water quality standard applies with equal force even if Ecology has established a numeric water quality standard. Specifically, Condition S10.A of the Permits require that Cargill's discharges not cause or contribute to an excursion of Washington State water quality standards.

Cargill discharges to Shell ditch, which flows to the Schell Marsh and to the Lummi River (marked "Red River" on some maps) and to Lummi Bay, and/or Schell Creek, and/or the City of Ferndale MS4 via 3rd Street and drainage systems north of Washington Street, to Washington Street, which ultimately drains to the Nooksack River and the Lummi River, and/or the Second Street ditch, which flows to the Ferndale Settling Pond, and/or tributaries thereto. Cargill discharges stormwater that contains elevated levels of turbidity, zinc, copper, oil, and out of range pH as indicated in the table of benchmark excursions below. These discharges cause and/or contribute to violations of water quality standards for turbidity, zinc, copper, oil, and pH in the receiving water bodies and have occurred each and every day during the last five years on which there was 0.1 inch or more of precipitation, and continue to occur. *See* WAC 173-201A-200(1)(b), (e), (g); (2); (3); (4); WAC 173-201A-210(1)(a), (b), (e), (f); (2); (3); (4); WAC 173-201A-240; WAC 173-201A-260; WAC 173-201A-600; WAC 173-201A-602; WAC 173-201A-610; WAC 173-201A-612. Precipitation data from that time period is appended to this notice of intent to sue and identifies these days.

Table 1: Benchmark Exceedances

Quarter in which Sample Collected	Turbidity Concentration (Benchmark 25 NTU)	pH (Benchmark Range between 5-9 SU)	Oil Sheen (Y/N)	Zinc (Benchmark 117 ug/L)	Copper (Benchmark 14 ug/L)
1Q 2010	4.8	6.2	N	**125**	6
2Q 2010	9.6	5.7	N	**419**	10
3Q2010	2.6	6.2	N	**233**	8.6
4Q 2010	11.2	5.9	N	**238**	14
1Q 2011	A	A	N	**533**	A
2Q 2011	A	A	N	**883**	A
3Q 2011	**31**	E	E	**935**	E*
4Q 2011	E	E	E	E	E
1Q 2012	18	A	N	**386**	A
2Q 2012	A	A	N	**279**	A
3Q 2012	ND	ND	ND	ND	ND
4Q 2012	14.6	5.8, 6.2	N	**155.5**	13.15
1Q 2013	7.2	6.6	N	**721**	13
2Q 2013	11.6	E	N	**375**	11.95
3Q 2013	12.8	A	N	**443.5**	**28.3**
4Q 2013	4.4	A	N	**175**	7.9
1Q 2014	6.2	A	N	**294**	8.8
2Q 2014	11	A	N	**479**	6.7
3Q 2014	11	A	N	**381**	6.2
4Q 2014	**28**	E	N	**387**	11.4
1Q 2015	16	A	N	**530**	9.1
2Q 2015	ND	ND	ND	ND	ND
3Q 2015	**31**	6.4	N	**457**	12.4
4Q 2015	15.05	7.3, 6.8	N	**121**	8.68
1Q 2016	5.7	6.5	N	**160**	2.9
2Q 2016	ND	ND	ND	ND	ND
3Q 2016	23	7.1	N	**190**	9.4
4Q 2016	19.5	6.7/6.8	N	**185**	11.65
1Q 2017	13	6.6	N	**250**	10

Key:
A = Consistent Attainment claimed, but did not meet requirements for consistent attainment, therefore a failure to sample.
E = Analysis Not Complete / Not Conducted / Not Reported
E* = A "No Discharge" was reported for one parameter but a sample was collected and tested for another parameter.
ND = No Discharge.

B. Compliance with Standards.

Condition S10.C of the Permits require Cargill to apply all known and reasonable methods of prevention, control and treatment ("AKART") to all discharges, including preparation and implementation of an adequate SWPPP and best management practices ("BMPs"). Cargill has violated and continues to violate these conditions by failing to apply AKART to its discharges or to implement an adequate SWPPP and BMPs as evidenced by the elevated levels of pollutants in its discharge indicated in the table above and as described below in this notice of intent to sue.

Condition S1.A of the Permits require that all discharges and activities authorized be consistent with the terms and conditions of the permits. Cargill has violated these conditions by discharging and acting inconsistent with the conditions of the Permits as described in this notice of intent to sue.

II. STORMWATER POLLUTION PREVENTION PLAN VIOLATIONS.

On information and belief, Cargill is in violation of the Permits' SWPPP provisions as follows:

1. Condition S3.A.1 of the Permits require Cargill to develop and implement a SWPPP as specified. Condition S3.A.2 of the Permits require the SWPPP to specify BMPs necessary to provide AKART and ensure that discharges do not cause or contribute to violations of water quality standards. On information and belief, Cargill has violated these requirements of the Permits each and every day during the last five years and continues to violate them as it has failed to prepare and/or implement a SWPPP that includes AKART BMPs and BMPs necessary to comply with state water quality standards.

2. Condition S3.A of the Permits require Cargill to have and implement a SWPPP that is consistent with permit requirements, fully implemented as directed by permit conditions, and updated as necessary to maintain compliance with permit conditions. On information and belief, Cargill has violated these requirements of the Permits each and every day during the last five years and continues to violate them because its SWPPP is not consistent with permit requirements, has not been fully implemented and has not been updated as necessary.

3. The SWPPP fails to satisfy the requirements of Condition S3 of the Permits because it does not adequately describe BMPs. Condition S3.B.4 of the Permits require that the SWPPP include a description of the BMPs that are necessary for the facility to eliminate or reduce the potential to contaminate stormwater. Condition S3.A.3 of the Permits require that the SWPPP include BMPs consistent with approved stormwater technical manuals, including but not limited to the Stormwater Management Manual for Western Washington, available at http://www.ecy.wa.gov/programs/wq/stormwater/manual.html, and Suggested Practices to Reduce Zinc Concentrations in Industrial Stormwater Discharges, available at https://fortress.wa.gov/ecy/publications/summarypages/0810025.html, or document how

stormwater BMPs included in the SWPPP are demonstratively equivalent to the practices contained in the approved stormwater technical manuals, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs. Cargill's SWPPP does not comply with these requirements because it does not adequately describe BMPs and does not include BMPs consistent with approved stormwater technical manuals nor does it include BMPs that are demonstratively equivalent to such BMPs with documentation of BMP adequacy.

4. Cargill's SWPPP fails to satisfy the requirements of Condition S3.B.2 of the Permits because it fails to include a facility assessment as mandated. The SWPPP fails to include an adequate facility assessment because it does not describe the industrial activities conducted at the site, the general layout of the facility including buildings and storage of raw materials, the flow of goods and materials through the facility, regular business hours and seasonal variations in business hours or in industrial activities as required.

5. Cargill's SWPPP fails to satisfy the requirements of Condition S3.B.1 of the Permits because it does not include a site map that identifies significant features, the stormwater drainage and discharge structures, the stormwater drainage areas for each stormwater discharge point off-site, a unique identifying number for each discharge point, each sampling location with a unique identifying number, paved areas and buildings, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, surface water locations, areas of existing and potential soil erosion, vehicle maintenance areas, and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes.

6. Cargill's SWPPP fails to comply with Condition S3.B.2.b of the Permits because it does not include an inventory of industrial activities that identifies all areas associated with industrial activities that have been or may potentially be sources of pollutants as required. The SWPPP does not identify all areas associated with loading and unloading of dry bulk materials or liquids, outdoor storage of materials or products, outdoor manufacturing and processing, onsite dust or particulate generating processes, on-site waste treatment, storage, or disposal, vehicle and equipment fueling, maintenance, and/or cleaning, roofs or other surfaces exposed to air emissions from a manufacturing building or a process area, and roofs or other surfaces composed of materials that may be mobilized by stormwater as required by these conditions.

7. Cargill's SWPPP does not comply with Condition S3.B.2.c of the Permits because it does not include an adequate inventory of materials. The SWPPP does not include an inventory of materials that lists the types of materials handled at the site that potentially may be exposed to precipitation or runoff and that could result in stormwater pollution, a short narrative for material describing the potential for the pollutants to be present in stormwater discharge that is updated when data becomes available to verify the presence or absence of the pollutants, a narrative description of any potential sources of pollutants from past activities, materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater as required. The SWPPP does not include the method and location of on-site storage or disposal of such materials and a list of

significant spills and significant leaks of toxic or hazardous pollutants as these permit conditions require.

8. Cargill's SWPPP does not comply with Condition S3.B.3 of the Permits because it does not identify specific individuals by name or title whose responsibilities include SWPPP development, implementation, maintenance and modification.

9. Condition S3.B.4 of the 2010 Permit required that permittees include in their SWPPPs and implement certain mandatory BMPs no later than July 1, 2010 unless site conditions render the BMP unnecessary, infeasible, or an alternative and equally effective BMP is provided. Condition S3.B.4 of the 2015 Permit also requires that permittees include in their SWPPPs and implement mandatory BMPs subject to the same conditions. Cargill is in violation of this requirement because it has failed to include in its SWPPP and implement the mandatory BMPs of the Permits, including but not limited to vacuuming paved surfaces with a vacuum sweeper to remove accumulated pollutants (including but not limited to animal and animal feed waste) a minimum of once per quarter (Condition S3.B.4.b.i.2.a) and failing to immediately clean up spills and leaks (including but not limited to grain spills on and around the railroad tracks at the facility) (Condition S3.B.4.b.i.3.d).

10. Cargill's SWPPP does not comply with Condition S3.B.4.b.i of the Permits because it does not include required operational source control BMPs in the following categories: good housekeeping (including definition of ongoing maintenance and cleanup of areas that may contribute pollutants to stormwater discharges, and a schedule/frequency for each housekeeping task); preventive maintenance (including BMPs to inspect and maintain stormwater drainage, source controls, treatment systems, and plant equipment and systems, and the schedule/frequency for each task); spill prevention and emergency cleanup plan (including BMPs to prevent spills that can contaminate stormwater, for material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs); employee training (including an overview of what is in the SWPPP, how employees make a difference in complying with the SWPPP, spill response procedures, good housekeeping, maintenance requirements, and material management practices, how training will be conducted, the frequency/schedule of training, and a log of the dates on which specific employees received training); inspections and recordkeeping (including documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping, identification of personnel who conduct inspections, provision of a tracking or follow-up procedure to ensure that a report is prepared and appropriate action taken in response to visual monitoring, definition of how Cargill will comply with signature and record retention requirements, and certification of compliance with the SWPPP and Permit).

11. Cargill's SWPPP does not comply with Condition S3.B.4.b.i.7 of the Permits because it does not include measures to identify and eliminate the discharge of process wastewater, domestic wastewater, noncontact cooling water, and other illicit discharges to stormwater sewers, or to surface waters and ground waters of the state.

12. Cargill's SWPPP does not comply with Condition S3.B.4.b.ii of the Permits because it does not include required structural source control BMPs to minimize the

exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff. Cargill's SWPPP does not comply with Condition S3.B.4.b.iii of the Permits because it does not include treatment BMPs as required.

13. Cargill's SWPPP fails to comply with Condition S3.B.4.b.v of the Permits because it does not include BMPs to prevent the erosion of soils or other earthen materials and prevent off-site sedimentation and violations of water quality standards.

14. Cargill's SWPPP fails to satisfy the requirements of Condition S3.B.5 of the Permits because it fails to include a stormwater sampling plan as required. The SWPPP does not include a sampling plan that identifies points of discharge to surface waters, storm sewers, or discrete ground water infiltration locations, documents why each discharge point is not sampled, identifies each sampling point by its unique identifying number, identifies staff responsible for conducting stormwater sampling, specifies procedures for sampling collection and handling, specifies procedures for sending samples to the a laboratory, identifies parameters for analysis, holding times and preservatives, laboratory quantization levels, and analytical methods, and that specifies the procedure for submitting the results to Ecology.

III. MONITORING AND REPORTING VIOLATIONS.

A. Failure to Collect Quarterly Samples.

Condition S4.B of the Permits require Cargill to collect a sample of its stormwater discharge once during every calendar quarter. Conditions S3.B.5.b and S4.B.2.c of the Permits require Cargill to collect stormwater samples at each distinct point of discharge offsite except for substantially identical outfalls, in which case only one of the substantially identical outfalls must be sampled. These conditions set forth sample collection criteria, but require the collection of a sample even if the criteria cannot be met. On information and belief, the facility has at least two distinct points of discharge off-site, Outfalls A and B. On information and belief, there are additional unnamed distinct discharge points.

Cargill violated these requirements by failing to collect stormwater samples at any of its discharge points during the 4th Quarter 2011.

Cargill has also violated and continues to violate these conditions because it does not sample each distinct point of discharge off-site. Un-sampled points of discharge include those from the parking lot north of Washington Street to a storm sewer that runs south to the Washington Street storm sewer; from the point of discharge formerly described as Discharge Point B, which discharges via an open ditch or sewer to the Vanderyacht stormwater facility, which discharges to the Nooksack River; and from the south paved area ("Area A") to the storm system along Third Street downstream of the current discharge site. These violations have occurred and continue to occur each and every quarter during the last five years that Cargill was and is required to sample its stormwater discharges, including the quarters in which it collected stormwater discharge samples from some, but not each, point of discharge. These violations will continue until Cargill commences monitoring all distinct points of discharge.

B. Failure to Analyze Quarterly Samples.

Condition S5.A.1 of the Permits require Cargill to analyze stormwater samples collected quarterly for turbidity, pH, total copper, oil sheen, and total zinc.

Cargill violated these conditions by failing to analyze stormwater samples as describe in Table 2 below:

Table 2 – Parameters Not Analyzed

Quarter	Parameter
1st Quarter 2011	Turbidity, pH, Copper
2nd Quarter 2011	Turbidity, pH, Copper
3rd Quarter 2011	pH, Oil Sheen, Copper
4th Quarter 2011	Turbidity, pH, Oil Sheen, Zinc, Copper
1st Quarter 2012	pH, Copper
2nd Quarter 2012	Turbidity, pH, Copper
2nd Quarter 2013	pH
3rd Quarter 2013	pH
4th Quarter 2013	pH
1st Quarter 2014	pH
2nd Quarter 2014	pH
3rd Quarter 2014	pH
4th Quarter 2014	pH
1st Quarter 2015	pH

C. Failure to Report Sample Analysis Result.

Condition S9.A pf the Permits require Cargill to report discharge sampling data obtained during each monitoring period on a Discharge Monitoring Report or a Solids Monitoring Form provided, or otherwise approved, by Ecology. Condition S9.D requires Cargill to collect results of samples taken at a designated sampling point more frequently than required by this permit and to include the results in the calculation and reporting of the data submitted in Cargill's DMR. Cargill has violated these conditions by failing to report the analysis results for a sample collected on November 3, 2014 and failing to include the results in the data submitted in Cargill's DMR, including the presence of an oil sheen, 140 NTU of turbidity, and 500 ug/l of Total Zinc.

D. Failure to Monitor for Parameters Required for Food and Kindred Products.

Condition S5.B and Table 3 of the Permits establish the following additional parameters and benchmarks for Standard Industrial Classification (SIC) code 2048 that are

applicable to Cargill due to the nature of its activities at this site, which include the manufacturing and/or mixing of prepared feeds, feed ingredients, and adjuncts for animals: Biochemical Oxygen demand ("BOD5"), Nitrate & Nitrite Nitrogen, and Phosphorus (Total). Cargill is obligated to analyze its quarterly stormwater discharge samples for these parameters and has violated Condition S5.B of the Permits described above by failing to conduct analyses of these additional parameters as required.

E. Failure to Comply with Visual Monitoring Requirements.

Condition S7.A of the Permits requires that monthly visual inspection be conducted at the facility by qualified personnel. Each inspection is to include observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged, observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharges, observations for the presence of illicit discharges, a verification that the descriptions of potential pollutant sources required by the permit are accurate, a verification that the site map in the SWPPP reflects current conditions, and an assessment of all BMPs that have been implemented (noting the effectiveness of the BMPs inspected, the locations of BMPs that need maintenance, the reason maintenance is needed and a schedule for maintenance, and locations where additional or different BMPs are needed).

Condition S7.C of the Permits requires that Cargill record the results of each inspection in an inspection report or checklist that is maintained on-site and that documents the observations, verifications, and assessments required. The report/checklist must include the time and date of the inspection, the locations inspected, a statement that, in the judgment of the person conducting the inspection and the responsible corporate officer, the facility is either in compliance or out of compliance with the SWPPP and the Permits, a summary report and schedule of implementation of the remedial actions that Cargill plans to take if the site inspection indicates that the facility is out of compliance, the name, title, signature and certification of the person conducting the facility inspection, and a certification and signature of the responsible corporate officer or a duly authorized representative.

Cargill is in violation of these requirements of Condition S7 of the Permits because, during the last five years, it has failed to conduct each of the requisite visual monitoring and inspections, failed to prepare and maintain the requisite inspection reports or checklists, and failed to make the requisite certifications and summaries.

IV. CORRECTIVE ACTION VIOLATIONS.

A. Violations of the Level One Requirements.

Condition S8.B of the Permits require Cargill take specified actions, called a "Level One Corrective Action," each time quarterly stormwater sample results exceed a benchmark value or are outside the benchmark range. Condition S5.A and Table 2 of the Permits establish the following benchmarks: turbidity 25 NTU; pH 5 – 9 SU; total copper 14 μg/L; and total zinc 117 μg/L.

As described by Condition S8.B of the Permits, a Level One Corrective Action requires Cargill: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits and contains the correct BMPs from the applicable Stormwater Management Manual; (2) make appropriate revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark values in future discharges and sign and certify the revised SWPPP in accordance with Condition S3.A.6 of the Permits; and (3) summarize the Level One Corrective Action in the Annual Report required under Condition S9.B of the Permits. Condition S8.B.4 of the Permits require Cargill implement the revised SWPPP as soon as possible, and no later than the DMR due date for the quarter the benchmark was exceeded.

Cargill has violated the requirements of the Permits described above by failing to conduct a Level One Corrective Action in accordance with permit conditions, including the required review, revision and certification of the SWPPP, the required implementation of additional BMPs, and the required summarization in the annual report each time since January 1, 2012, its quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH, Zinc, Turbidity, and Copper, including the benchmark excursions listed in Table 1 above.

B. Violations of the Level Two Requirements.

Condition S8.C of the Permits require Cargill take specified actions, called a "Level Two Corrective Action," each time quarterly stormwater sample results exceed an applicable benchmark value or are outside the benchmark range for pH for any two quarters during a calendar year.

As described by Condition S8.C of the Permits, a Level Two Corrective Action requires Cargill: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional structural source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and sign and certify the revised SWPPP in accordance with Condition S3.A.6 of the Permits; and (3) summarize the Level Two Corrective Action (planned or take) in the Annual Report required under Condition S9.B of the Permits. Condition S8.C.4 of the Permits require Cargill implement the revised SWPPP according to condition S3 of the Permits and the applicable stormwater management manual as soon as possible, and no later than September 30th of the following year.

The Permits establish the benchmarks applicable to Cargill described in section IV.A of this notice of intent to sue letter.

Cargill has violated the requirements of the Permits described above by failing to conduct a Level Two Corrective Action in accordance with permit conditions, including the required review, revision and certification of the SWPPP, the required implementation of additional BMPs, including additional structural source control BMPs, and the required summarization in the annual report each time since January 1, 2012, its quarterly stormwater

sampling results were greater than a benchmark or outside the benchmark range for pH for any two quarters during a calendar year. As indicated in Table 1 above, these violations include, but are not limited to, Cargill's failure to fulfill these Level Two Corrective Action obligations for Zinc triggered by its stormwater sampling during calendar years 2010, 2011, 2012, 2013, 2014, 2015, and 2016.

C. Violations of the Level Three Requirements.

Condition S8.D of the Permits require Cargill take specified actions, called a "Level Three Corrective Action," each time quarterly stormwater sample results exceed an applicable benchmark value or are outside the benchmark range for pH for any three quarters during a calendar year.

As described by Condition S8.D of the Permits, a Level Three Corrective Action requires Cargill: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and additional operational and/or structural source control BMPs if necessary for proper function and maintenance of treatment BMPs, and sign and certify the revised SWPPP in accordance with Condition S3.A.6 of the Permits; and (3) summarize the Level Three Corrective Action (planned or take) in the Annual Report required under Condition S9.B of the Permits, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or it new/additional treatment BMPs will be installed. Condition S8.D.2.b of the Permits require that a licensed professional engineer, geologist, hydrogeologist, of certified professional in storm water quality must design and stamp the portion of the SWPPP that addresses stormwater treatment structures or processes.

Condition S8.D.3 of the Permits require that, before installing BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, the Cargill submit an engineering report, plans, and specifications, and an operations and maintenance manual to Ecology for review in accordance with chapter 173-204 of the Washington Administrative Code. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. The plans and specifications and the operations and maintenance manual must be submitted to Ecology at least 30 days before construction/installation.

Condition S8.D.5 of the Permits require Cargill fully implement the revised SWPPP according to condition S3 of the Permits and the applicable stormwater management manual as soon as possible, and no later than September 30th of the following year.

The Permits establish the benchmarks applicable to Cargill described in section IV.A of this notice of intent to sue letter.

Cargill has violated the requirements of the Permits described above by failing to conduct a Level Three Corrective Action in accordance with permit conditions, including: the

required review, revision and certification of the SWPPP; the requirement to have a specified professional design and stamp the portion of the SWPPP pertaining to treatment; the required implementation of additional BMPs, including additional treatment BMPs; the required submission of an engineering report, plans, specifications, and an operations and maintenance plan; and the required summarization in the annual report each time since January 1, 2012 its quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH for any three quarters during a calendar year. As indicated in Table 1 above, these violations include, but are not limited to, Cargill's failure to fulfill these Level Three Corrective Action obligations for Zinc triggered by its stormwater sampling during calendar years 2010, 2011, 2012, 2013, 2014, 2015, and 2016. Moreover, when Cargill attempted to fulfill these obligations, Cargill failed to do so timely.

D. Violations of Corrective Action Requirements from Prior Permits

Condition S8.A of the Permits requires Defendant to continue to operate and maintain source control and treatment BMPs related to Level One, Two, and Three responses implemented prior to Defendant's current ISGP. Defendant has violated this requirement by failing to maintain and operate a Level Three corrective action for Zinc triggered by its stormwater sampling in calendar years 2009, 2010, and 2011.

V. ILLICIT AND PROHIBITED DISCHARGES.

Condition S5.E of the Permits prohibits the discharge of process wastewater (including stormwater that comingles with process wastewater) and illicit discharges. Appendix 2 to the Permits defines "illicit discharges" as "any discharge that is not composed entirely of stormwater." Condition S5.F of the Permits requires Cargill to manage stormwater to prevent the discharge of synthetic, natural or processed oil or oil containing products as identified by an oil sheen, and trash and floating debris, prohibiting those discharges. Cargill's discharges of manure, molasses, tallow, grain solids, and other accumulated solids violate these Permit conditions. Accumulated solids have been observed around the facility, including what may be manure deposited around the facility from the tires of trucks that return from dropping off loads at dairy farms. Additionally, spilled grain solids are deposited on the railroad tracks when deliveries of grain are offloaded, resulting in pollution from the grain and from animals who feed on the grain. Molasses and tallow tanks have been observed to discharge to the stormwater drain when leaking or rinsed out. On information and belief, these prohibited discharges occurred each and every day over the past five years Cargill has received, processed, or loaded animal feed and are reasonably likely to continue to occur.

Condition S7.B.3.b of the Permits also require Cargill to eliminate illicit discharges within 30 days of discovery; and Condition S3.B.4.b.i.7 of the Permits require Cargill's SWPPP to include measures to identify and eliminate illicit discharges to surface waters. Cargill violated these requirements by failing to eliminate its illicit discharges altogether over the last five years.

Additionally, Condition S7.B.3.a of the Permits requires Cargill to notify the Department of Ecology within seven days of any discovery of an illicit discharge. Cargill

violated this requirement by failing to notify Ecology about its illicit discharges within seven days of each occurrence over the past five years.

VI. VIOLATIONS OF THE ANNUAL REPORT REQUIREMENTS.

Condition S9.B of the Permits require Cargill to submit an accurate and complete annual report to Ecology no later than May 15 of each year. The annual report must include corrective action documentation as required in Condition S8.B – D of the Permits. If a corrective action is not yet completed at the time of submission of the annual report, Cargill must describe the status of any outstanding corrective action. Specific information to be included in the annual report is identification of the conditions triggering the need for corrective action, description of the problem and identification of dates discovered, summary of any Level 1, 2, or 3 corrective actions completed during the previous calendar year, including the dates corrective actions completed, and description of the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, including identification of the date Cargill expects to complete corrective actions.

Cargill has violated this condition. The annual report submitted by Cargill for 2012, on May 15, 2013, does not include the required information. Specifically, the report does not describe all of the stormwater problems identified, such as exceedances of Zinc levels outside of the permissible range, or all of the violations or corrections required based on the January 10, 2012 inspection. The annual report submitted by Cargill for 2013, received by Ecology on May 09, 2014, does not include the required information. Specifically, the report does not describe all of the stormwater problems identified, such as exceedances of Copper levels outside of the permissible range. The annual report submitted by Cargill for 2014, on May 15, 2015, does not include the required information. Specifically, the report does not describe all of the stormwater problems identified, such as exceedances of Zinc and Turbidity levels outside of the permissible range. The annual report submitted by Cargill for 2015, on May 13, 2016, does not include the required information. Specifically, the report does not describe all of the stormwater problems identified, such as exceedances of Zinc and Turbidity levels outside of the permissible range.

VII. VIOLATIONS OF THE RECORDKEEPING REQUIREMENTS.

A. Failure to Record Information.

Condition S4.B.3 of the Permits require Cargill record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if Cargill collected the sample within the first 30 minutes of stormwater discharge event, an explanation of why Cargill could not collect a sample within the first 30 minutes of a stormwater discharge event, the sample location, method of sampling and of preservation, and the individual performing the sampling. Upon information and belief, Cargill is in violation of these conditions as it has not recorded each of these specified items for each sample taken during the last five years.

B. Failure to Retain Records.

Condition S9.C of the Permits require Cargill to retain for a minimum of five years a copy of the current Permit, a copy of Cargill's coverage letter, records of all sampling information, inspection reports including required documentation, any other documentation of compliance with permit requirements, all equipment calibration records, all BMP maintenance records, all original recordings for continuous sampling instrumentation, copies of all laboratory results, copies of all required reports, and records of all data used to complete the application for the Permit. Upon information and belief, Cargill is in violation of these conditions because it has failed to retain records of such information, reports, and other documentation during the last five years.

VIII. FAILURE TO REPORT PERMIT VIOLATIONS.

Condition S9.E of the Permits requires Cargill to take certain actions in the event Cargill is unable to comply with any of the terms and conditions of the Permits which may endanger human health or the environment, or exceed any numeric effluent limitation in the permit. In such circumstances, Cargill must immediately take action to minimize potential pollution or otherwise stop the noncompliance and correct the problem, and Cargill must immediately notify the appropriate Ecology regional office of the failure to comply. Cargill must then submit a detailed written report to Ecology, including specified details, within 5 days of the time Cargill became aware of the circumstances unless Ecology requests an earlier submission.

On information and belief, Cargill routinely violates these requirements, including each and every time Cargill discharges illicit and/or non-stormwater discharges, as described in section V to this notice of intent to sue, above; each and every time Cargill failed to comply with the corrective action requirements described in section IV of this notice of intent to sue; and each and every time Cargill discharged stormwater with concentrations of pollutants in excess of the Permit benchmarks, as described in Table 1, above. All these violations may endanger human health or the environment.

IX. FAILURE TO APPLY FOR MODIFICATION OF PERMIT COVERAGE.

Condition S4.B.2.d requires Cargill to notify Ecology of any changes or updates to sample locations, discharge points, and/or outfalls by submitting an "Industrial Stormwater General Permit Discharge/Sample Point Update Form" to Ecology. Cargill changed its sampling location without requesting a Modification of Coverage. Cargill has violated this requirement each and every day since Cargill discontinued the use of Discharge point B, and since Cargill changed its sampling location on or about October 1, 2015.

X. REQUEST FOR SWPPP.

Pursuant to Condition S9.F of the 2015 Permit, Soundkeeper and RE Sources hereby request that Cargill, Inc. provide a copy of, or access to, its SWPPP complete with all

incorporated plans, monitoring reports, checklists, and training and inspection logs. The copy of the SWPPP and any other communications about this request should be directed to the undersigned at the letterhead address.

Should Cargill fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the 2015 Permit, it will be in violation of that condition, which violation shall also be subject to this notice of intent to sue and any ensuing lawsuit.

XI. CONCLUSION.

The above-described violations reflect those indicated by the information currently available to Soundkeeper and RE Sources. These violations are ongoing. Soundkeeper and RE Sources intend to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to $37,500 per day for each violation that occurred before November 2, 2015, and $51,570 per day for each violation that occurred thereafter. In addition to civil penalties, Soundkeeper and RE Sources will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Soundkeeper and RE Sources believe that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Cargill, Inc. under Section 505(a) of the Clean Water Act for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations addressed in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

SMITH & LOWNEY, PLLC

By: _____
Richard A. Smith
Katherine Brennan

cc: Scott Pruitt, Administrator, U.S. EPA
Michelle Pirzadeh, Acting Region 10 Administrator, U.S. EPA

Maia Bellon, Director, Washington Department of Ecology
Registered Agent (CT Corporation System, 505 Union Ave SE, Ste. 120, Olympia, WA 98501)