EDEN

Eden Environmental Citizen's Group

February 23, 2019

Via US Mail, Certified

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FEB 27 2019

Via US Mail

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Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Decore-Ative Specialties:

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Decore-Ative Specialties ("Discharger") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Decore-Ative Specialties facility located at 10481 Stockton Boulevard in Elk Grove, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

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CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around March 14, 2015, Decore-Ative Specialties submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the 2015 Permit and was assigned Waste Discharger Identification number ("WDID") 5S34I017519. However, the Facility was previously covered under the 1997 Permit, commencing October 2, 2002.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Decore-Ative Specialties' permanent facility address of 10481 Stockton Boulevard in Elk Grove, California.

Decore-Ative Specialties manufactures wooden cabinets. Facility operations are covered under Standard Industrial Classification Codes (SIC) 2434 (Wood Kitchen Cabinets).

Based on the EPA's Industrial Storm Water Fact Sheet for Sector W –Wood and Metal Furniture, polluted discharges from operations at the Facility contain toxic metals, such as lead and cadmium; arsenic; total suspended solids ("TSS"); chemical oxygen demand (COD; diesel; fuel; solvents; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

B. The Affected Receiving Waters

The Facility discharges directly into an unnamed water canal behind the facility, which flows into Deer Creek, a tributary of the San Joaquin River, via the Consumnes and Mokelumne Rivers ("Receiving Waters").

The San Joaquin River is a water of the United States. The CWA requires that water bodies such as the San Joaquin River meet water quality objectives that protect specific "beneficial uses." The Central Valley Regional Water Board has issued its *Water Quality Control Plan for the Sacramento and San Joaquin River Basins* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Migration (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN).

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when its Beneficial Uses are not being achieved due to the presence of one or more pollutants.

The San Joaquin River is impaired for Selenium, Salinity, Total Dissolved Solids (TDS), Electrical Conductivity (EC), Boron, Organophosphorus (OP) Pesticides (Diazinon, Chlorpyrifos), Oxygen-Demanding Substances (BOD/Algae, Ammonia, Organic N) Organochlorine "Legacy" Pesticides (DDT, Chlordane, Dieldrin, Toxaphene, etc.) Mercury, Pathogen-Indicator Organisms, E. coli, Fecal Coliforms, and Toxicity of Unknown Cause.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient/Invalid SWPPP and Site Map

The Discharger's current Storm Water Pollution Prevention Plan ("SWPPP") for the Facility is inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

(a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:

1) storm water drainage areas within the facility boundary and portions of any drainage area impacted by discharges from surrounding areas;
2) the flow direction of each drainage area;
3) areas of soil erosion;
4) locations of storm water collection and conveyance systems, associated discharge locations and direction of flow;
5) sample locations if different than the identified discharge locations;
6) locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDs and/or run-on;
7) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
8) locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred;
9) all areas of industrial activity subject to the General Permit.

(b) The SWPPP fails to include an adequate discussion of the Facility's receiving waters (Section XI.B.6(e), Section X.G.2.ix)

(c) The SWPPP fails to include an appropriate discussion of the Industrial Materials handled at the facility (Section X.F);

(d) The Minimum Best Management Policies (BMPs) as indicated in the SWPPP are insufficient and do not comply with the minimum required categories as listed in the General Permit, which include Good Housekeeping, Preventive Maintenance, Spill and Leak Prevention and Response, Material Handling and Waste Management, Erosion and Sediment Controls, Employee Training Program and Quality Assurance and Record Keeping (Section X.H.1);

(e) The SWPPP fails to include an appropriate Monitoring Implementation Plan, including a discussion of Visual Observations, Sampling and Analysis and Sampling Analysis Reporting (Section XI);

(f) The SWPPP fails to include an appropriate discussion of drainage areas and Outfalls from which samples must be taken during Qualified Storm Events (Section XI);

(g) The SWPPP fails to include the date of each SWPPP Amendment (Section X.A.10); and

(h) **The SWPPP is invalid because it was not certified and submitted by the Facility's Legally Responsible Person.** In fact, the SWPPP was not certified by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), which includes SWPPPs, must be certified and submitted by a duly authorized Legally Responsible Person.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 1, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

a. One storm water sample analysis for the time period July 1, 2017, through December 31, 2017; and

b. Two storm water sample analyses for the time period July 1, 2018, through December 31, 2018.

3. Failure to Deliver Samples to the Laboratory within 48 Hours of Collection

Pursuant to Attachment H, Section 2 of the General Permit, Dischargers are to deliver storm water run-off samples to a qualified Laboratory within 48 hours of the physical sampling. The Discharger's samples listed below were not delivered to the Facility's Laboratory in that time frame:

Sample Date/Time	Due to Lab by:	Date/Time Laboratory Received Sample
3/11/16 08:17	3/13/16 08:16	3/14/16 21:30
10/14/16 12:45	10/16/16 12:44	10/17/16 20:37
2/3/17 08:20	2/5/17 08:19	2/6/17 20:40
1/25/18 15:32	1/27/18 15:31	1/29/18 21:54

4. Failure to Upload Storm Water Sample Analyses within 30 Days

Section XI.B.11.a of the General Permit requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

Decore-Ative Specialties failed to upload into SMARTS within 30 days the following sampling and analytical results pursuant to Section XI.B.11.a of the General Permit:

Sample Date	Date of Laboratory Report	Date Due to SMARTS	Date Uploaded into SMARTS	Late Period
11/9/15	11/20/15	12/20/5	6/22/16	6 months
12/3/15	12/18/15	1/17/15	6/22/16	5 months
1/4/16	1/20/16	2/19/15	6/22/16	4 months
3/11/16	3/30/16	4/29/15	6/22/16	2 months
10/14/16	11/1/16	12/1/16	7/11/17	7 months
12/15/16	1/4/17	2/3/17	7/11/17	5 months
1/18/17	2/6/17	3/8/17	7/11/17	4 months
2/3/17	2/17/17	3/19/17	7/11/17	4 months
11/16/17	12/6/17	1/5/18	7/6/18	6 months
1/8/18	1/24/18	2/23/18	7/6/18	5 months
1/25/18	2/14/18	3/16/18	7/6/18	4 months
3/1/18	3/16/18	4/15/18	7/6/18	3 months

5. Failure to Analyze Storm Water Samples for the Correct Parameters

General Permit sections XI.B.6.a and XI.B.6.b require all Dischargers to analyze for the following three parameters, regardless of facility type: pH, Total Suspended Solids (TSS) and Oil & Grease (O&G).

Decore-Ative Specialties' laboratory analytical reports for samples collected on November 9, 2015 and October 14, 2016 failed to analyze for the required parameters of pH, TSS and oil & grease.

C. *Falsification of Annual Reports Submitted to the Regional Water Board*

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years or by both.

On June 2, 2018, Decore-Ative Specialties submitted its Annual Report for the Fiscal Year 2017-2018. The Report was signed under penalty of law by David Carrera. Mr. Carrera is the currently designated Legally Responsible Person ("LRP") for Decore-Ative Specialties.

Mr. Carrera responded "Yes" to Question No. 3 on the Annual Report ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?") However, as discussed above, Decore-Ative Specialties failed to collect and analyze the required number of storm water samples during the first half of the 2017-18 reporting year.

Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that Decore-Ative Specialties has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

Decore-Ative Specialties's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

Specific BMP Deficiencies

On September 5, 2014, the Facility was inspected by the Central Valley Regional Water Quality Control Board, during which inspectors observed a discharge of reddish liquid coming from the covered storage area next to the facility's sawdust extraction system which flowed into the v-ditch at one of the Facility's discharge points.

D. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a

separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

1. Discharges in Excess of Technology-Based Effluent Limitations

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2 of the General Permit. The General Permit includes "Numeric Action Levels" ("NALs") derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. (General Permit, Section I.M. (Finding 62)).

Decore-Ative Specialties's exceedances of Benchmark values identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT, in violation of the requirements of the Industrial General Permit. EDEN alleges and notifies Decore-Ative Specialties that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility's self-reported data submitted to the Regional Water Board. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

The Discharger's ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient BMPs at the Facility. EPA Benchmarks are relevant to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC* (E.D.Cal. 2016) 205 F.Supp.3d 1128; *Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 925; *Waterkeepers Northern California v. AG Industrial Mfg. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiff's contention that defendant did not have appropriate BMPs to achieve BAT/BCT).]

Decore-Ative Specialties's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the

CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

2. Discharges in Excess of Receiving Water Limitations

In addition to employing technology based effluent limitations, the Industrial General Permit requires dischargers to comply with Receiving Water Limitations. Receiving Water Limitation found in Section VI(B) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment.

Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment also constitute violations of the General Permit Receiving Water Limitation.

Applicable Water Quality Standards ("WQS") are set forth in the California Toxics Rule ("CTR") and the Regional Basin Plan. Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan. Industrial storm water discharges must strictly comply with WQS, including those criteria listed in the applicable Basin Plan. (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).)

The Basin Plan establishes WQS for the Sacramento River and its tributaries, including but not limited to the following:

• Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.

• Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

• Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.

• All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.

• Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Information available to EDEN indicates that the Facility's storm water discharges contain elevated concentrations of specific pollutants, as listed below. These polluted discharges can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water

from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the General Permit Receiving Water Limitation.

Further, EDEN puts the Discharger on notice that the Receiving Water Limitations are independent requirements that must be complied with, and that carrying out the process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or whether it is causing adverse impacts to human health or the environment.

Section XX.B. of the General Permit provides that when a facility's industrial storm water discharges and/or authorized NSWDs are determined to contain pollutants that are in violation of Receiving Water Limitations contained in Section VI, the Discharger must conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the BMPs described in the SWPPP have been properly implemented, assess its current SWPPP and certify via SMARTS any additional BMPs identified which are necessary in order to meet the Receiving Water Limitations.

EDEN alleges that from at least December 3, 2015, to the present, the Discharger has been in violation of the Receiving Water Limitations provision of Section VI of the General Permit as evidenced by its exceedances of the applicable Water Quality Standards set forth in the Regional Basin Plan, indicated below.

Further, the Discharger has failed comply with Section XX.B of the General Permit. Failure to comply with the additional Water Quality-Based Corrective Action requirements listed in Section XX.B is an additional violation of the General Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL average/ instantaneous Value	BASIN PLAN/CCR T22 Benchmark NAL value
2014-2015 Reporting Year					
11/19/14	TSS	mg/L	140	100/400	n/a
11/19/14	TSS	mg/L	160	100/400	n/a
12/11/14	TSS	mg/L	180	100/400	n/a
12/11/14	TSS	mg/L	150	100/400	n/a

Sample Collection Date	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL average/ instantaneous Value	BASIN PLAN/CCR T22 Benchmark NAL value
2015-16 Reporting Year					
11/9/15	COD	mg/L	170	120	n/a
12/3/15	COD	mg/L	280	120	n/a
12/3/15	COD	mg/L	170	120	n/a
12/3/15	COD	mg/L	150	120	n/a
12/3/15	pH	S.U.	6	Between 6-9	Between 6.5-8.5
2016-2017 Reporting Year					
10/14/16	COD	mg/L	350	120	n/a
10/14/16	COD	mg/L	340	120	n/a
10/14/16	COD	mg/L	340	120	n/a
12/15/16	COD	mg/L	280	120	n/a
12/15/16	COD	mg/L	170	120	n/a
12/15/16	COD	mg/L	150	120	n/a
12/15/16	pH	S.U.	6	Between 6-9	Between 6.5-8.5
12/15/16	pH	S.U.	5.5	Between 6-9	Between 6.5-8.5
12/15/16	pH	S.U.	6	Between 6-9	Between 6.5-8.5
1/18/17	pH	S.U.	5.5	Between 6-9	Between 6.5-8.5
1/18/17	pH	S.U.	5.5	Between 6-9	Between 6.5-8.5
1/18/17	pH	S.U.	5.5	Between 6-9	Between 6.5-8.5
FY 2016-17 Averages	COD Level 1	mg/L	126.75	100/400	n/a
	pH Level 1	SU	5.5	<6, >9	<6.5, >8.5

E. Failure to Comply with Level 1 Exceedance Response Action Requirements

As of July 1, 2015, the date the current General Permit became effective, all Dischargers were in "Baseline status" for all parameters listed in Table 2 of the Permit. (General Permit, Section XII(B).

Pursuant to Section XII(C) of the General Permit, a Discharger's Baseline status for any given parameter changes to "Level 1 status" if sampling results indicate either an annual average or instantaneous NAL exceedance for that same parameter.

Level 1 status commences on July 1 following the Reporting Year during which the exceedance(s) occurred, and the Discharger enters the Exceedance Response Action ("ERA") process. The ERA process requires the discharger to conduct a Level 1 ERA Evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner ("QISP"), of the industrial pollutant sources at the Facility that are or may be related to the NAL exceedance(s), by October 1 following commencement of Level 1 status.

The Level 1 ERA Evaluation must include the identification of the corresponding BMPs in the SWPPP, as well as any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit.

Based upon the Level 1 ERA Evaluation, the Discharger is required to, as soon as practicable, but no later than January 1 following commencement of Level 1 status, prepare a Level 1 ERA Report. (Section XII(C)(2)). The Level 1 Report must be prepared by a QISP and include a summary of the Level 1 ERA Evaluation, a detailed description of the necessary SWPPP revisions, and any additional BMPs for each parameter that exceeded an NAL.

The SWPPP revisions and additional BMP development and implementation must also be completed by January 1, and the Level 1 status discharger is required to submit via SMARTs the Level 1 ERA Report certifying that the Level 1 ERA Evaluation has been conducted, and necessary SWPPP revisions and BMP implementation has been completed. The certification also requires the QISP's identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status.

A Discharger's Level 1 status for a parameter will return to Baseline status if a Level 1 ERA Report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive qualified storm events that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter.

A Discharger will enter Level 2 status if there is an NAL exceedance of the same parameter occurring during the time the discharger is in Level 1 status.

Failure to Submit Level 1 ERA Report

Based on the sample data summarized above, the Facility exceeded the EPA Benchmark NAL for COD and pH for the Fiscal Year 2016-17. These results elevated the Discharger to Level 1 Status on July 1, 2017, pursuant to Section XII.C – Exceedance Response Actions of the General Permit.

Pursuant to Section XII(C)(2) of the General Permit, the Facility was required to have a QISP conduct an evaluation of the Facility by October 1, 2017, and to upload an adequate Level 1 ERA Report on or before January 1, 2018.

As of the date of this Notice, EDEN alleges that the Discharger has failed to conduct an adequate Level 1 status evaluation and has also failed to submit a Level 1 ERA report by uploading it into the SMARTS system.

Every day the Discharger conducts operations at the Facility without conducting an adequate Level 1 status evaluation, and/or without submitting an adequate Level 1 ERA Report is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

Decore-Ative Specialties has been in daily and continuous violation of the General Permit's Level 1 status ERA evaluation requirement every day since October 1, 2017. The Discharger has been in daily and continuous violation of the General Permit for failing to submit an adequate Level 1 ERA Report every day since January 1, 2018. These violations are ongoing, and EDEN will include additional violations when information becomes available.

F. Failure to Comply with the Mandates of the Regional Water Board

Pursuant to Section XIX of the General Permit, Regional Water Boards have general authority to enforce the provisions and requirements of the General Permit, including reviewing SWPPPs, Monitoring Implementation Plans, ERA Reports, and Annual Reports and requiring Dischargers to revise and re-submit PRDs, conducting compliance inspections, and taking enforcement actions.

The Central Valley Regional Water Quality Control Board conducted an inspection of the facility on September 5, 2015, and issued an Inspection Report Notice letter on October 23, 2014, requesting that the Facility upload an explanation of the source(s) of the reddish discharges observed at the east side of the facility during the inspection. To date, the Facility has failed to do so, in violation of a Regional Water Board mandate.

G. Failure to Comply with Facility SWPPP

The Facility SWPPP indicates that the facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility missed collecting storm water samples in the reporting years 2017-18 and 2018-19.

In addition, the Facility's SWPPP identifies the parameters for which the Facility's storm water run-off samples must be analyzed, including pH, oil & grease, Total Suspended Solids and Chemical Oxygen Demand. As specified above, the storm water run-off samples the facility analyzed and uploaded into the SMARTS system on November 9, 2015 and October 14, 2016 failed to analyze for the required parameters of Total Suspended Solids, oil & grease and pH.

Decore-Ative Specialties may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Decore-Ative Specialties, as well as employees of the Facility responsible for compliance with the CWA.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least November 19, 2014, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
EDEN ENVIRONMENTAL CITIZEN'S GROUP
2151 Salvio Street #A2-319
Concord, CA 94520
Telephone: (925) 732-0960
Email: Edenenvcitizens@gmail.com (emailed correspondence is preferred)
Website: edenenvironmental.org

EDEN has retained counsel in this matter as follows:

XHAVIN SINHA
Sinha Law
1645 Willow Street, Suite 150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Xhavin Sinha.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and $51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and

(d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Roseville, CA 95812-0100

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105