LOS ANGELES WATERKEEPER®

ORANGE COUNTY COASTKEEPER.
3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone 714-850-1965
Fax 714-850-1592
www.coastkeeper.org

February 2, 2017

FEB 09 2017

VIA CERTIFIED MAIL

Associated Ready Mixed Concrete, Inc.
Attn: Managing Agent
25901 Towne Centre Dr.
Foothill Ranch, CA 92610

Lebata, Inc.
Attn: Managing Agent
4621 Teller Avenue, Ste 130
Newport Beach, CA 92660

VIA U.S. MAIL

Kurt Caillier
Registered agent for:
Associated Ready Mixed Concrete, Inc.
4621 Teller Avenue, Ste 130
Newport Beach, CA 92660

Kurt Caillier
Registered agent for: Lebata, Inc.
4621 Teller Avenue, Ste 130
Newport Beach, CA 92660

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

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper and Los Angeles Waterkeeper (collectively "Coastkeeper") regarding violations of the Clean Water Act[1] and California's Industrial Storm Water Permit[2] ("Storm Water Permit") occurring at: 25901 Towne Centre Drive, Foothill Ranch, California 92610 ("Associated Facility" or "Facility"). The purpose of this letter is to put Associated Ready Mixed Concrete, Inc. ("Associated") and Lebata, Inc. ("Lebata") as the owner(s) and operator(s) of the Associated Facility, on notice of the violations of the Storm Water Permit occurring at the Associated Facility, including, but not limited to, discharges of polluted storm water from the Associated Facility into local surface waters.[3] Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Associated and/or Lebata are liable for violations of the Storm Water Permit and the Clean Water Act.

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[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ.

[3] Associated operates additional ready-mixed concrete facilities in Los Angeles County and Orange County. Coastkeeper is also issuing 60-day notices of violation and intent to sue letters to three of those additional facilities, as described below.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This letter is being sent to you as the responsible owner and operator of the Associated Facility or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Associated and Lebata that Coastkeeper intends to file a federal enforcement action against Associated and/or Lebata for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

1. BACKGROUND

1.1. Orange County Coastkeeper and Los Angeles Waterkeeper

Orange County Coastkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Founded in 1999, Orange County Coastkeeper has approximately 2,000 members who live and/or recreate in and around the Santa Ana River watershed.

Los Angeles Waterkeeper is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 120 Broadway, Suite 105, Santa Monica, California 90401. Founded in 1993, Waterkeeper has approximately 3,000 members who live and/or recreate in and around the Los Angeles area.

Orange County Coastkeeper and Los Angeles Waterkeeper are dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Los Angeles and Orange County watersheds. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiate enforcement actions on behalf of themselves and their members.

Members of Orange County Coastkeeper and Los Angeles Waterkeeper enjoy the waters that storm water from the Facility discharges into, including Borrego Creek, Reaches 1-2; San Diego Creek, Reaches 1 and 2; Upper Newport Bay; Lower Newport Bay; and the Pacific Ocean. Members of Orange County Coastkeeper and Los Angeles Waterkeeper use these waterways to swim, boat, kayak, bird watch, view wildlife, hike, bike, walk, and/or run. Additionally, members of Los Angeles Waterkeeper and Orange County Coastkeeper use the waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The discharge of pollutants from the Facility impairs each of these uses. Further, discharges of polluted storm water and non-storm water from the Facility are ongoing and continuous. Thus, the interests of Orange County Coastkeeper and Los Angeles Waterkeeper's members have been, are being, and will continue to be adversely

affected by Associated's and/or Lebata's failure to comply with the Clean Water Act and the Storm Water Permit.

1.2. The Owners and/or Operators of the Associated Facility

Information available to Coastkeeper indicates that Associated Ready Mixed Concrete, Inc. is an owner and/or operator of the Associated Facility since at least 1998. Associated Ready Mixed Concrete, Inc. is an active California corporation and its registered agent is: Kurt Caillier, 4621 Teller Avenue, Suite 130, Newport Beach, CA 92660.

Information available to Coastkeeper indicates that the real property where the Facility is located is owed by Lebata, Inc. Lebata Inc., is an active California corporation and Kurt Caillier is also the registered agent.

Coastkeeper refers to Associated Ready Mixed Concrete Inc. and Lebata, Inc. collectively as the "Facility Owners and/or Operators."

The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Associated Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act. Based on information and belief, Associated and/or Lebata are also the owners and/or operators of three other facilities that Coastkeeper has put on notice of similar Clean Water Act violations. One facility is located at 134 Redondo Beach Boulevard, Gardena, CA 90248, WDID# 4 19I007122. Another facility is located at 100 E. Redondo Beach Boulevard, Gardena, CA 90248, WDID# 4 19I007120. The third facility is located at 18030 Mount Washington Street, Fountain Valley, California 92708, WDID# 8 30I007107.

1.3. The Associated Facility's Storm Water Permit Coverage

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding #12. The Associated Facility first obtained Storm Water Permit coverage on August 20, 1998. On June 25, 2015, the Facility Owners and/or Operators submitted an NOI to continue coverage for the Facility under the 2015 version of the Permit ("2015 NOI"). The 2015 NOI identifies the owner/operator of the Associated Facility as "Associated Ready Mixed Concrete" and the Facility name and location as "Associated Ready Mixed Foothil, 25901 Towne Centre Dr, Foothill Ranch CA 92610." The 2015 NOI states that the facility is 2.6 acres in size and only five percent impervious.[4]

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[4] most recent version of the Facility SWPPP dated August 4, 2016, states that the site is nearly 100 percent impervious.

The NOI lists the Standard Industrial Classification ("SIC") code for the Associated Facility as 3273 (ready-mixed concrete). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. Information available to Coastkeeper, including the Facility SWPPP describing vehicle and equipment maintenance and storage at the Facility, indicates that SIC code 4231 (terminal and joint terminal maintenance facilities for motor freight transportation) and/or 4212 (local trucking without storage) also apply to the Facility.

1.4. Storm Water Pollution and the Waters Receiving Facility's Discharges

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Associated Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from concrete mixing facilities such as the Associated Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS"); nitrite plus nitrate ("N+N"); benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; total kjehldahl nitrogen ("TKN"); trash; 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. Health & Saf. Code §§ 25249.5 - 25249.1. Discharges of polluted storm water pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Associated Facility discharges into Borrego Creek,[5] Reaches 1-2; San Diego Creek, Reaches 1-2; Upper Newport Bay; the Lower Newport Bay; and the Pacific Ocean ("Receiving Waters"). The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special biological significance that the Receiving Waters have, and consequently impairs recreational and aesthetic opportunities, such as wildlife observation and recreational contact in the Newport Bay such as paddle boarding and kayaking.

The California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") issued the Basin Plan for the Coastal Watersheds of Santa Ana River Basin ("Basin Plan"). The Basin Plan identifies "Beneficial Uses" of water bodies in the region. The Beneficial Uses for

[5] Borrego Creek is also identified as the Borrego Canyon Wash in the Basin Plan.

Borrego Creek and Reach 2 of San Diego Creek are: intermittent groundwater recharge; intermittent water contact recreation; intermittent non-contact water recreation; intermittent warm freshwater habitat; and intermittent wildlife habitat. The Beneficial Uses for Reach 1 of San Diego Creek are: water contact recreation; non-contact water recreation; warm freshwater habitat; and wildlife habitat. *See* Basin Plan at Table 3-1. The Beneficial uses for Upper Newport Bay are: water contact recreation; non-contact water recreation; commercial and/or recreational fishing; preservation of biological habitats of special significance; wildlife habitat; rare, threatened, or endangered species habitat; spawning, reproduction, and development habitat; marine; shellfish habitat for shellfish harvesting for human consumption, commercial, or sport purposes; and estuarine habitat. *See id.* The Beneficial Uses for Lower Newport Bay are: navigation water contact recreation; non-contact water recreation; commercial and/or recreational fishing; wildlife habitat; rare, threatened, or endangered species habitat; spawning, reproduction, and development habitat; marine habitat; and shellfish habitat for shellfish harvesting for human consumption, commercial, or sport purposes. *See id.*

According to the 2012 303(d) List of Impaired Water Bodies, Reach 2 of Borrego Creek is impaired for ammonia and indicator bacteria.[6] Reach 1 of San Diego Creek is impaired for fecal coliform, nutrients, pesticides, sedimentation/siltation, selenium, and toxaphene.[7] Reach 2 of San Diego Creek is impaired for indicator bacteria, nutrients, sedimentation/siltation, and unknown toxicity.[8] The Upper Newport Bay is impaired for chlordane, copper, DDT, indicator bacteria, metals, nutrients, PCBs, pesticides, sediment toxicity, and sedimentation/siltation.[9] The Lower Newport Bay is impaired for chlordane, copper, DDT, indicator bacteria, nutrients, pesticides, PCBs, and sediment toxicity.[10] Polluted discharges from industrial sites, such as the Associated Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife.

2. THE ASSOCIATED FACILLITY AND RELATED DISCHARGES OF POLLUTANTS

2.1. <u>The Associated Facility Site Description and Industrial Activities</u>

The Associated Facility is a concrete mixing facility that produces ready-mixed concrete. Concrete is produced by mixing aggregate (sand, gravel, or crushed stone), cement (a fine powder), fly ash, chemical additives, and water.

Information available to Coastkeeper indicates that the Facility has several enclosed buildings including an office, office storage, and hazardous materials storage. It also contains outdoor raw material storage, returned concrete storage, a batch plant, equipment storage areas, settling ponds, a truck rinsing station, and a storm water drain on site. The Facility Owners and/or

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[6] 2012 Integrated Report – All Assessed Waters, *available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml* (last accessed on January 10, 2017).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

Operators maintain a portion of the Facility dedicated to raw material storage or stockpiling, a second portion dedicated to office space, employee parking, and loading/unloading of mixed concrete, and another portion dedicated to storage of trucks and other equipment. Each of these areas is an area of industrial activity at the Associated Facility.

Industrial activities include, but are not limited to: maintaining concrete transport vehicles and other Facility vehicles and equipment; storage of hazardous materials, such as diesel fuel, new vehicle fluids, and hazardous waste vehicle fluids; concrete truck parking; unloading of sand and gravel; storage of sand and gravel; storage of cement; storage of chemical additives; storage of fly ash and cement; weighing sand, gravel, cement, and lime; cement mixing; mixing appropriate amounts of sand, gravel, and cement; storage of process water; and storage of vehicle wash-water.

2.2. Pollutants and Pollutant Sources Related to Associated's Industrial Activities

The areas of industrial activity at the Facility are sources of pollution. The pollutants associated with industrial activities at the Facility include, but are not limited to: pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; COD; BOD; TSS; N+N; benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; TKN; trash; and O&G.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Associated Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), maintenance area(s), add-mix area(s), batch plant area(s), washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

The Facility Owners and/or Operators' failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. Information available to Coastkeeper also indicates that the Facility has repeated problems with non-storm water discharges resulting from concrete trucks dumping wet concrete.

These illegal discharges of polluted storm and non-storm water negatively impact Coastkeeper's members' use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

2.3. Associated Facility Storm Water Flow and Discharge Locations

In the Facility SWPPP, the Facility Owners and/or Operators state that the Facility is considered a single drainage area ("DA 1") and identify one discharge point at the Facility: Sample Point 1 ("SP1"). The Facility SWPPP states that storm water that falls on the northeast portion of

the site is directed to the facility's truck rinse pits or to the opening underneath the aboveground material storage bunker, where the underground material conveyors are located and collects water for reuse in batch plant operations. The SWPPP does not include any information about the sizing or retention capacity of the rinse pits or other storm water collection areas. The Facility Owners and/or Operators report that "water that falls on the remaining area of the Facility flows to an on-site storm drain at the southwest corner of the Facility. The storm drain flows out of the Facility and discharges to a v-ditch just beyond the Facility perimeter."[11]

Based on information available to Coastkeeper, storm water also discharges from the Facility from at the two Facility driveways. The first driveway is located at Baker Ranch Road. The second driveway is located at the southeast corner of the facility of Towne Center Drive.

Accordingly, storm water polluted by industrial activities at the Facility is discharged to Receiving Waters via at least three discharge locations at the Facility. Storm water originating at the Facility flows southwest out of the driveway to a storm drain on Baker Ranch Road. After the storm water enters the storm drain it is carried to Reach 1 of the Borrego Creek, which flows downstream to Reach 2, and then flows into the San Diego Creek, which drains into the Newport Bay and the Pacific Ocean.

3. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

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

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued, and, as explained below, includes terms that are as stringent as or more stringent than the 1997 Permit. For purposes of this Notice Letter, Coastkeeper refers to the reissued permit as the "2015 Permit." Accordingly, Associated and/or Lebata are liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115,121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect ").

[11] *See* Facility SWPPP dated August 4, 2016.

3.1. Unauthorized Non-Storm Water Discharges from the Associated Facility in Violation of Storm Water Permit Discharge Prohibitions

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B.

Information available to Coastkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, on February 12, 2015, the City of Foothill Ranch documented illegal non-storm water discharges resulting from a concrete spill outside the Facility where employees cleaning the spill failed to implement BMPs during the cleanup process causing polluted non-storm water to run into City storm drains. Associated has had multiple similar incidents causing illegal non-storm water discharges, as recorded by the City. In addition, unauthorized non-storm water discharges occur at the Facility from the Facility's sedimentation watering system and/or when truck washing and cleaning activities occur. The Facility Owners and/or Operators conduct these activities without BMPs to prevent related non-storm water discharges. Non-storm water discharges resulting from dust control and/or washing and cleaning are not from sources that are listed among the authorized non-storm water discharges in Special Conditions and are always prohibited under the Storm Water Permit.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Discharge Prohibitions are violated each time non-storm water is discharged from the Associated Facility. *See* 1997 Permit, Discharge Prohibition D(1); *see also* 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the number and dates of violations when additional information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

3.2. Discharges of Polluted Storm Water from the Associated Facility in Violation of Storm Water Permit Effluent Limitations

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of

BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic[12] and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.[13] The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

Information available to Coastkeeper, including its review of publicly available information and observations, BMPs that achieve BAT/BCT have not been implemented at the Facility. Consistent with Coastkeeper's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Facility Owners and/or Operators have failed and continue to fail to implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.[14] The table in Exhibit 1 sets forth the results of sampling at the Facility conducted by Coastkeeper as well as the Facility Owners and/or Operators. The repeated and significant exceedances of EPA Benchmarks as set forth in Exhibit 1 demonstrates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of rain events resulting in a discharge at the Facility).[15] These discharge violations are ongoing and will continue every time the Facility Owners and/or Operators discharge polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Coastkeeper will update the dates of violations when additional information and data become available. Each time the Facility Owners and/or Operators discharge polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Effluent Limitation V.A. is an independent requirement with which Associated and/or Lebata must

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[12] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, benzene, arsenic, lead, and zinc, among others.

[13] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

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

[15] Dates of significant rain events are measured at the Santa Ana rain gauge operated by the Orange County Flood Control District. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

comply, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. Exceedances of the NALs demonstrate that a facility (such as the Facility at issue here) is among the worst performing facilities in the State. However, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

3.3. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[16] The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the WQS from the Basin Plan for pH is 6.5-8.5 s.u. On November 20, 2016, storm water discharging from the Facility measured a pH level of 8.6 s.u., 0.10 s.u. above the maximum allowable pH. *See* Ex. 1.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated beneficial uses, for some of the same pollutants discharging from the Facility, including copper. Information available to Coastkeeper indicates that the Facility's storm water discharges contain elevated concentrations of these pollutants, such as copper and zinc, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. *See*,

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[16] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

e.g., Ex. 1. Further, storm water discharged with high pH, such as storm water discharges from the Facility, can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die. 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 Storm Water Permit Receiving Water Limitations.

Coastkeeper puts the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.,* Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS, it is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Receiving Water Limitations are independent Permit requirements with which Associated and/or Lebata must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 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 water quality standard. Even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

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

The Storm Water Permit Requires permittees to develop and implement Storm Water Pollution Prevention Plans prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

3.4.1. 1997 Permit SWPPP Requirements

Section A(1) and Provision E(2) of the 1997 Permit require discharges to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

See 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (see 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (see 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (see 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

3.4.2. <u>2015 Permit SWPPP Requirements</u>

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3.4.3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, Appendix A of the SWPPP dated August 4, 2016, does not include a Facility site map, nor does it include a figure that shows the drainage area and outfalls as stated in SWPPP Section 4.0. The Facility SWPPP thus fails to include a site map, as required by the Storm Water Permit. However, a separate site map for the Facility appears to have been uploaded to SMARTS on October 11, 2016, which fails to include all discharge locations or a legible depiction of sample points versus storm drains because the site map uses substantially similar or identical symbols for both. In addition, the site map dated October 11, 2016, fails to accurately depict the direction of storm water flows at the Facility.

In addition, the Facility has been cited for violations by the City on multiple occasions for illegal non-storm water discharges and/or spills. These non-storm water discharges and/or spills are not identified or addressed in the SWPPP. Despite correspondence with the Regional Board related to the need to address these non-storm water discharges and/or spills in the Facility SWPPP, the Facility Owners and/or Operators have failed and continue to properly revise the SWPPP.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit SWPPP requirements since at least February 2, 2012. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

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

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue,

industrial activities. The specific M&RP requirements of the 1997 and 2015 Permit are set out below.

3.5.1. 1997 Permit M&RP Requirements

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit.
The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

The Facility was and/or is a member of the Building Materials Industry Group Monitoring Program, and thus the Facility Owners and/or Operators must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, the Facility Owners and/or Operators must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15). Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities, such as aluminum and nitrate plus nitrite. *See* Storm Water Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 3273, such as the Facility, to also analyze storm water samples for iron. *See* 1997 Permit, Table D, Sector E.

3.5.2. 2015 Permit M&RP Requirements

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the

concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency to the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

As an *increase* in sampling frequency to the 1997 Permit, Section XI(B)(1-5) of the 2015 Permit requires permittees participating in a group monitoring plan, such as the Facility Owners and/or Operators, to collect storm water discharge samples from a qualifying storm event[17] as follows: 1) from each discharge location, 2) from one storm event within the first half of each reporting year[18] (July 1 to December 31), 3) from one storm event within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit *all sampling* and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event. Emphasis added.

The parameters to be analyzed are also consistent with the 1997 Permit, however, the 2015 Permit no longer requires SC to be sampled. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c)-(d) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial activities. Table 1 of the 2015 Permit specifically requires SIC Code 3273 facilities, such as the Associated Facility, to analyze for iron. Section XI(B)(6)(e) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

3.5.3. <u>The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit M&RP Requirements</u>

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owners and/or Operators have failed and continue to fail to develop an M&RP that

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efines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).
2015 Permit, Findings, ¶ 62(b).

requires the Facility Owners and/or Operators to analyze storm water discharges from the Facility for all required parameters by failing to specify that storm water discharges will be analyzed for, at a minimum, lead, zinc, copper, COD, N+N, and BOD, in violation of Section B(5)(c) of the 1997 Permit and Section XI(B)(6)(e) of the 2015 Permit. In fact, as reported in the most recent, publicly available SWPPP for the Facility certified on August 4, 2016, the Facility Owners and/or Operators acknowledge that the receiving water is impaired for lead, and that lead is present at the Facility, but fails to require sampling for lead. Specifically, SWPPP Section 10.4.3 states that trace amounts of lead are found in cement and fly ash, but because those materials are supposed to be enclosed, lead is not expected to be in the Facility's storm water discharge. Since lead is known to be present on site, it should be sampled for until sampling data proves that it is not present in storm water from the Facility.

Based on information available to Coastkeeper, the Facility Owners and/or Operators have also failed to develop and implement an adequate M&RP by failing to develop and implement an adequate training program for Facility employees and/or contractors responsible for collecting storm water samples, as required by the Storm Water Permit. For example, as documented in an email included with the laboratory report, the samples collected on September 9, 2015, were delivered to the lab without a chain of custody form.[19] The samples collected on January 5, 2016, had labeling problems, including the sample ID was mismatched with the chain of custody and preservation was not indicated on the label. Labeling issues are ongoing as evidenced by the October 24, 2016, sampling analysis which indicates that the sample ID was again mismatched with the chain of custody.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise an M&RP, in violation of M&RP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised M&RP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit M&RP requirements since at least February 2, 2012. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

3.6. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities

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[19] *See*, SMARTS Sampling Data from September 9, 2015, email from SESPE Consulting, Inc. dated September 15, 2015.

required, and other information specified in Section B(13). The 2015 Permit also includes an annual reporting requirement. *See* 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2014-2015 Annual Report, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above EPA benchmarks, thus demonstrating that the Facility BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Facility Owners and/or Operators have also submitted incomplete and/or incorrect Annual Reports. For example, the 2013-2014 Annual Report submitted on SMARTS is the only annual report that does not erroneously certify that the SWPPP complies with the Permit because this annual report is completely blank. Failure to properly fill out and submit an annual report for the 2013-2014 reporting year is a violation of the Permit. In the 2014-2015 Annual Report at Form 3 the Facility Owners and/or Operators failed to report unauthorized non-storm water discharges ("NSWDs") that occurred in October 2014 and June 2015 documented by the City of Foothill Ranch.

For instance, since the filing of the 2010-2011 Annual Reports, the Facility Owners and/or Operators have failed to properly report required sampling and/or observations. Additionally, monthly visual observation forms submitted with the Facility Annual Reports indicate only that there was no eligible event and do not include any substantive observations, as required. Based on information available to Coastkeeper, there were multiple qualifying storm events at the Facility that occurred during operating hours during the past five years. *See* Exh. 2. The 2014-2015 Annual Report is also missing pages 3 through 6. The absence of page 6 indicates that the Facility Owners and/or Operators did not report whether the Facility is in compliance with the Permit or whether the Facility Owners and/or Operators reviewed the SWPPP.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 1997 Permit, Section C(11)(d). The Facility Owners and/or Operators have not reported non-compliance, as required.

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm

Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least February 2, 2012. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

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

When the 2015 Permit became effective on July 1, 2015, all permittees were in "Baseline status." *See* 2015 Permit, Section XII(B). A permittee's Baseline status for any given parameter changes to "Level 1 status" if sampling results indicate an NAL exceedance for that same parameter. *See* 2015 Permit, Section XII(C). Level 1 status commences on July 1 following the reporting year during which the exceedance(s) occurred. *See* 2015 Permit, Section XII(C). By October 1 following commencement of Level 1 status, permittees are required to: complete an evaluation, with the assistance of a QISP, of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s); and identify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of Storm Water Permit. *See* 2015 Permit, Section XII(C)(1)(a)-(c). Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated. *See* 2015 Permit, Section XII(C)(1)(c).

Based upon this Level 1 status evaluation, the permittee is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation, certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP that includes the a summary of the Level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *See* 2015 Permit, Section XII(C)(2)(a)(i)-(ii). The permittee in Level 1 status must also certify and submit via SMARTS 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. *See* 2015 Permit, Section XII(C)(2)(a)(iii). A permittee's Level 1 status for a parameter will return to Baseline status once 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. *See* 2015 Permit, Section XII(C)(2)(b).

The Facility Owners and/or Operators are in Level 1 status for iron based on NAL exceedances during the 2015-2016 reporting year. Specifically, the annual average for iron during the 2015-2016 reporting year was 4.7 mg/L—nearly 5 times over the annual NAL for iron of 1.0 mg/L. The compliance group in which the Facility Owners and/or Operators are members submitted a report titled: "Consolidated Exceedance Response Action Level 1 Report BMI Ready Mixed Concrete Group (#241)" dated November 30, 2016 ("Consolidated Report").

The Consolidated Report is inadequate. For example, rather than conducting an evaluation to identify the BMPs in the SWPPP at the Facility that correspond to the iron NAL exceedance at the Facility, the Consolidated Report states that the annual average NAL for iron is too low, and recommends no additional or improved BMPs to specifically address iron NAL exceedances at the Facility. *See* Consolidated Report, pp. 15-17. The Consolidated Report does cite sweeping as existing BMPs for iron at the compliance group facilities. *See* Consolidated Report, pp. 15-18. However, the Facility SWPPP expressly identifies sweeping as a BMP that is not effective at addressing iron: "Two pollutants that are difficult to control are pH and Iron. Both of these are present in cement. Cement dust is very fine and it is difficult to sweep it up to a level that does not adversely impact storm water." *See* Facility SWPPP, Section 7.0 (Assessment of Potential Pollutant Sources). Nor did the "screening experiment" cited in the Consolidated Report evaluate cement dust as a source of iron. *See* Consolidated Report, pp. 15-18. Accordingly, the Consolidated Report in no way meets the requirements of Section XII(C) of the 2015 Permit.

The Facility Owners and/or Operators have failed and continue to fail to conduct a Level 1 status evaluation and submit a Level 1 ERA Report, and/or have conducted an inadequate Level 1 status evaluation and submitted an inadequate Level 1 ERA Report that fails to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without a Level 1 status evaluation and/or a Level 1 ERA Report, and/or an adequate Level 1 status evaluation and/or an adequate Level 1 ERA Report, as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's Level 1 status ERA requirements every day since at least July 1, 2016. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since February 2, 2012.

4. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five 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, Coastkeeper 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), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

5. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Associated's and/or Lebata's violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Coastkeeper's legal counsel:

Caroline Koch
Drevet Hunt
Lawyers for Clean Water, Inc.
1004A O'Reilly Avenue
San Francisco, California 94129

Orange County Coastkeeper
ATTN: Colin A. Kelly
3151 Airway Ave., Suite F-110
Costa Mesa, CA 92626
Tel: (714) 850-1965 ext. 307

Sincerely,

Colin Kelly
Senior Staff Attorney
Orange County Coastkeeper

Arthur Pugsley
Senior Attorney
Los Angeles Waterkeeper

SERVICE LIST

VIA U.S. MAIL

Dana J. Boente
Acting U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Alexis Strauss
Acting Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Kurt Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, California 92501

Catherine McCabe
Acting Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Exhibit 1

Sample collected by Coastkeeper (C) or Discharger (D)	Date of sample collection	Sample Location	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria/WQO	Magnitude of CTR/WQO Exceedance
2011-2012 WET SEASON									
No samples collected									
2012-2013 WET SEASON									
No samples collected									
2013-2014 WET SEASON									
No samples collected									
2014-2015 WET SEASON									
No samples collected									
2015-2016 Reporting Year									
D	9/9/15	SP1	pH	8	SU	6.0-9.0	n/a	6.5-8.5	n/a
D	9/9/15	SP1	Total Suspended Solids (TSS)	18.1	mg/L	100	0.181	none	n/a
D	9/9/15	SP1	Oil & Grease	1.9	mg/L	15	0.126666667	none	n/a
D	9/9/15	SP1	Iron	4.77	mg/L	1	4.77	none	n/a
D	9/15/15	SP1	pH	8	SU	6.0-9.0	n/a	6.5-8.5	n/a
D	1/5/16	SP1	pH	7	SU	6.0-9.0	n/a	6.5-8.5	n/a
D	1/5/16	SP1	Total Suspended Solids (TSS)	72.9	mg/L	100	0.729	none	n/a
D	1/5/16	SP1	Oil & Grease	1.65	mg/L	15	0.11	none	n/a
D	1/5/16	SP1	Iron	4.63	mg/L	1	4.63	none	n/a
2016-2017 Reporting Year									
C	11/20/16	Southwest Driveway	pH	8.6	SU	6.0-9.0	n/a	6.5-8.5	0.1 above range
C	11/20/16	Southwest Driveway	Total Suspended Solids (TSS)	290	mg/L	100	2.9	none	n/a
C	11/20/16	Southwest Driveway	Aluminum	5.3	mg/L	0.75	7.066666667	none	n/a
C	11/20/16	Southwest Driveway	N+N	0.43	mg/L	0.68	0.632352941	none	n/a
C	11/20/16	Southwest Driveway	Zinc	0.11	mg/L	0.2	0.55	0.213	0.516431925
C	11/20/16	Southwest Driveway	Iron	5.6	mg/L	1	5.6	none	n/a
C	11/20/16	Southwest Driveway	Copper	0.0089	mg/L	0.0253	0.351778656	0.026	0.342307692
C	11/20/16	Southwest Driveway	Biochemical Oxygen Demand	6.7	mg/L	30	0.223333333	none	n/a
C	11/20/16	Southwest Driveway	Chemical Oxygen Demand	36	mg/L	120	0.3	90	0.4
						Total Exceedances	**5**		**1**

Exhibit 2

Dates of Significant Rain Events Measured at Santa Ana Rain Gauge		
Date	**Day of Week**	**Rain Inches**
1/21/12	Saturday	0.64
1/22/12	Sunday	0.21
1/24/12	Tuesday	0.51
2/16/12	Thursday	0.45
2/28/12	Tuesday	0.14
3/18/12	Sunday	1.05
3/26/12	Monday	0.67
4/11/12	Wednesday	0.39
4/14/12	Saturday	0.7
4/26/12	Thursday	0.26
7/13/12	Friday	0.18
10/11/12	Thursday	0.18
10/12/12	Friday	0.17
11/17/12	Saturday	0.24
11/29/12	Thursday	0.21
11/30/12	Friday	0.1
12/3/12	Monday	0.6
12/13/12	Thursday	0.54
12/24/12	Monday	0.55

Dates of Significant Rain Events Measured at Santa Ana Rain Gauge		
Date	**Day of Week**	**Rain Inches**
12/26/12	Wednesday	0.26
12/30/12	Sunday	0.13
1/24/13	Thursday	0.56
1/25/13	Friday	0.3
1/26/13	Saturday	0.22
2/9/13	Saturday	0.18
2/20/13	Wednesday	0.18
3/8/13	Friday	0.27
3/9/13	Saturday	0.12
5/6/13	Monday	0.35
5/7/13	Tuesday	0.19
10/10/13	Thursday	0.24
11/21/13	Thursday	0.32
11/30/13	Saturday	0.22
12/8/13	Sunday	0.27
12/20/13	Friday	0.16
2/3/14	Monday	0.12
2/7/14	Friday	0.11
2/27/14	Thursday	0.44

Dates of Significant Rain Events Measured at Santa Ana Rain Gauge		
Date	**Day of Week**	**Rain Inches**
2/28/14	Friday	0.5
3/1/14	Saturday	1.07
3/2/14	Sunday	0.33
4/2/14	Wednesday	0.12
4/26/14	Saturday	0.22
11/1/14	Saturday	0.32
12/1/14	Monday	0.13
12/3/14	Wednesday	1.05
12/4/14	Thursday	0.8
12/12/14	Friday	1.32
12/13/14	Saturday	0.69
12/17/14	Wednesday	0.34
12/31/14	Wednesday	0.12
1/11/15	Sunday	0.3
1/12/15	Monday	0.75
1/27/15	Tuesday	0.12
2/23/15	Monday	0.52
3/2/15	Monday	0.19
3/3/15	Tuesday	0.19

Dates of Significant Rain Events Measured at Santa Ana Rain Gauge		
Date	**Day of Week**	**Rain Inches**
4/8/15	Wednesday	0.2
5/8/15	Friday	0.29
5/15/15	Friday	1.06
5/16/15	Saturday	0.16
7/19/15	Sunday	0.19
7/20/15	Monday	0.25
9/10/15	Thursday	0.16
9/15/15	Tuesday	1.27
12/14/15	Monday	0.2
12/20/15	Sunday	0.14
12/22/15	Tuesday	0.27
12/23/15	Wednesday	0.27
1/6/16	Wednesday	0.97
1/7/16	Thursday	1.56
2/1/16	Monday	0.21
2/18/16	Thursday	0.43
3/6/16	Sunday	0.37
3/7/16	Monday	0.2
3/12/16	Saturday	0.44

Dates of Significant Rain Events Measured at Santa Ana Rain Gauge		
Date	**Day of Week**	**Rain Inches**
5/7/16	Saturday	0.62
10/17/16	Monday	0.17
10/24/16	Monday	0.32
10/25/16	Tuesday	0.1
11/21/16	Monday	0.87
11/27/16	Sunday	0.5
12/16/16	Friday	1.56
12/22/16	Thursday	1.16
12/23/16	Friday	0.29
12/24/16	Saturday	1.15
12/31/16	Saturday	0.86
1/1/17	Sunday	0.27
1/5/17	Thursday	0.17
1/6/17	Friday	0.15
1/9/17	Monday	0.46
1/11/17	Wednesday	0.37
1/13/17	Friday	1.71
	Total Rain Days	**93**