environmental
DEFENSE CENTER

October 13, 2015

Sent Via Certified Mail, Return Receipt Requested:

General Magnaplate California
2707 Palma Drive
Ventura, CA 93003

Jim Dedmon, *Operations Manager*
General Magnaplate California
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Ventura, CA 93003

General Magnaplate Corporation
1331 West Edgar Road
Linden, NJ 07036

Jeff Keith, *Operations Manager*
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General Magnaplate California
2707 Palma Drive
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Linden, NJ 07036

Re: NOTICE OF VIOLATION AND INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

Dear General Magnaplate California Owner(s) and/or Operator(s):

We write on behalf of the Environmental Defense Center ("EDC") regarding violations of the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, at the metal finishing facility, General Magnaplate California, located at 2707 Palma Drive, Ventura, California, 93003 ("Magnaplate Facility" or "Facility").[1] The responsible Owner(s) and/or Operator(s) of the Facility include General Magnaplate California; Jim Dedmon, Operations Manager of General Magnaplate California; General Magnaplate Corporation; and Jeff Keith, Operations Manager of General Magnaplate Corporation, collectively referred to as "Magnaplate."

Specifically, this letter constitutes notice of EDC's intent to sue Magnaplate for its violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and California's General Industrial Storm Water Permit, National Pollution Discharge Elimination System

[1] According to the Magnaplate Facility's Storm Water Pollution Prevention Plan filed on July 9, 2015, the Facility is "collectively" located at 2707 Palma Drive, but actually exists at 2701, 2703, 2705 and 2707 Palma Drive. EDC puts Magnaplate on notice of violations occurring at any and all such addresses, referred to collectively as 2707 Palma Drive.

("NPDES") General Permit No. CAS000001, Water Quality Order No. 97-03-DWQ ("1997 Permit"), as superseded by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit includes many of the same fundamental requirements as the 1997 Permit. EDC refers to the 1997 and 2015 Permits interchangeably as the "Storm Water Permit." As detailed in this Notice Letter, Magnaplate is in ongoing violation of the Storm Water Permit and CWA, and its unlawful discharges of pollutants adversely impact the Santa Clara River and Pacific Ocean.[2]

This notice is provided pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a), and its implementing regulations at 40 C.F.R. §§ 135.1–135.3. Unless Magnaplate takes the actions necessary to remedy the ongoing violations of the Storm Water Permit and CWA, EDC intends to file suit in U.S. District Court following expiration of the 60-day notice period, seeking injunctive relief and civil penalties, as well as fees and costs. Under the CWA, Magnaplate is subject to penalties as high as $37,500 per day per violation enumerated below. 40 C.F.R. § 19.4. If Magnaplate has any information demonstrating that one or more of the violations alleged in this notice did not occur or are described incorrectly, please immediately provide this information to EDC.

I. Background

A. The Environmental Defense Center

Founded in 1977, EDC is a non-profit 501(c)(3), public benefit corporation with over 3,000 members in Santa Barbara, Ventura, and San Luis Obispo Counties. EDC's main office is located at 906 Garden Street, in Santa Barbara, California, 93101. EDC's Ventura County office is located at 111 West Topa Topa Street, in Ojai, California, 93023. EDC protects and enhances the local environment through education, advocacy, and legal action. Specifically, EDC focuses on clean water, the Santa Barbara Channel, open space and wildlife, and climate and energy.

EDC has members who reside near the Santa Clara River and the Pacific Ocean in Ventura County, and who regularly use these waters and surrounding areas for recreational activities, including swimming, hiking, biking, kayaking, fishing, and surfing. As described below, the Magnaplate facility has unlawfully and continuously discharged pollutants into the Santa Clara River, which in turn flows into the Pacific Ocean. These illegal discharges are due to Magnaplate's failure to comply with the Storm Water Permit and CWA, and have impaired and will continue to impair EDC members' use and enjoyment of these water bodies. Thus, the interests of EDC's members have been, are being, and will continue to be adversely affected by Magnaplate's failure to comply with the Storm Water Permit and CWA.

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[2] The violations described herein are based on EDC's review of documents and information relating to the Magnaplate Facility obtained via Public Records Act requests, including documents submitted by Magnaplate to the Los Angeles Regional Water Quality Control Board ("Regional Board").

B. The Magnaplate Facility's Owner(s) and/or Operator(s)

Information available to EDC indicates that the Magnaplate Facility is owned and/or operated by General Magnaplate California; Jim Dedmon, Operations Manager of General Magnaplate California; General Magnaplate Corporation; and Jeff Keith, Operations Manager of General Magnaplate Corporation. *See* http://www.magnaplate.com/contact/u-s-sales-locator. General Magnaplate Corporation has its global corporate headquarters in New Jersey, and facilities in both Texas and California. Information available to EDC indicates that General Magnaplate California is a corporation registered in California. The Registered Agent for General Magnaplate California is listed as William Bowne, and the Registered Agent for General Magnaplate Corporation is Candida C. Aversenti. General Magnaplate California has a California Entity Number of C0910754, indicating that its corporate status is currently suspended. Available information indicates this is because of a failure to submit the required Statement of Information form, and thus should be corrected and the status restored to active. In addition, a California Entity Number of C1005800 is also listed on the California Secretary of State website for General Magnaplate California, indicating that the corporation has merged with another entity. The General Magnaplate California Facility opened in 1980. As explained herein, Magnaplate is liable for violations of the Storm Water Permit and the CWA at that facility.

C. The Clean Water Act and Storm Water Permit

The objective of the CWA is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the CWA prohibits the discharge of a pollutant from a point source into waters of the United States except as in compliance with other specified sections of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342. Section 402(p) establishes the framework for regulating pollutants in industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p).

In California, EPA has delegated authority to issue NPDES permits to the State Board. 33 U.S.C. § 1342(b), (d). The Los Angeles Regional Board is responsible for the issuance and enforcement of the Storm Water Permit in Region 4, which includes Ventura County. In order to discharge storm water lawfully in California, industrial facility operators must enroll in and comply with the terms of the Storm Water Permit.

The 1997 Permit requires that dischargers meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require control of pollutant discharges using Best Management Practices ("BMPs") that achieve either best available technology economically achievable ("BAT") or best conventional pollutant control technology ("BCT") to prevent or reduce pollutants.[3] 33 U.S.C. §§ 1311(b)(2)(A), (E). Rather than requiring specific application

[3] Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BCT for conventional pollutants, which include TSS, O&G, pH, BOD, and fecal coli form. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional, which must undergo BAT treatment prior to discharge. *Id.*; 40 C.F.R. § 401.15.

of BAT and BCT techniques to each storm water discharge, compliance with the terms and conditions of the 1997 Permit serves as a proxy for meeting the BAT/BCT mandate. *See* 1997 Permit, Finding 10. Conversely, failure to comply with the terms and conditions of the 1997 Permit constitutes failure to subject discharges to BAT/BCT, and is a violation of the CWA.

The 2015 Permit retains this core statutory requirement to meet BAT/BCT standards. Just like the 1997 Permit, the 2015 Permit requires all facility operators to develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") that includes BMPs, although the 2015 Permit now requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary, to achieve compliance with the effluent and receiving water limitations of the 2015 Permit. In addition, the 2015 Permit requires all facility operators to sample storm water discharges more frequently than the 1997 Permit, and to compare sample and analytical results with numeric action levels ("NALs"). All facility operators are required to perform Exceedance Response Actions ("ERAs") as appropriate whenever sampling indicates NAL exceedances.

Both the 1997 Permit and the 2015 Permit generally require facility operators to: (1) submit a Notice of Intent ("NOI") that certifies the type of activity or activities undertaken at the facility and committing the operator to comply with the terms and conditions of the permit; (2) eliminate unauthorized non-storm water discharges; (3) develop and implement a SWPPP; (3) perform monitoring of storm water discharges and authorized non-storm water discharges; and (4) file an Annual Report that summarizes the year's industrial activities and compliance with the Storm Water Permit.

D. Magnaplate Facility Storm Water Permit Coverage and SIC Codes

Prior to beginning industrial operations, dischargers are required to submit an NOI to the State Board to apply for Storm Water Permit coverage. *See* 1997 Permit, Finding #3; 2015 Permit, § II(A)(1). Magnaplate initially filed an NOI to comply with the terms of the Storm Water Permit in 1992, and submitted an additional NOI in 2006. Magnaplate is currently enrolled as a discharger under the 2015 Permit, and filed an NOI to comply with the terms of the 2015 Permit on July 9, 2015. The Waste Discharge Identification ("WDID") number for the facility is 4 56I004733.

The Storm Water Permit requires that the NOI include the Standard Industrial Classification ("SIC") code identifying the industrial activities taking place at the facility. *See* 1997 Permit, Attachment 3 at 2; 2015 Permit, Attachment D at F(1)(b). According to records on file with the Regional Board, Magnaplate has certified that the Facility's SIC code is 3471, and the regulated activity is described as "Electroplating, Plating, Polishing, Anodizing, and Coloring." The Storm Water Permit classifies facilities with SIC code 3471 under "Fabricated Metal Products." *See* 1997 Permit at Table D; 2015 Permit §XI(B) Table 1. In addition, Magnaplate certified in its 1992 NOI that the industrial activities at the Facility include "Hazardous Waste Treatment, Storage or Disposal Facility (RCRA Subtitle C)" and "Wastewater Treatment." The corresponding SIC codes for such activities are SIC Codes 4953 and 4952.

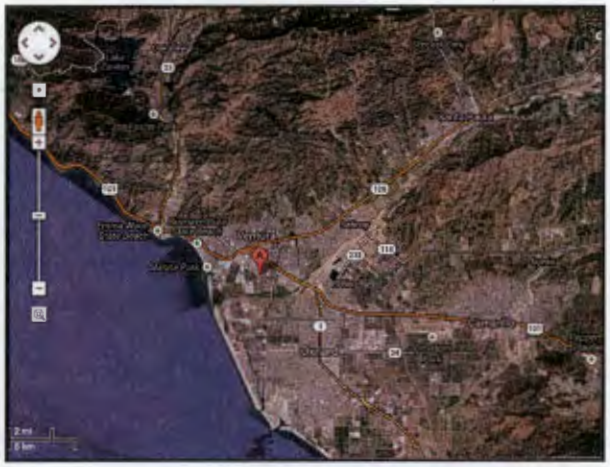
E. The Santa Clara River and Pacific Ocean

The Magnaplate Facility is located in the environmentally important area of the coastal plain of the Santa Clara River, which flows into the Santa Clara River Estuary, and the Pacific Ocean. *See* PICTURES 1 & 2. The Santa Clara River is Southern California's last naturally flowing major river system and the 10th most endangered U.S. waterway.[4] In addition to being the largest wild river remaining in Southern California, and one of only a few rivers in the region that has not been channelized by concrete, the River provides crucial aquatic ecosystem functions in the region, including groundwater recharge and riparian habitat. It is home to as many as 17 species listed as threatened or endangered by state and federal governments, and includes critical habitat for many species, including the Santa Ana Sucker, Tidewater Goby, Unarmored Threespine Stickleback, California Red Legged Frog, Arroyo Toad, Southwestern Willow Flycatcher, Least Bell's Vireo, and the Southern California Steelhead.[5] Finally, ocean currents carry coastal waters out to the nearby Channel Islands National Sanctuary and National Park, both of which are home to unique ecosystems and numerous special status species.

Based on available information, the Magnaplate Facility discharges storm water to the Santa Clara River, the Santa Clara River Estuary, and the Pacific Ocean (collectively, the "Receiving Waters"). The Facility is located approximately 0.8 miles from Reach 1 of the Santa Clara River, approximately 1.8 miles from the Santa Clara River Estuary, and approximately 2.3 miles from the Pacific Ocean. The Magnaplate Facility sits near state park and campground facilities, miles of heavily used public beaches, residential areas, and the Ventura Harbor.

PICTURES 1 & 2

FACILITY LOCATED IN COASTAL PLAIN OF THE SANTA CLARA RIVER



[4] *See* Daryl Kelley, *Santa Clara River Listed as 10th Most Endangered Waterway*, L.A. Times, Apr. 15, 2005, http://articles.latimes.com/2005/apr/13/local/me-endangered13.

[5] The steelhead run on the Santa Clara River prior to 1940 is estimated to have had thousands of fish and to have been one of the largest steelhead runs in southern California. *See* report by Moore, Mark titled "An Assessment of the Impacts of the Proposed Improvements to the Vern Freeman Diversion on Anadromous Fishes of the Santa Clara River System, Ventura County, California" (1980).

The Santa Clara River and its associated hydrological features are a vital source of water for both municipal and agricultural uses, as well as important wildlife habitat. The Regional Board issued the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura County* ("Basin Plan"), which identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the waterbodies of Reach 1 of the Santa Clara River and the Santa Clara River Estuary, including the Receiving Waters, include: industrial service and process supply; agricultural supply; groundwater recharge; freshwater replenishment; navigation; commercial and sport fishing; warm and cold freshwater habitat; estuarine, marine, and wildlife habitat; rare, threatened, or endangered species habitat; habitat necessary for the migration of aquatic organisms; and wetland habitat.[6]

The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of reptile, amphibian, fish, and bird species, as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of the Receiving Waters for water contact sports and fishing is impaired by toxic metals, pathogens and bacteria, and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

According to the State Board's 2010 list of 303(d) impaired water bodies, the Santa Clara River Estuary is impaired by coliform bacteria; nitrogen, nitrate; chemA; and toxaphene. *See* 2015 Permit, Appendix 3. The State Board has found that these are pollutants that are likely to be associated with industrial storm water, and total maximum daily loads ("TMDLs")[7] are currently under development for these impairments. *Id.* In addition, the Regional Board has determined that the Santa Clara River is impaired by nutrients and bacteria, and has developed EPA-approved TMDLs applicable to industrial storm water dischargers. *See* 2015 Permit, Attachment E. Polluted discharges from the Magnaplate Facility cause and/or contribute to the degradation of these already impaired waters. Facilities in the metal finishing industry, such as Magnaplate, utilize various hazardous materials that, when conveyed in storm water discharges, pose substantial risk to human health and the environment. For the Santa Clara River aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Magnaplate Facility, must be eliminated.

II. The Magnaplate Facility and Associated Discharges of Pollutants

A. Magnaplate Facility Site Description

Information available to EDC indicates that the Magnaplate Facility consists of a 70,000

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[6] Basin Plan, Table 2-1, *available at* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/electronics_documents/BeneficialUseTables.pdf.

[7] TMDLs refer to the maximum amount of a pollutant that a water body can receive and still attain water quality standards.

square foot campus ("campus").[8] The Facility's two storm water discharge points are located at or near the southeast and southwest corners of the campus.

The Magnaplate Facility is comprised of four buildings. The 2701 building is an enclosed one-story 1,200 square foot building located at the northeast corner of the campus. According to EDC's information and belief, no industrial processes occur in the 2701 building, although an air conditioning unit produces authorized non-storm water discharges. The 2703 building is an enclosed one-story 8,900 square foot building located in the middle of the northern boundary of the campus. Half of the 2703 building is used for Magnaplate production processes, including powder and spray coating applications, metal heat treatment, and curing of powder and sprayed metals. The other half of the 2703 building is rented out to C & R Molds (a neighboring business located at 2737 Palma Drive) as a storage area.

The 2705 building is a two-story 2,800 square foot building located at the northwest corner of the campus. The south half of the ground floor of the 2705 building is a maintenance room used for housing tools and materials required for plant maintenance. The north half of the ground floor of the 2705 building is a blasting area consisting of two separate rooms. The second story of the 2705 building is mostly unused, but stores some company documents and equipment. The west wall of the 2705 building is an outdoor chemical storage area that is covered by a roof but not enclosed by any walls. Finally, the 2707 building is an enclosed one-story 9,700 square foot building located on the southern boundary of the campus. The 2707 building contains the entirety of the Magnaplate Facility's plating and anodizing processes. The 2707 building also has an air conditioning unit that produces authorized non-storm water discharges. The rest of the campus is comprised of a parking area and driveways, and is almost 100 percent impervious.

B. Magnaplate Facility Industrial Activities and Pollutant Sources

Available information indicates that the Magnaplate Facility is engaged in low volume powder and regular spray coating applications, metal heat treatment and curing of powder and sprayed coatings, thermal application of powdered metals, abrasive blasting, and plating and anodizing processes. The Magnaplate facility is also generally engaged in the storage and transport of chemicals and hazardous materials.

Trucks transport industrial materials including chemicals to and from the 2705 building's outdoor storage area and the 2707 building. Magnaplate has certified that materials with potential exposure to rainwater include: chemicals stored in the outdoor storage area on the west side of the 2705 building; powder from thermal spray operations stored outside on the south side of the 2703 building; abrasive media stored outside the west side of the 2705 building; and three trash dumpsters located outside on the south side of the 2703 building. In its most recent SWPPP, Magnaplate has identified other potential risk areas for discharges of pollutants to storm water as: the loading and unloading of raw materials and supplies at all buildings; the transferring of materials, parts, chemicals, and blasting media from one building to another;

[8] Magnaplate's NOIs all indicate that the total site size is 29,000 square feet, but a Google maps area calculation indicates that the entire campus is in fact 70,000 square feet.

escaped particulate matter from the abrasive blasting and fabrication operations, particularly where it is impossible to perform such operations within a completely enclosed area; equipment temporarily stored outdoors without proper covering; and tracking of suspended solids from the driveway and into storm drains.

C. Magnaplate Facility Pollutants

Certain activities undertaken at the Magnaplate Facility pose particular risks to water quality, including the outdoor use of abrasives, chemical storage, thermal spray operations, and wet processing. The Magnaplate Facility's 2015 SWPPP indicates that hazardous materials present at the Facility include metal dust, spent powders, spent blasting media including aluminum oxide and glass bead, oils and fluids from vehicles, and other chemicals in the "List of Industrial Materials" in the 2015 SWPPP.

Because metal finishing facilities are likely to discharge storm water runoff that is contaminated, the EPA provides a storm water fact sheet for fabricated metal products manufacturing facilities. *See* Environmental Protection Agency, *Sector AA: Fabricated Metal Products Manufacturing Facilities* (EPA-833-F-06-042) December 2006. The fact sheet offers facility operators guidance on how to prepare storm water management programs that are appropriate for their facility and operations. Table 1 below sets forth the EPA chart regarding the various pollutant sources and pollutants that are typically associated with facilities such as the Magnaplate Facility.

TABLE 1: *COMMON ACTIVITIES, POLLUTANT SOURCES, AND ASSOCIATED POLLUTANTS AT FABRICATED METAL PRODUCTS MANUFACTURING FACILITIES*

Activity	Pollutant Source	Pollutant
Tool workpiece interface/ shaving, chipping	Used metal working fluid with fine metal dust	Total suspended solids (TSS), chemical oxygen demand (COD), oil and grease
Parts/tools cleaning, sand blasting, metal surface cleaning, removal of applied chemicals	Solvent cleaners, abrasive cleaners, alkaline cleaners, acid cleaners, rinse waters	Spent solvents, TSS, acid/alkaline waste, oil
	Solvents, cold and hot dips, cleaning parts, degreasing	Acid, coolants, clean composition, degreaser, mineral spirits, pickle liquor, spent caustic, sludge.
Making structural components	Cuttings, scraps, turnings, fines	Metals
Painting operations	Paint and paint thinner spills, sanding, spray painting	Paints, spent solvents, heavy metals, TSS
	Empty containers, paint application wastes, spills, over spraying, storage areas	Paint wastes, thinner, varnish, heavy metals, spent chlorinated solvents
Cleanup of spills and drips	Used absorbent materials	TSS, spilled material
Transportation or storage of materials	Wood dunnage/pallets	BOD, TSS
Metal preparation	Grinding, welding, sawing, shaving, brazing, bending, cutting, etching	Steel scraps, aluminum scraps, brass, copper, dust, chips and borings, steel scale, teflon, manganese.

Surface treatment	Finishing, plating, case hardening, chemical coating, coating, polishing, rinsing, abrasive cleaning, electroplating	Acid, aromatic solvent, corn cob, lubricants, sand, oil, pH, nitrates, nitrites, carbon, phosphates, borates, nitrogen, oily sludge, nickel, chromium, hydrofluoric acid.
Galvanizing	Spills, leaks, transporting materials	Acid solution, phosphates, zinc chromate, hexavalent chromium, nickel.
Heavy equipment use and storage	Leaking fluids, fluids replacement, washing equipment, use on poor surface area, soil disturbance	Oil, heavy metals, organics, fuels, TSS, hydraulic oil, diesel fuel, gasoline
Equipment/vehicle maintenance	Leaking fluids, fluids replacement, washing equipment	Oil, grease
	Vehicle fueling	Gas/diesel fuel, fuel additives
Storage of uncoated structural steel	Stored on porous pavement	Aluminum, lead, zinc, copper, iron, oxide, oil, nickel, manganese.
Storing galvanized steel directly on the ground	Galvanizing material drippage or leaching	Metals: zinc, nickel, cadmium, chromium.
Vehicle/equipment traffic	Soil disturbance and erosion	TSS from erosion, hydraulic fluid loss/spillage
Cleaning equipment/vehicles	Chemicals disposed improperly, spillage	Oil, grease, surfactants, chromates, acid, hydroxide, nitric acid

D. Applicable Effluent Standards or Limitations

The Storm Water Permit requires all industrial facilities to sample and analyze storm water discharges for the following parameters: pH, total suspended solids ("TSS"), specific conductance ("SC"), and total organic carbon ("TOC") or oil and grease ("O&G"). *See* 1997 Permit, § B(5)(c)(i); 2015 Permit, §§ XI(B)(6)(a), (b). Fabricated metal products facilities classified under SIC code 3471, such as the Magnaplate Facility, must also sample and analyze samples for zinc ("Zn"), nitrate + nitrite nitrogen ("N+N"), iron ("Fe"), and aluminum ("Al"). *See* 1997 Permit at Table D; 2015 Permit, § VI(B) at Table 1.

The EPA has published "benchmark" levels as numeric thresholds for helping to determine whether a facility discharging industrial storm water has implemented the requisite BAT and BCT mandated by the CWA. *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, as modified effective May 27, 2009. These benchmarks represent pollutant concentrations at which a storm water discharge could potentially impair, or contribute to impairing, water quality, or affect human health from ingestion of water or fish. EPA benchmarks have been established for pollutants discharged by the Magnaplate Facility, and include: pH—6.0-9.0 s.u.; TSS—100 mg/L; SC—200 uhmos/cm; TOC—110 mg/L; O&G—15 mg/L; Zn—0.117 mg/L; N+N—0.68 mg/L; Fe—1.0 mg/L; and Al—0.75 mg/L.

The Criteria for Priority Toxic Pollutants in the State of California, or California Toxics Rule ("CTR"), set forth in 40 C.F.R. § 131.38, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. The CTR sets forth a numeric limit of 0.067 mg/L for zinc in freshwater surface waters.[9]

[9] The CTR numeric limits, or "criteria," are expressed as dissolved metal concentrations in the CTR, but the Storm Water Permit requires permittees to report their sample results as total metal concentrations.

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

The citizen suit provision of the CWA provides that "any citizen" may commence a suit "against any person," including a corporation, "who is alleged to be in violation of an effluent standard or limitation under this chapter." 33 U.S.C. § 1365(a)(1). The CWA in turn defines "effluent standard or limitation" to include "a permit or condition" issued under section 402. *Id.* § 1365(f)(6). Accordingly, a citizen may commence a suit alleging violations of the Storm Water Permit. *See Natural Resource Defense Council v. Southwest Marine, Inc.*, 236 F. 3d 985 (9th Cir. 2000) (storm water permit enforcement action where company was liable for discharges of "significant contributions of pollutants" and inadequate recordkeeping).

In the years since enrolling under the Storm Water Permit, Magnaplate has failed to carry out its obligations under the Storm Water Permit and CWA. As discussed in further detail below, Magnaplate is in ongoing violation of the Storm Water Permit, and its violations span both the 1997 Permit and 2015 Permit. Specifically, Magnaplate has failed to obtain complete Storm Water Permit coverage; repeatedly discharged high levels of pollutants in storm water in violation of the Storm Water Permit's effluent and receiving water limitations; failed to develop an adequate monitoring and reporting program; and failed to develop, implement and/or update an adequate SWPPP to ensure development and implementation of BMPs that achieve BAT/BCT.

A. Operation of Industrial Facility Without Complete Permit Coverage in Violation of the Storm Water Permit and the Clean Water Act

As discussed above, industrial operators in California must enroll under the Storm Water Permit and comply with the terms of the Permit in order to lawfully discharge storm water under the CWA. The Storm Water Permit requires operators to identify the appropriate SIC codes for the facility, and sample and analyze storm water discharges for any additional parameters associated with those SIC codes. *See* 1997 Permit, § B(5)(c)(iii); 2015 Permit, § XI(B)(6)(d). Hazardous waste treatment, storage or disposal facilities are categorized under SIC code 4953, and are required to sample for more parameters than are metal finishing facilities, including ammonia, magnesium, chemical oxygen demand, arsenic, cadmium, cyanide, lead, mercury, selenium, and silver. *See* 1997 Permit, Table D; 2015 Permit, § VI(B) Table 1.

According to information available to EDC, Magnaplate has failed to obtain Storm Water Permit coverage for all of the regulated industrial operations conducted at the Facility. In its 1992 NOI, Magnaplate identified itself as a "Hazardous Waste Treatment, Storage or Disposal Facility (RCRA Subtitle C)." Available information indicates that the Facility's industrial

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See 1997 Permit, § B(10)(b); 2015 Permit, Attachment H at 18. In order to compare the sample results reported by the Magnaplate Facility with the CTR criteria, EDC used the CTR criteria converted to total metal concentrations set forth in the State Board's "Water Quality Goals" database. The formula used to convert the CTR criteria to total metal concentrations is set forth in the CTR at 40 C.F.R. § 131.38(b)(2)(i). The CTR criteria for zinc in this instance is based on a hardness of 50 mg/L.

activities still include hazardous waste treatment, storage, or disposal.[10] By Magnaplate's own admission, there is a chemical storage area outside the west wall of building 2705, and chemicals are stored inside the 2707 building. *See* Magnaplate 2015 SWPPP, pp. 4–5. However, Magnaplate has failed to identify SIC code 4953 in any of its NOIs since 1992. In addition, it has failed to analyze its storm water samples for all of the additional required parameters associated with SIC Code 4953, for at least the past five years.

Magnaplate therefore has failed to obtain complete Permit coverage by failing to identify all SIC codes applicable to its industrial activities. Every day Magnaplate conducts industrial activities without complete Permit coverage is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the CWA. In addition, every time Magnaplate fails to analyze its storm water samples for the parameters associated with SIC Code 4953 is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the CWA. Magnaplate is in ongoing violation of the requirement to obtain and comply with an appropriate Permit, and EDC will include additional violations when further information becomes available. Magnaplate is subject to civil penalties for all violations of the CWA occurring since October 13, 2010.

B. Discharges of Polluted Storm Water from the Magnaplate Facility in Violation of Receiving Water Limitations

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). Receiving Water Limitation C(2) of the 1997 Permit further prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable water quality standard. The 2015 Permit also includes this receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI(A).

Discharges that contain pollutants in concentrations that exceed levels known to adversely impact human health or the environment, or that contain pollutants in excess of an applicable water quality standard, constitute distinct violations of the Receiving Water Limitations of the Storm Water Permit and the CWA.

Storm water samples from Magnaplate's own documents demonstrate consistent violations of Receiving Water Limitations C(1) and C(2) of the 1997 Permit. First, Magnaplate's discharges contain chemicals such as iron, aluminum, nickel, and zinc, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters, and therefore Magnaplate's discharges adversely impact human health and the environment.

In addition, Magnaplate's own storm water sampling at the Facility also demonstrates that discharges contain concentrations of pollutants that cause or contribute to an exceedance of

[10] For example, information available in EPA's Resource Conservation and Recovery Act ("RCRA") database indicates that Magnaplate is enrolled under the RCRA hazardous waste permitting program, and is classified as a "Large Quantity Generator." *See* http://www3.epa.gov/enviro/facts/rcrainfo/search.html. Magnaplate's RCRA Handler ID is CAT080033350.

applicable water quality standards such as the CTR. Table 2 below sets forth the results of sampling conducted by Magnaplate. Each sample result demonstrates violations of Receiving Water Limitation C(1) and/or Receiving Water Limitation C(2).

TABLE 2: SAMPLING DEMONSTRATING EXCEEDANCES OF WATER QUALITY STANDARDS

DATE	CONSTITUENT	OBSERVED CONCENTRATION	CTR CRITERIA	LOCATION (AS IDENTIFIED BY OPERATOR)
2/18/11	Zn	0.94 mg/L	0.067 mg/L	Sample Point A
2/18/11	Zn	0.12 mg/L	0.067 mg/L	Sample Point B
11/08/12	Zn	2.6 mg/L	0.067 mg/L	Sample Point B
11/08/12	Zn	0.62 mg/L	0.067 mg/L	Sample Point A
11/29/12	Zn	0.19 mg/L	0.067 mg/L	Sample Point B
11/29/12	Zn	1.20 mg/L	0.067 mg/L	Sample Point A
1/24/13	Zn	0.37 mg/L	0.067 mg/L	Sample Point A
1/24/13	Zn	0.30 mg/L	0.067 mg/L	Sample Point B
2/28/14	Zn	0.36 mg/L	0.067 mg/L	Sample Point A
2/28/14	Zn	0.46 mg/L	0.067 mg/L	Sample Point B
12/2/14	Zn	0.46 mg/L	0.067 mg/L	Sample Point A
5/14/15	Zn	0.62 mg/L	0.067 mg/L	Sample Point A
5/14/15	Zn	0.73 mg/L	0.067 mg/L	Sample Point B

Information available to EDC, including sampling data exhibiting consistent exceedances of water quality standards, demonstrates that Magnaplate has failed and continues to fail to meet the Storm Water Permit's receiving water limitations. EDC puts Magnaplate on notice that it violates the Storm Water Permit's receiving water limitations each time polluted storm water discharges from the Facility. *See, e.g.*, Exhibit A (setting forth dates of significant rainfall). Magnaplate's discharges prior to July 1, 2015 violate Receiving Water Limitation C(1) and C(2) of the 1997 Permit, and Magnaplate remains in ongoing violation of Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit every time storm water is discharged from the Facility. EDC will update the dates of violations when additional information and data become available.

Each time discharges of storm water from the Magnaplate Facility cause or contribute to a violation of an applicable water quality standard is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI(A) of the 2015 Permit, and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each time discharges from the Magnaplate Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI(B) of the 2015 Permit, and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Magnaplate is subject to civil penalties for all violations of the CWA occurring since October 13, 2010.

C. Discharges of Polluted Storm Water from the Magnaplate Facility in Violation of Effluent Limitations

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BMPs that meet BAT standards for toxic and nonconventional pollutants, and BCT standards for conventional pollutants.[11] The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). EPA Benchmarks are 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. The 2015 Permit sets forth Numeric Action Levels ("NALs") that are derived from and function similarly to EPA Benchmarks. *See* 2015 Permit Fact Sheet, § I(D)(5).

Storm water samples from Magnaplate's own documents demonstrate consistent exceedances of EPA benchmarks, as demonstrated in Table 3 below.

TABLE 3: SAMPLING DEMONSTRATING EXCEEDANCES OF EPA BENCHMARKS

DATE	PARAMETER	OBSERVED CONCENTRATION	EPA BENCHMARK VALUE	LOCATION (AS IDENTIFIED BY OPERATOR)
2/18/11	Zn	0.94 mg/L	0.117 mg/L	Sample Point A
2/18/11	Zn	0.12 mg/L	0.117 mg/L	Sample Point B
2/18/11	N+N	1.224 mg/L	0.68 mg/L	Sample Point A
2/18/11	N+N	2.337 mg/L	0.68 mg/L	Sample Point B
2/18/11	Fe	3.5 mg/L	1.0 mg/L	Sample Point A
2/18/11	Al	2.30 mg/L	0.75 mg/L	Sample Point A

[11] Toxic pollutants are listed at 40 C.F.R. § 401.15 and conventional pollutants are listed at 40 C.F.R. § 401.16.

2/18/11	pH	5.9 su	6.0-9.0 su	Sample Point B
11/08/12	TSS	130 mg/L	100mg/L	Sample Point A
11/08/12	Al	3.10 mg/L	0.75 mg/L	Sample Point B
11/08/12	Al	3.20 mg/L	0.75 mg/L	Sample Point A
11/08/12	Fe	2.6 mg/L	1.0 mg/L	Sample Point B
11/08/12	Fe	2.6 mg/L	1.0 mg/L	Sample Point A
11/08/12	Zn	2.6 mg/L	0.117 mg/L	Sample Point B
11/08/12	Zn	0.62 mg/L	0.117 mg/L	Sample Point A
11/29/12	Al	1.10 mg/L	0.75 mg/L	Sample Point B
11/29/12	Al	1.10 mg/L	0.75 mg/L	Sample Point A
11/29/12	Fe	1.20 mg/L	1.0 mg/L	Sample Point A
11/29/12	Zn	0.19 mg/L	0.117 mg/L	Sample Point B
11/29/12	Zn	1.20 mg/L	0.117 mg/L	Sample Point A
11/29/12	pH	5.5 su	6.0-9.0 su	Sample Point A
1/24/13	Al	1.10 mg/L	0.75 mg/L	Sample Point A
1/24/13	Fe	4.10 mg/L	1.0 mg/L	Sample Point A
1/24/13	Zn	0.37 mg/L	0.117 mg/L	Sample Point A
1/24/13	Al	0.82 mg/L	0.75 mg/L	Sample Point B
1/24/13	Fe	1.10 mg/L	1.0 mg/L	Sample Point B
1/24/13	Zn	0.30 mg/L	0.117 mg/L	Sample Point B
1/24/13	TSS	220 mg/L	100 mg/L	Sample Point A
1/24/13	SC	230 umhos/cm	200 umhos/cm	Sample Point A
1/24/13	N+N	1.30 mg/L	0.68 mg/L	Sample Point A
1/24/13	TSS	240 mg/L	100 mg/L	Sample Point B
1/24/13	SC	330 umhos/cm	200 umhos/cm	Sample Point B
1/24/13	N+N	3.80 mg/L	0.68 mg/L	Sample Point B

2/28/14	Zn	0.36 mg/L	0.117 mg/L	Sample Point A
2/28/14	Fe	1.3 mg/L	1.0 mg/L	Sample Point A
2/28/14	Al	0.78 mg/L	0.75 mg/L	Sample Point A
2/28/14	Zn	0.46 mg/L	0.117 mg/L	Sample Point B
2/28/14	Fe	1.7 mg/L	1.0 mg/L	Sample Point B
2/28/14	Al	0.84 mg/L	0.75 mg/L	Sample Point B
12/2/14	Zn	0.46 mg/L	0.117 mg/L	Sample Point A
12/2/14	Al	1.1 mg/L	0.75 mg/L	Sample Point A
12/2/14	Al	0.85 mg/L	0.75 mg/L	Sample Point B
5/14/15	Zn	0.62 mg/L	0.117 mg/L	Sample Point A
5/14/15	Fe	7.3 mg/L	1.0 mg/L	Sample Point A
5/14/15	Al	4.7 mg/L	0.75 mg/L	Sample Point A
5/14/15	TSS	370 mg/L	100 mg/L	Sample Point A
5/14/15	Zn	0.73 mg/L	0.117 mg/L	Sample Point B
5/14/15	Fe	7.3 mg/L	1.0 mg/L	Sample Point B
5/14/15	Al	4.7 mg/L	0.75 mg/L	Sample Point B
5/14/15	TSS	290 mg/L	100 mg/L	Sample Point B
5/14/15	pH	4.8 su	6.0-9.0 su	Sample Point B

Information available to EDC, including sampling data exhibiting consistent exceedances of EPA Benchmarks, demonstrates that Magnaplate has failed and continues to fail to develop and/or implement BMPs at the Facility that achieve compliance with BAT/BCT standards. EDC puts Magnaplate on notice that it violates the Effluent Limitations of the Storm Water Permit every time it discharges storm water from the Facility without BMPs that achieve BAT/BCT. *See, e.g.,* Exhibit A (setting forth dates of significant rainfall). Magnaplate's discharges prior to July 1, 2015 violate Effluent Limitation B(3) of the 1997 Permit, and it remains in ongoing violation of Effluent Limitation V(A) of the of the 2015 Permit each time storm water is discharged from the Facility. EDC will update the dates of violations when additional information and data become available.

Each time Magnaplate discharges polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit or 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 CWA, 33 U.S.C. § 1311(a). Magnaplate is subject to civil penalties for all violations of the CWA occurring since October 13, 2010.

D. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Magnaplate Facility

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program 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. An adequate Monitoring and Reporting Program therefore 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.

Sections B(3) – B(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Visual Observations

The 1997 Permit requires facility operators to conduct visual observations of storm water discharges during the first hour of discharge of at least one storm event per month during the wet season at each discharge point. *See* 1997 Permit, § B(4). The 2015 Permit also requires visual observations, but requires the observations to occur at the same time as sampling, which is required four times per year. *See* 2015 Permit, §§ XI(A)(2), XI(B). The 1997 Permit further requires dischargers to document the presence of any floating or suspended material, oil & gas, discolorations, turbidity, odor, and the source of any pollutants. *See* 1997 Permit, §§ B(3), (4). Dischargers must maintain records of observations, observation dates, locations observed, and any response actions taken. The 2015 Permit likewise requires similar record-keeping of visual observations. *See* 2015 Permit, § XI (A)(3).

Information available to EDC indicates that Magnaplate has consistently failed to properly conduct and/or record monthly visual observations of storm water discharges as required by the Storm Water Permit for at least the past five years. Magnaplate failed to conduct monthly visual observations during at least four months every year since October 13, 2010, asserting that no qualifying rain events occurred during operating hours. However, as evidenced by the qualifying rain events set forth in Exhibit B, Magnaplate had numerous opportunities to conduct visual observations in the months that it failed to do so.

Magnaplate's failure to conduct monthly visual observations of storm water discharges as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise a Monitoring and Reporting Program that complies with the requirements of Section B and Provision E(3) of the 1997 Permit, section XI of the 2015 Permit, and the CWA. EDC will include additional violations when information becomes available, including specific violations of the 2015 Permit monitoring requirements. Magnaplate is in ongoing violation of the Storm Water Permit's Monitoring and Reporting Program requirements and is subject to civil penalties for all violations of the CWA occurring since October 13, 2010.

ii. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges over the course of the reporting year. *See* 2015 Permit, § XI(B)(2). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit broadens this qualifying storm event definition by only requiring that the storm water discharges be preceded by 48 hours without discharge from any drainage area in order to trigger the sampling requirement. *See* 2015 Permit, § XI(B)(1)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The Magnaplate Facility has repeatedly violated these monitoring requirements.

During the 2010-2011 reporting period, the Magnaplate Facility only sampled from one storm event, which Magnaplate claimed was the first storm event of the wet season, and failed to collect samples from a second storm event. During the 2011-2012 reporting period, the Magnaplate Facility did not sample any storm water discharges during the reporting period. During the 2013-2014 reporting period, the Magnaplate Facility only sampled from the first storm event of the wet season and failed to collect samples from a second storm event. In the explanations for these failures to sample, Magnaplate repeatedly claimed that no qualifying storm events occurred during the reporting period, or that no storms generated sufficient flow for sampling. However, as evidenced by the attached rainfall data in Exhibit B, there were numerous qualifying events and thus sampling opportunities during each of these reporting periods for Magnaplate to conduct the required sampling and analysis.

The Magnaplate Facility's failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise a Monitoring and Reporting Program that complies with the requirements of Section B and Provision E(3) of the 1997 Permit, Section XI of the 2015 Permit, and the CWA. EDC will include additional violations when information becomes available, including specific violations

of the 2015 Permit. Magnaplate is in ongoing violation of the Storm Water Permit's Monitoring and Reporting Program requirements and is subject to civil penalties for all violations of the CWA occurring since October 13, 2010.

iii. Failure to Submit Accurate and Complete Annual Reports

Section B(14) of the 1997 Permit requires operators to submit an Annual Report to the Regional Board by July 1 of each year. The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. *See* 2015 Permit, § XV.

Information available to EDC indicates that Magnaplate has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Magnaplate Facility's ACSCE Reports provide an explanation of the Magnaplate Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. Further, despite consistent exceedances of CTR criteria, as discussed above, Magnaplate has never submitted an ACSCE Report describing additional BMPs that will be implemented to prevent or reduce the pollutants that are causing or contributing to the exceedance of this applicable water quality standard. *See* 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); *see also* 2015 Permit § I(E)(3) (requiring discharges to implement additional BMPs or other control measures if storm water discharges cause or contribute to an exceedance of water quality standards). These examples of failures to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the Storm Water Permit. Instead, Magnaplate has consistently disregarded these failures to comply with the Storm Water Permit by simply checking the boxes in the ACSCE Report indicating that Magnaplate certifies compliance with the Storm Water Permit's requirements. By providing erroneous information, Magnaplate has failed to properly respond to EPA benchmark and water quality standard exceedances, in violation of the Storm Water Permit.

EDC puts Magnaplate on notice that its failures to submit accurate and complete Annual Reports are violations of Section B(14) of the 1997 Permit, Receiving Water Limitations C(3) and C(4) of the 1997 Permit, and the CWA. Magnaplate is in ongoing violation of section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. Each of these violations is a separate and distinct violation of the Storm Water Permit and the CWA. Magnaplate is subject to civil penalties for all violations

of the CWA occurring since October 13, 2010.

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

Under the Storm Water Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement an SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. In order to enroll under the 2015 Permit, the 2015 Permit requires all dischargers to implement a new SWPPP by July 15, 2015 that complies with all of the new requirements of the 2015 Permit. *See* 2015 Permit, § X. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). 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 and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the Storm Water Permit. 2015 Permit Factsheet § I(1).

Sections A(3) – A(10) of the 1997 Permit set forth the requirements for an SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit

Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Magnaplate has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP. Magnaplate has a long history of failing to implement an adequate SWPPP. The Regional Board sent Notices of Violations to the facility because of this failure, on three separate occasions, in 2002, 2008, and 2010. In each instance, the Regional Board noted Magnaplate's failure to design and implement BMPs in accordance with the Storm Water Permit. Magnaplate only responded to these Notices of Violations by making minor changes to its SWPPP, repeatedly failing to meet CWA mandates. Magnaplate's most recent SWPPP was filed on June 22, 2105 in light of the requirement to do so under the new 2015 Permit, and as discussed below, is likewise inadequate.

Magnaplate has failed to develop effective and comprehensive BMPs under the terms of the 2015 Permit. Magnaplate's 2015 SWPPP describes only five BMPs, which fail to address a variety of minimum BMPs as required by the 2015 Permit. The 2015 SWPPP further maintains that no additional advanced BMPs are required, which is unlikely given the ongoing presence of high levels of pollutants in the Facility's storm water discharges. The 2015 SWPPP also fails to: (1) include the required BMP Descriptions, (2) identify the pollutants that each BMP is designed to reduce or prevent, and (3) justify each minimum and advanced BMP not being implemented, as required by the 2015 Permit. *See* 2015 Permit §§ X(H)(4)(a)(i), (b). In addition, the 2015 SWPPP does not include the required BMP Summary Table. Most importantly, Magnaplate's samples have consistently exceeded benchmarks and water quality standards, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in discharges. Despite these exceedances, Magnaplate has failed to sufficiently update its SWPPP. Although Magnaplate revised its SWPPP in 2011, samples taken after these revisions still contained high concentrations of pollutants. Further, the 2015 SWPPP is in large part an exact copy of the clearly inadequate 2011 SWPPP, which remains mostly unchanged since the Magnaplate SWPPP was filed in 2008. Magnaplate's SWPPP has therefore never achieved the Storm Water Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges.

EDC puts Magnaplate on notice that it violates the Storm Water Permit and the CWA every day that the Magnaplate Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and EDC will include additional violations as information and data become available. Magnaplate is subject to civil penalties for all violations of the CWA occurring since October 13, 2010.

V. Persons Responsible for the Violations

EDC puts General Magnaplate California, General Magnaplate Corporation, Jim Dedmon, and Jeff Keith on notice that they are the entities and/or persons responsible for the violations described above. If additional entities and/or persons are subsequently identified as also being responsible for the violations set forth above, EDC puts General Magnaplate California, General Magnaplate Corporation, Jim Dedmon, and Jeff Keith on notice that it intends to include those identified persons in this action.

VI. Name and Address of Noticing Party

The name, address, and telephone number of EDC are as follows:

Lee Heller
President, Board of Directors
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101
(805) 963-1622

VII. Counsel

EDC has retained legal counsel to represent it in this matter. Please direct all communications to:

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VIII. Relief Sought

As detailed in this Notice of Intent to Sue sent to Magnaplate, in accordance with requirements of the CWA, Magnaplate is in violation of multiple requirements of the Storm Water Permit, including exceedances of receiving water limitations and effluent limitations, monitoring and reporting violations, and SWPPP violations. Section 309 of the CWA, 33 U.S.C.

§ 1319(d), as adjusted by 40 C.F.R. §19.4, provides for penalties of as much as $37,500 per day per violation. In addition to civil penalties, EDC will seek injunctive relief to prevent further violations of the CWA and Storm Water Permit pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a), (d). EDC will also seek to recover its costs associated with this action, including attorneys' fees and experts' fees.

EDC believes that this Notice of Intent to Sue sufficiently states grounds for filing suit under the CWA. We intend to file a citizen suit under section 505(a) of the CWA against Magnaplate and its agents for the above-referenced violations upon the expiration of the 60-day notice period. During the 60-day notice period, however, we are willing to discuss effective remedies for the violations alleged in this letter. If you wish to pursue such discussions in the absence of litigation, we respectfully request that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period, as we do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Maggie Hall

Matthew Preusch
Keller Rohrback LLP

Maggie Hall, Staff Attorney
Environmental Defense Center

Daniel Mensher
Keller Rohrback LLP

Brian Segee, Senior Attorney
Environmental Defense Center

SERVICE LIST

VIA CERTIFIED MAIL

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Samuel Unger, Executive Officer
Regional Water Quality Control Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

EXHIBIT A

SIGNIFICANT RAIN EVENTS (OVER 0.1")[1]

DATE	RAINFALL (IN.)
10/6/2010	0.93
10/19/2010	0.25
10/30/2010	0.93
11/7-8/2010	0.21
11/20/2010	0.37
11/21/2010	0.12
12/5/2010	0.49
12/17/2010	0.46
12/18/2010	2.22
12/19/2010	2.1
12/20/2010	0.37
12/21/2010	0.43
12/22/2010	0.88
12/25/2010	0.69
12/29/2010	0.6
1/2-3/2011	0.26
1/30/2011	0.15
2/15-16/2011	0.87
2/18/2011	0.59
2/19/2011	0.46
2/25-26/2011	0.62
3/2-3/2011	0.11
3/19-21/2011	3.78
3/23/2011	0.3
3/24-25/2011	0.35
5/17-18/2011	0.44
6/6/2011	0.12
10/5/2011	1.51
11/6/2011	0.19
11/11-12/2011	0.46
11/20/2011	1.03
12/12/2011	0.22
1/20-21/2012	0.87
1/23/2012	0.59

[1] Source: Hourly Rainfall Totals from *Ventura County Watershed Protection District Hydrologic Data Server*, Ventura-County Government Center (Station 222A), *available at* http://www.vcwatershed.net/hydrodata/php/getstation.php?siteid=222A.

3/17/2012	0.85
3/25/2012	1.41
3/31/2012	0.16
4/10-11/2012	1.17
4/13/2012	0.66
4/25-26/2012	0.14
11/17/2012	0.26
11/28-29/2012	0.26
11/29-30/2012	0.37
12/1/2012	0.15
12/2-3/2012	0.6
12/12/2012	0.18
12/18/2012	0.17
12/22/2012	0.27
12/23-24/2012	0.63
1/23-24/2013	0.78
2/19/2013	0.14
3/7-8/2013	0.85
3/31/2013	0.13
5/6/2013	0.2
11/20-21/2013	0.43
12/7/2013	0.43
2/6/2014	0.25
2/26-27/2014	1.62
2/27-28/2014	2.34
3/1/2014	0.72
10/30/2014	0.57
11/1/2014	0.31
12/2/2014	1.14
12/3/2014	0.26
12/11-12/2014	2.01
12/15-16/2014	0.23
12/17/2014	0.22
1/10-11/2015	1.26
2/7/2015	0.21
2/22/2015	0.33
3/1/2015	0.46
4/7/2015	0.22
5/14/2015	0.38
6/9/2015	0.11

EXHIBIT B

SIGNIFICANT RAIN EVENTS (OVER 0.1") OCCURRING DURING MAGNAPLATE OPERATING HOURS (7AM-3:30PM)[1]

DATE	DAY OF WEEK	TIME PERIOD	RAINFALL (IN.)
2010-2011 REPORTING PERIOD			
10/6/2010	Wednesday	7am-12pm	0.3
12/20/2010	Monday	7am-4pm	0.26
12/22/2010	Wednesday	7am-3pm	0.63
12/29/2010	Wednesday	7am-9am	0.28
2/16/2010	Wednesday	7am-11am	0.1
2/18/2010	Friday	1pm-4pm	0.24
3/23/2010	Wednesday	11am-4pm	0.3
2011-2012 REPORTING PERIOD			
10/5/2011	Wednesday	7am-1pm	1.24
12/12/2011	Monday	7am-10am	0.18
1/23/2012	Monday	7am-3pm	0.51
4/13/2012	Friday	9am-3pm	0.64
2012-2013 REPORTING PERIOD			
1/24/2013	Thursday	7am-11am	0.24
2013-2014 REPORTING PERIOD			
2/6/2014	Thursday	2pm-3pm	0.17
2/28/2014	Friday	7am-4pm	0.22
2014-2015 REPORTING PERIOD			
12/2/2014	Tuesday	7am-4pm	1.14
12/12/2014	Friday	7am-1pm	0.34
4/7/2015	Tuesday	3pm	0.22
5/14/2015	Thursday	2pm-3pm	0.34

[1] Source: Hourly Rainfall Totals from *Ventura County Watershed Protection District Hydrologic Data Server*, Ventura-County Government Center (Station 222A), *available at* http://www.vcwatershed.net/hydrodata/php/getstation.php?siteid=222A.

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