SAN FRANCISCO
BAYKEEPER®

September 13, 2012

*VIA CERTIFIED MAIL*
*RETURN RECEIPT REQUESTED*

Joe Emmerichs, President
Pacific Steel Casting Company
1333 Second Street
Berkeley, CA 94710

Christina Chan, Environmental Engineer
Pacific Steel Casting Company
1333 Second Street
Berkeley, CA 94710

Michael S. Davidson
Agent for Service of Process
Vista IP Law Group
3470 Mt Diablo Blvd, Suite A300
Lafayette, CA 94549

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

Dear Sirs and Madam:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against Pacific Steel Casting Company. ("You" or "Your" or "Pacific Steel") for Your violations of the Clean Water Act ("CWA") at Pacific Steel's steel foundry facility located at 1333 Second Street in Berkeley, California (the "Facility").

This letter addresses Pacific Steel's unlawful discharge of pollutants from its industrial facility into San Francisco Bay and the ongoing and continuous violations of the substantive and procedural requirements of the Clean Water Act and National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("Industrial Stormwater Permit").

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

As required by the CWA, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred and which continue to occur at Pacific Steel's Facility. Baykeeper's investigations have uncovered significant violations of the Industrial Stormwater Permit at Your Facility. Consequently, You are hereby placed on formal notice from Baykeeper that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against Pacific Steel under CWA section 505(a), 33 U.S.C. §1365(a), for CWA violations. These violations of the Order and the CWA are described more fully below.

During the 60-day notice period, we would like to discuss effective remedies for the violations identified in this letter. If You wish to pursue such discussions, we suggest that You initiate those discussions within the next twenty (20) days so that they may be completed at the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court even if discussions are continuing when that period ends.

## I. BACKGROUND

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its main office in San Francisco, California. Baykeeper's purpose is to preserve, protect, and defend the environment, wildlife, and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of local communities. To further its goals, Baykeeper actively seeks federal and state agency implementation of state and federal water quality related laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members. Baykeeper has over two thousand members who use and enjoy the San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are impacted by Pacific Steel's operations.

In most of the San Francisco Bay area, stormwater flows untreated either directly, or through the storm drain system, into San Francisco Bay and other receiving waters. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering the Bay environment each year. With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from area industries, pour into the Bay and its tributaries. These contaminated stormwater discharges can and must be controlled for the Bay ecosystem to regain its health.

Discharges of stormwater and non-stormwater from steel foundries are of significant concern because the industrial activities associated with these sites make various pollutants particularly accessible to stormwater. Specifically, facilities such as Pacific Steel's are engaged in the manufacturing and processing of metal and steel components which contain heavy metals and other pollutants that can come into contact with stormwater.

## II. THE LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this notice letter have occurred and continue to occur at Pacific Steel's Facility, located at 1333 Second Street, Berkeley, CA 94710. Contaminated stormwater discharges from the Facility into nearby storm drains which drain to San Francisco Bay. Violations of the substantive and procedural requirements of the General Industrial Permit and the Clean Water Act have occurred and continue to occur at the Facility.

**A. The Facility**

Pacific Steel Casting Company operates the Facility, which is located in Berkeley near San Francisco Bay. Pacific Steel was founded in 1934 and began by making steel castings for the U.S. Military. Today, Pacific Steel is the fourth largest steel foundry in the United States. Pacific Steel processes and manufactures materials containing heavy metals. Stormwater from the Facility flows into nearby streets and storm drains, which discharge directly to San Francisco Bay.

**B. The Affected Waters**

Stormwater from the Facility reaches San Francisco Bay via storm drains in Berkeley. San Francisco Bay is a water of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives which protect specific "beneficial uses." The beneficial uses of the San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat.

The San Francisco Bay Basin (Region 2) Water Quality Control Plan ("Basin Plan") seeks to protect and maintain aquatic ecosystems and the resources those systems provide to society through water quality objectives and standards.[1] The Basin Plan acknowledges discharges of urban industrial site stormwater as a significant source of pollution adversely affecting the quality of local waters. Contaminated stormwater from Pacific Steel's Facility adversely impacts the water quality of San Francisco Bay watershed and threaten the ecosystem of this watershed, which includes significant habitat for listed rare and endangered species.

San Francisco Bay and its shoreline, tributaries, and adjacent wetlands are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished the Bay's once-abundant and varied fisheries, the Bay and its wetlands and

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[1] The Basin Plan is published by EPA at: http://water.epa.gov/scitech/swguidance/standards/wqslibrary/upload/2009_03_16_standards_wqslibrary_ca_ca_9_san_francisco.pdf. (Last accessed on 9/13/12).
The Basin Plan is also published by the Regional Board at: http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan. (Last accessed on 9/13/12).

tributaries are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Stormwater contaminated with sediment, heavy metals, and other pollutants harms the special aesthetic and recreational significance that the San Francisco Bay has for people in the surrounding communities. San Francisco Bay is used by kayakers and windsurfers, as well as recreational and subsistence anglers. The public's usage of the San Francisco Bay for water contact sports exposes many people to toxic metals and other contaminants in stormwater runoff. Non-contact recreational and aesthetic opportunities, such as wildlife observation, also are damaged by stormwater contaminants discharged to San Francisco Bay.

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. You have submitted an NOI to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit. Other than Your discharges covered under the Industrial Stormwater Permit, Your Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

Based on information available to Baykeeper, You have violated and are in violation of the Industrial Stormwater Permit and the Clean Water Act. Consequently, You are hereby placed on formal notice from Baykeeper that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, Baykeeper intends to file suit in federal court against You under CWA section 505(a), 33 U.S.C. § 1365(a), for Your violations of the CWA.

## III. THE ACTIVITIES AT THE FACILITIES ALLEGED TO CONSTITUTE VIOLATIONS AND THE EFFLUENT LIMITATIONS VIOLATED

Pacific Steel engages in the design, engineering, and manufacture of steel castings, which are commonly used in the following industries: oil and gas, mining, construction, trucking, alternative energy, and military. Potential pollutants from steel foundries include oil and grease, sediment, and heavy metals, such as aluminum, iron, lead, and zinc. Some of Pacific Steel's operations occur outdoors and are exposed to rainfall. Stormwater flows from the Facility into nearby storm drains, which drain to San Francisco Bay.

As a result of the pollutant-generating activities at Pacific Steel's Facility, contaminated stormwater runs off the Facility and discharges into nearby storm drains which discharge to San Francisco Bay. Information available to Baykeeper indicates that You have failed to comply with all requirements of the Industrial Stormwater Permit. As further described below, these actions all constitute violations of CWA.

### A. Discharges in Violation of the Industrial Stormwater Permit

The CWA provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of a NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p)

(requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). Pacific Steel's Facility discharges stormwater associated with industrial activity to San Francisco Bay and its tributaries. The Industrial Stormwater Permit authorizes Your discharges of stormwater, conditioned on Your compliance with the terms of the General Permit. Information available to Baykeeper indicates that Your stormwater discharges from the Facility have violated several of these permit terms, thereby violating the CWA. *Id.*

**1. Discharges in Excess of BAT/BCT Levels**

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from Pacific Steel's Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants[2] and best conventional pollutant control technology ("BCT") for conventional pollutants.[3] Industrial Stormwater Permit, Order Part B(3). EPA and the Santa Ana Regional Board have published Benchmark Values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT.[4] Based on Your self-reported stormwater sampling data, discharges of stormwater from Your Facility contain pollutant levels in excess of Benchmark Values, an objective measure for determining whether Your discharges are in compliance with BAT and BCT requirements for discharges of stormwater associated with industrial activity. In addition, Baykeeper has collected stormwater discharging from Your Facility, and the samples were analyzed for various metals. Stormwater samples from the Facility exceeded EPA Benchmarks. Available information indicates that You have failed and are failing to employ measures that constitute BAT and BCT for steel foundries in violation of the requirements of the Industrial Stormwater Permit. Such BAT and BCT measures could include, but are not limited to, moving certain polluting generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, installing air filters to prevent pollutants from being released onto the roof and adjacent property, frequent sweeping to reduce the build-up of pollutants on-site, and other similar measures for reducing stormwater pollutant discharges to the limits of available, economically achievable technology.

Specific examples of instances when Your self-reported stormwater discharges exceeded EPA Benchmarks can be found in Attachment 2. In addition to the samples in Attachment 2, Baykeeper's own stormwater samples collected at the Facility exceeded EPA Benchmarks for copper and zinc. These ongoing exceedances over the past five years also indicate that each time You discharge stormwater, You are not meeting BAT and BCT requirements. Baykeeper alleges and puts You on notice that each day that You

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[2] BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.
[3] BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.
[4] These Benchmark Values are presented in Attachment 1 and can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf and http://cwea.org/p3s/documents/multi-sectorrev.pdf (Last accessed on 9/13/12).

have discharged stormwater from the Facility, Your stormwater contained levels of pollutants which may be exceeding Benchmark Values for aluminum, copper, iron, pH, total suspended solids ("TSS") and/or zinc, among other pollutants. Baykeeper alleges that You have discharged stormwater containing excessive levels of pollutants from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five years.[5] Attachment 3 compiles all dates in the last five (5) years when a significant rain event occurred.

Baykeeper alleges that Your unlawful discharges of stormwater from the Facility with levels of pollutants exceeding BAT and BCT levels of control have occurred and continue to occur during all significant rain events. Further, Pacific Steel's ongoing discharge of stormwater containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control necessarily means that You have not developed and/or implemented sufficient BMPs at Your Facility to prevent stormwater flows from coming into contact with the sources of contaminants at the Facility or otherwise to control the discharge of pollutants from the Facility. You have not developed and/or implemented adequate pollution controls to meet BAT and BCT at the Facility, and You have violated and will continue to violate the Clean Water Act and the Industrial Stormwater Permit each and every day You discharge stormwater without meeting BAT/BCT. Each discharge of stormwater from Your Facility constitutes a separate violation of the Industrial Stormwater Permit and the CWA. These violations occurred on the dates in Attachment 2, as well as each day in Attachment 3 in which rainfall was greater than 0.1 inches. You are subject to civil penalties for violations of the Industrial Stormwater Permit and the CWA within the past five (5) years.

**2. Discharges Impairing Receiving Waters**

The Industrial Stormwater Permit's Discharge Prohibitions prohibit stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* Industrial Stormwater Permit, Order Part A(2). The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. *Id.* at Order Part C(1). Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS"). *Id.* at Order Part C(2). Applicable WQSs are set forth in the California Toxics Rule ("CTR")[6] and the Basin Plan and found in Attachment 4. Exceedances of WQSs are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan, *inter alia*, establishes the following Water Quality Standards for San Francisco Bay and its tributaries:

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[5] Significant local rain events are reflected in the rain gauge data available at http://cdec.water.ca.gov and http://lwf.ncdc.noaa.gov/oa/ncdc.html. (Last accessed on 9/13/12).

[6] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31682.

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

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

- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.

- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms. Detrimental responses include, but are not limited to, decreased growth rate and decreased reproductive success of resident or indicator species. There shall be no acute toxicity in ambient waters. Acute toxicity is defined as a median of less than 90 percent survival, or less than 70 percent survival, 10 percent of the time, of test organisms in a 96-hour static or continuous flow test. There shall be no chronic toxicity in ambient waters. Chronic toxicity is a detrimental biological effect on growth rate, reproduction, fertilization success, larval development, population abundance, community composition, or any other relevant measure of the health of an organism, population, or community.

- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. See the Basin Plan's Table 3-3 for specific marine water quality objectives for toxic pollutants.[7]

Baykeeper alleges that Pacific Steel's stormwater discharges have caused or contributed to exceedances of the Water Quality Standards set forth in the Basin Plan and California Toxics Rule. Attachment 2 to this Notice Letter compiles the self-monitoring data reported by Pacific Steel pursuant to the Industrial Stormwater Permit to the Regional Board, reflecting Pacific Steel's sampling of actual stormwater discharges. Based on information available to Baykeeper, the sample results reflected in Attachment 2 are representative of the pollutant levels in the Facility's discharges of stormwater. Thus, every instance when the Facility has discharged stormwater, including instances when the Facility has discharged stormwater that Pacific Steel has not sampled, these stormwater discharges contained levels of pollutants comparable to the levels set forth in Attachment 2. Thus, You are exceeding Benchmarks on all days when stormwater is

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[7] Basin Plan, Table 3-3 is available at: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-03.pdf. (Last accessed on 9/13/12).

discharging from Your Facility, in addition to those days when You have sampled stormwater.

Attachment 2 indicates that You routinely discharge stormwater to San Francisco Bay containing the following pollutants: aluminum, copper, iron, pH, TSS, and zinc. The levels of these pollutants in Your stormwater discharges have caused pollution, contamination, or nuisance in violation of the Discharge Prohibitions of the Industrial Stormwater Permit, and have adversely impacted the environment in violation of the Receiving Water Limitations of the Industrial Stormwater Permit. *See* Industrial Stormwater Permit, Order Parts A(2) and C(2). Moreover, the discharge of these pollutants has caused or contributed to San Francisco Bay's failure to attain one or more applicable Water Quality Standards in violation of the Receiving Water Limitations. *Id.* at Order Part C(2).

Baykeeper alleges that each day that Pacific Steel discharged stormwater from the Facility, Your stormwater contained levels of pollutants that exceeded one or more of the applicable Water Quality Standards in San Francisco Bay. Pacific Steel discharged stormwater from the Facility during at least every significant local rain event over 0.1 inches that have caused or contributed to Water Quality Standards not being met in San Francisco Bay in the last five years. Significant local rain events in the last five (5) years are compiled in Attachment 3 and otherwise available at http://cdec.water.ca.gov and http://lwf.ncdc.noaa.gov/oa/ncdc.html (Last accessed on 9/13/12).

Pacific Steel's unlawful discharges from the Facility have occurred and continue to occur presently during all significant rain events. Each and every day that stormwater discharges from Your Facility is a violation of the Industrial Stormwater Permit and the CWA because You are failing to meet BAT and BCT. In addition, each discharge from Your Facility that has caused or contributed, or causes or contributes to an exceedance of an applicable Water Quality Standard constitutes a separate violation of the Industrial Stormwater Permit and the CWA. You are subject to penalties for violations of the Industrial Stormwater Permit and the CWA within the past five (5) years.

**3. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan ("SWPPP"), as Required by the Industrial Stormwater Permit.**

The Industrial Stormwater Permit requires dischargers covered by the Industrial Stormwater Permit and commencing industrial activities before October 1, 1992 to develop and implement an adequate SWPPP by October 1, 1992. Industrial Stormwater Permit, Section A: Storm Water Pollution Prevention Plan Requirements, (1)(a). The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly, and in any case no later than August 1, 1997. *Id.* at Order Part E(2).

The SWPPP must include, among other requirements, the following: (a) identification of all the members of a stormwater pollution prevention team responsible

for developing and implementing the SWPPP (*Id.* at Section A(3)); (b) a site map showing the stormwater conveyance system and areas of actual and potential pollutant contact and all areas of on-going industrial activity (*Id.* at Section A(4)); (c) a list of significant materials handled and stored at the site including quantities and frequencies (*Id.* at Section A(5)); (d) a description of all potential pollutant sources, industrial processes, material handling and storage, dust and particulate generating activities, significant spills and leaks, non-stormwater discharges, and potential soil erosion activity (*Id.* at Section A(6)); (e) an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in stormwater discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective (*Id.* at Sections A(7-8)); (f) specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, including BMPs already existing and BMPs to be adopted or implemented in the future (*Id.* at Section A(8)); (g) a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP as necessary after the evaluation has been completed (*Id.* at Section A(9)); and (h) revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit (*Id.* at Section A(10)). Facility operators are required to at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which have been installed or used to achieve compliance with the conditions of the Industrial Stormwater Permit and the requirements of the SWPPP. *Id.* at Order Part C(5).

Pacific Steel's SWPPP does not include, and Pacific Steel has not implemented, adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by the Facility's discharges of stormwater contaminated with pollutants at levels attainable via application of BAT and BCT. Pacific Steel's failure to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP in all the above respects constitutes a violation of the Industrial Stormwater Permit, Section A(8) (SWPPP must specify BMPs necessary to attain BAT and BCT levels that are tailored to site conditions).

Accordingly, You have violated the Clean Water Act each and every day You have failed to develop and/or implement an adequate SWPPP meeting all of the requirements of Section A of the Industrial Stormwater Permit, and You will continue to be in violation every day that You fail to develop and/or implement an adequate SWPPP. You are subject to penalties for violations of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

**4. Failure to Develop and Implement an Adequate Monitoring and Reporting Programs and Perform Annual Comprehensive Site Compliance Evaluations as Required by the Industrial Stormwater Permit.**

The Industrial Stormwater Permit requires facility operators to develop and to implement a Monitoring and Reporting Program ("MRP") by October 1, 1992 or when

industrial activities begin at a facility. Industrial Stormwater Permit, Section B: Monitoring Program and Reporting Requirements, (1) and Order Part E(3). The Industrial Stormwater Permit requires that the MRP ensure that each facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* at Section B(2). Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by Section A of the Industrial Stormwater Permit. The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.* at Section B(10).

Pursuant to the monitoring and reporting requirements of the Industrial Stormwater Permit, facility operators must conduct and record visual observations of all drainage locations at the facility for authorized non-stormwater, unauthorized non-stormwater, and stormwater discharges throughout the year. *Id.* at Sections B(3), (4), and (8). Facility operators must also implement responsive measures to eliminate unauthorized non-stormwater discharges, to reduce or prevent pollutants from contacting non-stormwater discharges, and to reduce or prevent pollutants in stormwater discharges. *Id.* at Sections B(3), (4), and (7).

In addition to conducting visual observations, facility operators are required to collect and sample stormwater samples during the first hour of discharge from the first storm event of the wet season and at least one other storm event in the wet season. *Id.* at Section B(5)(a). Facility operators that do not collect samples from the first storm event of the wet season are required to explain in the Annual Report why the first storm event was not sampled. *Id.* If either sample collection or monthly visual observations of stormwater discharges occur more than one hour after discharge begins, facility operators must explain in the Annual Report why the sampling occurred more than one hour after discharges began. *Id.* at Section B(8)(b).

To achieve the objectives of the monitoring program, facility operators must comply with certain procedural requirements, including explaining monitoring methods; providing a description of the visual observation and sampling methods, location, and frequency; and identifying the analytical methods and corresponding method of detection limits used to detect pollutants in stormwater discharges. *Id.* at Section B(10). Facility operators must submit an Annual Report by July 1 each year to the Regional Water Board that includes a summary of visual observations and sampling results, laboratory reports, the Annual Comprehensive Site Compliance Evaluation Report, an explanation of why a facility did not implement any required activities, and records specified in Sections B(13)-(14).

Pacific Steel has been operating the Facility with an inadequately developed and/or inadequately implemented MRP, in violation of the substantive and procedural requirements set forth above. Your monitoring program has not ensured that stormwater discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by Section B(2). The monitoring programs have not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Order Part B(2). Pacific Steel's MRP has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Section B(2) of the Industrial Stormwater Permit.

As a result of Your failure to adequately develop and/or implement an adequate MRP at the Facility, You have been in daily and continuous violation of the Industrial Stormwater Permit and the CWA on each and every day for the last five years. These violations are ongoing. You will continue to be in violation of the monitoring and reporting requirements every day You fail to adequately develop and/or implement an effective MRP at the Facility. You are subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

**5. Discharges Without Permit Coverage.**

Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the Clean Water Act. *See* 33 U.S.C. §§ 1311(a), 1342. In turn, You have sought coverage under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." Industrial Stormwater Permit, Order Part A(1). Because You have not obtained coverage under any separate NPDES permit, and have not eliminated discharges not permitted by the Industrial Stormwater Permit, each and every discharge from Your Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

## IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS

Pacific Steel Casting Company is the person responsible for the violations at the Facility described above.

## V. NAME AND ADDRESS OF NOTICING PARTY

Our name, address, and telephone number is as follows:

San Francisco Baykeeper

785 Market Street, Suite 850
San Francisco, CA 94103
(415) 856-0444

## VI. COUNSEL

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Amanda Garcia
Andrea Kopecky
San Francisco Baykeeper
785 Market Street, Suite 850
San Francisco, CA 94103
(415) 856-0444

Amanda Garcia: (415) 856-0444 x105, amanda@baykeeper.org
Andrea Kopecky: (415) 856-0444 x110, andrea@baykeeper.org

## VII. REMEDIES

Baykeeper will seek declaratory and injunctive relief preventing further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. §1365(a) and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d) and 40 C.F.R. section 19.4, against You in this action. The CWA imposes civil penalty liability of up to $32,500 per day per CWA violation for violations occurring from March 15, 2004 through January 12, 2009, and $37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4 (2009). Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against You for the above-referenced violations. During the 60-day notice period, we are willing to discuss effective remedies for the violations noted in this letter. We suggest that You contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court even if discussions are continuing when the notice period ends.

Sincerely,

Andrea L. Kopecky

Andrea Kopecky
Associate Attorney
San Francisco Baykeeper

Cc:

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| Lisa Jackson<br>Administrator<br>US EPA, Ariel Rios Building<br>1200 Pennsylvania Avenue, N.W.<br>Mail Code: 1101A<br>Washington, D.C. 20460 | Eric H. Holder, Jr.<br>U.S. Attorney General<br>U.S. Department of Justice<br>950 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20530-0001 |
| Jared Blumenfeld<br>Regional Administrator<br>U.S. EPA - Region 9<br>75 Hawthorne Street<br>San Francisco, California 94105 | Thomas Howard<br>Executive Director<br>State Water Resources Control Board<br>1001 I Street<br>Sacramento, CA 95814 |
| Bruce Wolfe<br>Executive Officer<br>Regional Water Quality Control Board<br>San Francisco Bay Region<br>1515 Clay Street, Suite 1400<br>Oakland, CA 94612 | |

# Attachment 1: EPA Benchmarks

| Parameter | Units | Benchmark value |
|---|---|---|
| Biochemical Oxygen Demand | mg/L | 30 |
| Chemical Oxygen Demand (COD) | mg/L | 120 |
| Total Suspended Solids (TSS) | mg/L | 100 |
| Oil and Grease | mg/L | 15 |
| Nitrate + Nitrite Nitrogen | mg/L | 0.68 |
| Total Phosphorus | mg/L | 2 |
| pH | SU - low | 6 |
| pH | SU - high | 9 |
| Acrylonitrile | mg/L | 7.55 |
| Aluminum Total | mg/L | 0.75 |
| Ammonia Total (as N) | mg/L | 19 |
| Antimony, Total | mg/L | 0.64 |
| Arsenic Total | mg/L | 0.15 |
| Benzene | mg/L | 0.01 |
| Beryllium, Total | mg/L | 0.13 |
| Butylbenzyl Phthalate | mg/L | 3 |
| Chloride | mg/L | 860 |
| Copper Total | mg/L | 0.0636 |
| Dimethyl Phthalate | mg/L | 1 |
| Ethylbenzene | mg/L | 3.1 |
| Fluoranthene | mg/L | 0.042 |
| Fluoride | mg/L | 1.8 |
| Iron Total | mg/L | 1 |
| Lead Total | mg/L | 0.0816 |
| Manganese | mg/L | 1 |
| Mercury Total | mg/L | 0.0024 |
| Nickel Total | mg/L | 1.417 |
| PCB-1016 | mg/L | 0.000127 |
| PCB-1221 | mg/L | 0.1 |
| PCB-1232 | mg/L | 0.000318 |
| PCB-1242 | mg/L | 0.0002 |
| PCB-1248 | mg/L | 0.002544 |
| PCB-1254 | mg/L | 0.1 |
| PCB-1260 | mg/L | 0.000477 |
| Phenols, Total | mg/L | 1 |
| Pyrene | mg/L | 0.01 |
| Selenium Total | mg/L | 0.2385 |
| Silver Total | mg/L | 0.0318 |
| Toluene | mg/L | 10 |
| Trichloroethylene | mg/L | 0.0027 |
| Zinc Total | mg/L | 0.117 |
| Cyanide Total (as CN) | mg/L | 0.0636 |
| Magnesium Total | mg/L | 0.064 |
| Electrical Conductivity @ 25 Deg. C | umhos/cm | 200 |

## Attachment 2: Table of Violations for Pacific Steel Casting Co.

Table containing each stormwater sample result provided by Pacific Steel in which samples exceed Water Quality Standards (yellow), or EPA Benchmarks (green), or both (green). Samples listed are only from the last 5 years. The EPA Benchmarks and Water Quality Standards are listed at the end of the table.

| No. | Location | Date | Parameter | | Value | Units | Wet Season |
|---|---|---|---|---|---|---|---|
| 1 | D1 | 3/1/2012 | Copper Total | = | 0.012 | mg/L | 2011 - 2012 |
| 2 | D1 | 3/1/2012 | Zinc Total | = | 6.5 | mg/L | 2011 - 2012 |
| 3 | D2 | 3/1/2012 | Copper Total | = | 0.014 | mg/L | 2011 - 2012 |
| 4 | D2 | 3/1/2012 | Zinc Total | = | 0.64 | mg/L | 2011 - 2012 |
| 5 | D3 | 3/1/2012 | Total Suspended Solids (TSS) | = | 150 | mg/L | 2011 - 2012 |
| 6 | D3 | 3/1/2012 | Aluminum Total | = | 7.6 | mg/L | 2011 - 2012 |
| 7 | D3 | 3/1/2012 | Copper Total | = | 0.035 | mg/L | 2011 - 2012 |
| 8 | D3 | 3/1/2012 | Iron Total | = | 7.7 | mg/L | 2011 - 2012 |
| 9 | D3 | 3/1/2012 | Zinc Total | = | 1 | mg/L | 2011 - 2012 |
| 10 | D12 | 3/1/2012 | Total Suspended Solids (TSS) | = | 230 | mg/L | 2011 - 2012 |
| 11 | D12 | 3/1/2012 | Aluminum Total | = | 9.6 | mg/L | 2011 - 2012 |
| 12 | D12 | 3/1/2012 | Copper Total | = | 0.088 | mg/L | 2011 - 2012 |
| 13 | D12 | 3/1/2012 | Iron Total | = | 17 | mg/L | 2011 - 2012 |
| 14 | D12 | 3/1/2012 | Zinc Total | = | 0.78 | mg/L | 2011 - 2012 |
| 15 | D13 | 3/1/2012 | pH | = | 5.92 | SU | 2011 - 2012 |
| 16 | D13 | 3/1/2012 | Aluminum Total | = | 0.79 | mg/L | 2011 - 2012 |
| 17 | D13 | 3/1/2012 | Copper Total | = | 0.01 | mg/L | 2011 - 2012 |
| 18 | D13 | 3/1/2012 | Iron Total | = | 1.2 | mg/L | 2011 - 2012 |
| 19 | D13 | 3/1/2012 | Zinc Total | = | 0.51 | mg/L | 2011 - 2012 |
| 20 | D15 | 3/1/2012 | Aluminum Total | = | 5.2 | mg/L | 2011 - 2012 |
| 21 | D15 | 3/1/2012 | Copper Total | = | 0.048 | mg/L | 2011 - 2012 |
| 22 | D15 | 3/1/2012 | Iron Total | = | 18 | mg/L | 2011 - 2012 |
| 23 | D15 | 3/1/2012 | Zinc Total | = | 0.53 | mg/L | 2011 - 2012 |
| 24 | D10 | 3/1/2012 | Total Suspended Solids (TSS) | = | 230 | mg/L | 2011 - 2012 |
| 25 | D10 | 3/1/2012 | Aluminum Total | = | 6.1 | mg/L | 2011 - 2012 |
| 26 | D10 | 3/1/2012 | Copper Total | = | 0.071 | mg/L | 2011 - 2012 |
| 27 | D10 | 3/1/2012 | Iron Total | = | 16 | mg/L | 2011 - 2012 |
| 28 | D10 | 3/1/2012 | Zinc Total | = | 1.5 | mg/L | 2011 - 2012 |
| 29 | D2 | 11/20/2009 | Copper Total | = | 0.029 | mg/L | 2009 - 2010 |
| 30 | D2 | 11/20/2009 | Zinc Total | = | 0.49 | mg/L | 2009 - 2010 |
| 31 | D2 | 11/20/2009 | Iron Total | = | 3.6 | mg/L | 2009 - 2010 |
| 32 | D2 | 11/20/2009 | Aluminum Total | = | 0.95 | mg/L | 2009 - 2010 |
| 33 | D13 | 11/20/2009 | Copper Total | = | 0.013 | mg/L | 2009 - 2010 |
| 34 | D13 | 11/20/2009 | Zinc Total | = | 0.26 | mg/L | 2009 - 2010 |
| 35 | D13 | 11/20/2009 | Iron Total | = | 2.1 | mg/L | 2009 - 2010 |
| 36 | D13 | 11/20/2009 | Aluminum Total | = | 1 | mg/L | 2009 - 2010 |
| 37 | D1 | 11/20/2009 | Zinc Total | = | 2.4 | mg/L | 2009 - 2010 |
| 38 | D10 | 11/20/2009 | Copper Total | = | 0.025 | mg/L | 2009 - 2010 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 39 | D10 | 11/20/2009 | Zinc Total | = | 0.89 | mg/L | 2009 - 2010 |
| 40 | D10 | 11/20/2009 | Iron Total | = | 1.5 | mg/L | 2009 - 2010 |
| 41 | D1 | 11/20/2009 | Copper Total | = | 0.059 | mg/L | 2009 - 2010 |
| 42 | D1 | 11/20/2009 | Zinc Total | = | 0.91 | mg/L | 2009 - 2010 |
| 43 | D1 | 11/20/2009 | Iron Total | = | 5.8 | mg/L | 2009 - 2010 |
| 44 | D1 | 11/20/2009 | Aluminum Total | = | 1.7 | mg/L | 2009 - 2010 |

| EPA benchmarks (MSGP) | | |
|---|---|---|
| Total Suspended Solids (TSS) | 100 | mg/L |
| Oil and Grease | 15 | mg/L |
| Nitrate + Nitrite Nitrogen | 0.68 | mg/L |
| Arsenic Total | 0.16854 | mg/L |
| Benzene | 0.01 | mg/L |
| Copper Total | 0.0636 | mg/L |
| Toluene | 10 | mg/L |
| Mercury Total | 0.0024 | mg/L |
| Nickel Total | 1.417 | mg/L |
| Cadmium Total | 0.0159 | mg/L |
| Zinc Total | 0.117 | mg/L |
| Magnesium Total | 0.0636 | mg/L |

| Criteria – Basin Plan | | |
|---|---|---|
| Chromium VI | 1.1 | mg/L |
| Copper Total | 0.0048 | mg/L |
| Cyanide Total (as CN) | 0.001 | mg/L |
| Zinc Total | 0.09 | mg/L |
| PAHs | 0.015 | mg/L |
| Nickel Total | 0.074 | mg/L |

## Attachment 3: Alleged Dates of Pacific Steel Casting Co. Violations, September 2007 to April 2012

Days with Precipitation One Tenth of an Inch or Greater, as reported by NOAA's National Climatic Data Center, Richmond station. http://www7.ncdc.noaa.gov/IPS/coop/coop.html.

| 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| 9/22/07 | 1/3/08 | 1/2/09 | 1/12/10 | 1/2/11 | 1/20/12 |
| 10/12/07 | 1/4/08 | 1/22/09 | 1/17/10 | 1/12/11 | 1/21/12 |
| 11/10/07 | 1/5/08 | 2/5/09 | 1/18/10 | 1/13/11 | 1/23/12 |
| 11/11/07 | 1/6/08 | 2/6/09 | 1/20/10 | 1/30/11 | 2/7/12 |
| 12/4/07 | 1/7/08 | 2/9/09 | 1/21/10 | 2/16/11 | 2/13/12 |
| 12/6/07 | 1/8/08 | 2/11/09 | 1/22/10 | 2/17/11 | 2/15/12 |
| 12/7/07 | 1/10/08 | 2/13/09 | 1/23/10 | 2/19/11 | 2/29/12 |
| 12/17/07 | 1/21/08 | 2/14/09 | 1/25/10 | 2/24/11 | 3/1/12 |
| 12/18/07 | 1/22/08 | 2/15/09 | 1/26/10 | 2/25/11 | 3/13/12 |
| 12/20/07 | 1/23/08 | 2/17/09 | 1/27/10 | 3/2/11 | 3/14/12 |
| 12/28/07 | 1/24/08 | 2/22/09 | 1/30/10 | 3/6/11 | 3/15/12 |
| 12/29/07 | 1/25/08 | 2/23/09 | 2/5/10 | 3/14/11 | 3/16/12 |
| | 1/26/08 | 2/24/09 | 2/6/10 | 3/15/11 | 3/17/12 |
| | 1/27/08 | 2/26/09 | 2/9/10 | 3/16/11 | 3/24/12 |
| | 1/28/08 | 3/1/09 | 2/12/10 | 3/18/11 | 3/25/12 |
| | 1/29/08 | 3/2/09 | 2/22/10 | 3/19/11 | 3/27/12 |
| | 1/31/08 | 3/3/09 | 2/23/10 | 3/20/11 | 3/28/12 |
| | 2/1/08 | 3/4/09 | 2/24/10 | 3/23/11 | 3/31/12 |
| | 2/2/08 | 3/5/09 | 2/26/10 | 3/24/11 | 4/1/12 |
| | 2/3/08 | 3/15/09 | 2/27/10 | 3/25/11 | 4/11/12 |
| | 2/19/08 | 3/16/09 | 3/2/10 | 3/26/11 | 4/12/12 |
| | 2/20/08 | 3/22/09 | 3/3/10 | 4/9/11 | 4/13/12 |
| | 2/21/08 | 4/7/09 | 3/10/10 | 4/13/11 | 4/26/12 |
| | 2/22/08 | 4/8/09 | 3/12/10 | 4/21/11 | |
| | 2/23/08 | 5/2/09 | 3/25/10 | 5/16/11 | |
| | 2/24/08 | 5/3/09 | 3/31/10 | 5/25/11 | |
| | 3/15/08 | 5/5/09 | 4/1/10 | 5/31/11 | |
| | 4/23/08 | 9/16/09 | 4/2/10 | 6/4/11 | |
| | 10/4/08 | 10/13/09 | 4/3/10 | 6/28/11 | |
| | 10/31/08 | 10/15/09 | 4/4/10 | 6/29/11 | |
| | 11/1/08 | 10/19/09 | 4/5/10 | 9/4/11 | |
| | 11/2/08 | 11/21/09 | 4/11/10 | 9/5/11 | |
| | 11/3/08 | 12/11/09 | 4/12/10 | 9/6/11 | |
| | 11/4/08 | 12/12/09 | 4/20/10 | 10/4/11 | |
| | 12/14/08 | 12/14/09 | 4/27/10 | 10/5/11 | |

| 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| | 12/19/08 | 12/16/09 | 4/28/10 | 10/6/11 | |
| | 12/21/08 | 12/21/09 | 5/10/10 | 11/6/11 | |
| | 12/25/08 | 12/30/09 | 5/18/10 | 11/12/11 | |
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| | | | 12/26/10 | | |
| | | | 12/29/10 | | |

# Attachment 4: Water Quality Standards

| Parameter | Units | Water quality standard | Source |
|---|---|---|---|
| Arsenic Total | mg/L | 0.069 | Basin Plan |
| Cadium, Total | mg/L | 0.042 | Basin Plan |
| Chromium VI | mg/L | 1.1 | Basin Plan |
| Copper Total | mg/L | 0.0108 | Basin Plan, Site Specific Objectives |
| Cyanide Total (as CN) | mg/L | 0.0094 | Basin Plan, Site Specific Objectives |
| Lead Total | mg/L | 0.22 | Basin Plan |
| Mercury Total | mg/L | 0.0021 | Basin Plan |
| Selenium Total | mg/L | 0.29 | California Toxics Rule |
| Silver Total | mg/L | 0.0019 | Basin Plan |
| Zinc Total | mg/L | 0.09 | Basin Plan |
| PAHs | mg/L | 0.015 | Basin Plan |
| Nickel Total | mg/L | 0.0624 | Basin Plan, Site Specific Objectives |