ORANGE COUNTY
COASTKEEPER®
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June 3, 2016

VIA CERTIFIED MAIL

Robertson's Ready Mix Irvine Batch Plant
Attn: Roger Hortick
16081 Construction Circle W.
Irvine, California 92606

Mervyn Encarnacion
Registered Agent for Service of Process for
Robertson's Ready Mix, Ltd.,
a California Limited Partnership
200 S. Main Street, Suite 200
Corona, California 92882

Robertson's Ready Mix, Ltd.,
a California Limited Partnership
200 S. Main Street, Suite 200
Corona, California 92882-2212

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

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper ("Coastkeeper") regarding violations of the Clean Water Act[1] and California's Industrial Storm Water Permit[2] ("Storm Water Permit") occurring at the industrial facility with its main address at: 16081 Construction Circle W., Irvine, California 92606 ("Facility"). The purpose of this letter is to put Robertson's Ready Mix Irvine Batch Plant and Robertson's Ready Mix, Ltd., a California Limited Partnership, (collectively, "Robertson's"), as the owners and/or operators of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Robertson's is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency for the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

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

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

This letter is being sent to you as the responsible owners and/or operators of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Robertson's that Coastkeeper intends to file a federal enforcement action against Robertson's for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

I. BACKGROUND

A. Orange County Coastkeeper

Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Coastkeeper has over 2,000 members who live and/or recreate in and around the Newport Bay watershed. Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Orange County. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act and other environmental regulations, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Coastkeeper use and enjoy the waters that Robertson's discharges into, including San Diego Creek and Newport Bay and its tributaries. Members of Coastkeeper use and enjoy San Diego Creek and Newport Bay and its tributaries to swim, wade, picnic, hike, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants from the Facility impairs each of these uses. Further, discharges of pollutants from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by Robertson's failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owners and/or Operators of the Facility

Information available to Coastkeeper indicates that Robertson's Ready Mix, Ltd., is an owner and/or operator of the Facility. Robertson's Ready Mix, Ltd. is an active California limited partnership and its registered agent is: Mervyn Encarnacion, 200 S. Main Street, Suite 200, Corona, California 92882. Pursuant to California Corporations Code section 15904.04, Robertson's Ready Mix, Ltd.'s general partners are jointly and severally liable for the Clean Water Act violations described herein. Further, to the extent Robertson's Ready Mix, Ltd.'s limited partners own and/or operate the Facility together with Robertson's Ready Mix, Ltd.

Coastkeeper refers to Robertson's Irvine Batch Plant and Robertson's Ready Mix, Ltd. together as the "Facility Owners and/or Operators." The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.

C. The Facility's Storm Water Permit Coverage

Facilities that discharge storm water associated with specified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding ¶¶ 12, 17.

On November 11, 1997, Robertson's submitted an NOI to obtain Storm Water Permit coverage for the Facility. The NOI submitted in November 1997 ("1997 NOI") identifies the owner/operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Irvine Batch Plant, 16081 Construction Circle West, Irvine, CA 92714." The 1997 NOI lists the Facility as 2.79 and 30% impervious. The 1997 NOI lists the Waste Discharge Identification ("WDID") number for the Facility as 8 30S012228.

On September 29, 2015, Robertson's submitted an NOI to continue the Facility's coverage under the Storm Water Permit ("2015 NOI"). The 2015 NOI identifies the Operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Irvine Batch Plant" located at 16081 Construction Cir. W., Irvine, CA 92606. The 2015 NOI lists the Facility size as "2.79 acres", the industrial area exposed to storm water is listed as "33100 Sq.Feet" (approximately 0.76 acres), and the percentage of imperviousness is not listed. However, the Facility Storm Water Pollution Prevention Plan ("SWPPP")[3] indicates that the site is approximately 40% pervious. The 2015 NOI lists the Waste Discharge Identification ("WDID") number for the Facility as 8 30I013539.

The 1997 NOI and 2015 NOI list the Standard Industrial Classification ("SIC") code for the Facility as 3273 ("Ready-Mixed Concrete"). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. Information available to Coastkeeper, including the Facility SWPPP describing vehicle and equipment maintenance and storage at the Facility, indicates that SIC code 4212 (local trucking without storage) also applies to the Facility.[4]

D. Storm Water Pollution and the Waters Receiving Robertson's Discharges

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

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[3] The Facility SWPPP publicly available via the SMARTS database is labeled "April 2015" and is signed by the Facility's "legally responsible person" on September 30, 2015. Coastkeeper also obtained the April 2015 SWPPP via a Public Records Act request. Coastkeeper understands that the April 2015 SWPPP is the current SWPPP for the Facility.

[4] Information available to Coastkeeper, including the 2014/2015 Group Monitoring Plan for the Facility, indicates this Facility works with asphalt (rather than Ready-mixed concrete), is 80% impervious, and is 6 acres in size (rather than under 2.8). This information is contradictory to the Facility's SWPPP, and Coastkeeper will add additional violations based on this information as more data becomes available.

Based on EPA's Industrial Storm Water Fact Sheet for Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from concrete mixing facilities such as the Facility contain pH-affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to the San Diego Creek pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Facility discharges into the local storm drain system, to Peters Canyon Wash (also referred to as Peters Canyon Channel), which is tributary to San Diego Creek Reach 1, which discharges to both Upper Newport Bay and Lower Newport Bay, and finally to the Pacific Ocean ("Receiving Waters"). The Receiving Waters are ecologically sensitive areas.

Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as 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 local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the applicable Receiving Waters downstream of the point at which it receives storm water discharges from the Facility are as follows:

- Peters Canyon Wash has the following intermittent uses: Groundwater Recharge (GWR); Water Contact Recreation (REC 1), Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD).
- San Diego Creek: REC 1,[5] REC 2, WARM, and WILD;
- Upper Newport Bay: REC 1, REC 2, Commercial and Sportfishing (COMM), Preservation of Biological Habitats of Special Significance (BIOL), Rare, Threatened or Endangered Species (RARE), Spawning, Reproduction and Development (SPWN), Marine Habitat (MAR), Shellfish Harvesting (SHEL), and Estuarine Habitat (EST);
- Lower Newport Bay: REC 1, REC 2, COMM, WILD, RARE, SPWN, MAR, SHEL, and Navigation (NAV).

See Basin Plan at Table 3-1.

[5] However, according to the Basin Plan, access for this purpose is prohibited by the Orange County Resources Development and Management.

According to the 2012 303(d) List of Impaired Water Bodies, Peters Canyon Wash is impaired for Dichlorodiphenyltrichloroethane ("DDT"), Indicator Bacteria, Toxaphene, and pH. Reach 1 of the San Diego Creek is impaired for Fecal Coliform, Nutrients, Pesticides, Sedimentation/siltation, Selenium, and Toxaphene; Upper Newport Bay is impaired for Chlordane, Copper, DDT, Indicator Bacteria, Metals, Nutrients, Polychlorinated biphenyls ("PCBs"), Pesticides, Sediment Toxicity, and Sedimentation/Siltation; and Lower Newport Bay is impaired for Chlordane, Copper, DDT, Indicator Bacteria, Nutrients, PBCs, Pesticides, and Sediment toxicity.[6] Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Facility Site Description and Industrial Activities

Information available to Coastkeeper indicates the Facility is located at 16081 Construction Circle West, Irvine, CA 92606, which is southwest of the intersection of Jamboree Road and Warner Ave., as well as less than 1 mile north of the San Diego Creek. Information available to Coastkeeper indicates the Facility shares a property line with, and is immediately adjacent to, a neighboring raw materials facility with no particular delineation between the two sites save sparingly placed orange construction cones. The Facility is also bordered on the southwest by two automobile repair shops.

The Facility is approximately 2.8 acres. The Facility is an active concrete batch plant. Raw materials, including aggregate (rock, sand, and gravel), cement[7], fly ash, and admixtures are delivered to the Facility, and are mixed with water to create concrete. These materials, water, and (if applicable) admixtures are added to concrete haul trucks that mix the ingredients together to produce concrete and haul the concrete off site. The concrete production process also includes onsite vehicle and mobile equipment operation, parking, diesel fueling from an underground fuel tank, and maintenance. As part of the concrete production process, the Facility receives unused or recycled surplus concrete from its customers, stores it until it is dry, then crushes it at the Facility by a mobile crushing unit, before being hauled offsite again.

The Facility's industrial activities include, but are not limited to: concrete mixing; transport of raw materials; unloading of raw materials; outdoor storage of raw materials, including sand, gravel, rock, chemical admixtures, fly ash, and cement; fueling, repairing, cleaning, and maintaining vehicles and equipment; storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new vehicle fluids, and hazardous waste vehicle fluids; vehicle and equipment storage.

Based on Coastkeeper's review of the SWPPP and other publicly available documents, the Facility includes a batch plant, a fuel storage area, an industrial waste water containment area, two

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[6] 2012 Integrated Report, *available at* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on May 18, 2016).

[7] Based on Coastkeeper's review of the Facility SWPPP, cement is stored in "cement storage silos" in the concrete batch plant area of the Facility, and that cement is received in this area. To the extent cement is stored outdoors, storm water discharges from the Facility may be subject to additional effluent limitations set out at 40 C.F.R. § 411.30. Coastkeeper will add additional information and/or violations relevant to the Facility Owners and/or Operators' storage and handling of cement as that information becomes available to Coastkeeper.

sumps, outdoor aggregate storage areas, fly ash silos, admixture storage areas, a truck washing area, a reclaimer pit, material unloading and loading areas, parking areas for passenger vehicles and mixing trucks, and an office. Information available to Coastkeeper indicates that Robertson's discharges process waters from equipment washing and other activities as part of its industrial operations.

Information available to Coastkeeper indicates that up to 4320 tons of aggregate, up to 364 tons of cement, up to 84 tons of fly ash, and up to 18,600 gallons of admixtures, may be in process or storage at the Facility at any one time. Additionally, up to 10,220 gallons of fuels, oils, and greases may be stored at the Facility at any one time.

B. Pollutants Associated with Robertson's Industrial Activities

Information available to Coastkeeper indicates that pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances[8]; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, and arsenic, COD; BOD; TSS[9]; benzene; gasoline and diesel fuels; fuel additives; coolants; trash; and O&G.

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

Information available to Coastkeeper also indicates that concrete, particulates, fugitive dust of sand, gravel, and cement have been and continue to be tracked from vehicle maintenance and equipment washing areas throughout the Facility. These pollutants accumulate at the recycled concrete storage area, near the Exit at the east corner of the site, and near the loading and unloading areas. As a result of the pollutants accumulating near the Exit, trucks and vehicles leaving the Facility via that driveways are pollutant sources tracking sediment, dirt, O&G, metal particles, and other pollutants off-site.

Information available to Coastkeeper indicates that recycled concrete storage is located in a northern area of the site. This unprocessed material is stored outside and without adequate cover or containment. Information available to Coastkeeper also indicates the presence of a block wall

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[8] Storm water discharged with high pH can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die.

[9] High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

partially containing an aggregate storage area on the southeastern side of the lot that it is accessible by its entrance near the grizzly material off-loading area are stored outside and without adequate cover or containment result in discharges of polluted storm water and fugitive dust emissions through the entrance to the storage area. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks occur outside without adequate secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Facility. These activities are all pollutant sources at the Facility.

Robertson's failure to develop and/or implement required BMPs result in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act.

C. Facility Storm Water Flows and Discharge Locations

The Facility SWPPP states the site is approximately 40% pervious and is considered two drainage areas labeled "Drainage Area 1 (DA1)" and "Drainage Area 2 (DA2)." The Facility Owners and/or Operators identify three (3) discharge points located at the Facility identified as "Outfall 1", "Outfall 2", and "Outfall 3." As shown on the Facility site map, Outfall #1 is located at the westernmost entrance to the Facility from Construction Circle West, Outfall #2 is located at the Exit onto Construction North at the eastern corner of the Facility's lot, and Outfall #3 is located at the center driveway to the Facility from Construction Circle West. The Facility's SWPPP indicates that DA1 encompasses the entire site, except for the site's exit, which is the east driveway. Storm water falling into DA1 reportedly flows towards the center of the plant, where it is captured in the reclaimer pit or sump basin, with any overflow from this area draining to Outfall #1. The Facility SWPPP indicates that Outfall #1 will be sampled. As described in the Facility SWPPP, DA2 encompasses the eastern edge of the property and the east driveway exit and storm water falling into DA2 is contained in a sump located near the east driveway exit at Outfall #2. The Facility Owners and/or Operators assert Outfall #2 and Outfall #3 are not sampled because no industrial activities in the Facility areas that discharge to those discharge locations. Information available to Coastkeeper indicates that industrial activities are conducted in the Facility areas that discharge to Outfall #2 and Outfall #3, however.

The Facility Owner and/or Operators also report that a sump basin or reclaimer pit near the center of the Facility, and another sump located near Outfall #2, which collects water and pumps the recycled water back to the batch plant. No sizing information for this retention/detention is provided, however. Based on information available to Coastkeeper, this retention/detention does not contain all storm water at the Facility and that storm water polluted by the industrial activities at the Facility discharges to the Receiving Waters from the Facility three driveways.[10]

[10] To the extent Robertson's intends to retain storm water associated with industrial activities on the Facility in an effort to terminate its current Permit coverage, Coastkeeper puts Robertson's on notice that it has not met the requirements of Section XX.C. of the Storm Water Permit, and that any discharges from the Facility not in compliance with the Storm Water Permit are violations of Sections 301(a) and 402(p) of the Clean Water Act.

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

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

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued. For purposes of this Notice Letter, Coastkeeper refers to the reissued permit as the "2015 Permit." The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, Robertson's is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

A. Unauthorized Non-Storm Water Discharges from the Robertson's Facility in Violation of Storm Water Permit Discharge Prohibitions

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

Information available to Coastkeeper, including information from Coastkeeper's own field investigators, indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur during concrete truck filling and/or when truck washing and cleaning activities occur. The Facility Owners and/or Operators conduct these activities without the BMPs necessary to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the Storm Water Permit and thus are prohibited.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Discharge Prohibitions are violated each time unauthorized non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Facility Owners and/or

Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the number and dates of violations when additional information becomes available. Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

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

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic[11] and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.[12] The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

Information available to Coastkeeper, including its review of publicly available information and observations, BMPs that achieve BAT/BCT have not been implemented at the Facility. Consistent with Coastkeeper's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Facility Owners and/or Operators have failed and continue to fail to implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.[13] The table in Exhibit 1 sets forth the results of sampling at the Facility conducted by Coastkeeper as well as Robertson's. For example, a storm water sample collected by Robertson's on January 5, 2016, contained 8.44 mg/L of iron, 8.44 times higher than the EPA Benchmark for iron, and 265 mg/L of TSS, 2.65 times higher than the EPA Benchmark for TSS. Additionally, samples collected by Coastkeeper on January 5, 2016 contained 8.5 mg/L of aluminum, approximately 11.33 times higher than the EPA Benchmark for aluminum. The significant exceedances of EPA Benchmarks as set forth in Exhibit 1 demonstrates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

Coastkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of rain events resulting in a discharge near the Facility).[14] These

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

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

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

[14] Dates of significant rain events are measured at Rain Station KSNA at the Orange County - John Wayne Airport in Santa Ana, California. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of

discharge violations are ongoing and will continue every time Robertson's discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Coastkeeper will update the dates of violations when additional information and data become available. Each time Robertson's discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Effluent Limitation V.A. is a separate, independent requirement with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. The NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[15] And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

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

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

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

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rainfall, which generally results in discharges at a typical industrial facility. Exhibit 2 also includes dates on which a rain event was measured albeit below 0.1 inches and a storm water sample was collected.

[15] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

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

Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, a storm water sample collected on January 5, 2016, from OF1 included a highly acidic pH level of 4 s.u., over 25 times the *Basin Plan* criteria range for pH. These exceedances of WQS demonstrate that Robertson's has violated and continues to violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

As explained herein, the Receiving Waters are impaired for some of the same pollutants discharging from the Facility and are thus unable to support the designated beneficial uses. The 2012 303(d) List of Impaired Water Bodies lists the San Diego Creek, Upper Newport Bay, and Lower Newport Bay as impaired for multiple pollutants.[17] Information available to Coastkeeper indicates that facilities of this type often discharge storm water which contains elevated concentrations of pollutants, such as aluminum, iron, copper, lead, and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from this type of facility also adversely impact human health. Coastkeeper will provide additional information regarding this issue as it becomes available. These types of harmful discharges are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1) and C(2); 2015 Permit, Receiving Water Limitation VI.A and VI.B.

Coastkeeper puts the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.*, Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

Further, Coastkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality based criteria relevant to determine whether an industrial facility has caused or contributed to an exceedance of a water quality standard.[18] And even if the

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[17] 2012 Integrated Report, *available at* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml (last accessed on May 18, 2016).

[18] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances

Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

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

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

1. 1997 SWPPP Requirements

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

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

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and 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.

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defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

2. 2015 SWPPP Requirements

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

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

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

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

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, in violation of Section A(4) of the 1997 Permit and Section X(E)(3) of the 2015 Permit, there is no site map attached to the SWPPP. To the extent the site map included with the 2015 NOI could be the SWPPP site map, it fails to identify all areas of industrial activity, areas impacted by discharges from surrounding areas, areas of soil erosion, locations and descriptions of structural control measures that affect run-on, and all discharge locations.

Further, the narrative portions of the SWPPP fail to include all sources of unauthorized non-storm water discharges in violation of Section A(6) of the 1997 Permit and Section X(G)(1)(e) of the 2015 Permit. The SWPPP also fails to include an adequate assessment of potential pollutant sources

or BMPs that achieve the BAT/BCT standards, as required by Section A(6) of the 1997 Permit and Sections X(G) and X(H) of the 2015 Permit. And fails to identify run-on from areas surrounding the Facility in violation of Section A(7)(a)(ii) of the 1997 Permit and Section X(G)(1)(f) of the 2015 Permit.

The Facility Owners and/or Operators also fail to address all areas of industrial activity and/or all areas of pollutant sources and corresponding pollutants by claiming in the 2015 NOI that only "31200 sq ft" of the Facility include industrial activities that are exposed to storm water and that discharges from Outfall 2 and Outfall 3 are not associated with industrial activity. To the extent there are areas of the Facility where industrial activities, in fact, do not occur, the Facility Owners and/or Operators have failed to comply with the certification requirements set out at Section XVII(E)(1) of the 2015 Permit that would allow Robertson's to exclude certain areas from its storm water management program. Nor have the Facility Owners and/or Operators revised the Facility SWPPP, as required by Section A(7) of the 1997 Permit and Section X(D)(2)(a) of the 2015 Permit.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise the SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least June 3, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

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

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 Permit Requirements

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

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and

unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

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

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when "industrial activities and BMPs within two or more drainage areas are substantially identical." If a discharger seeks to reduce sampling locations, the "[f]acility operators must document such a determination in the annual report." *Id.*

2. <u>2015 Permit Requirements</u>

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

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

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event[19] as follows: 1) from each discharge location, 2) from two storm events within the first half of each reporting year[20] (July 1 to December 31), 3) from two storm events within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial operations. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

Dischargers participating in a Compliance Group, i.e., group monitoring plan, are required to sample two QSEs each year. *See* 2015 Permit, Section II(M).

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

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owners and/or Operators have failed and continue to fail to conduct all required quarterly and/or monthly visual observations of unauthorized discharges. *See* 1997 Permit, Section B(3); *see also* 2015 Permit, Section XI(A)(1). Additionally, the Facility Owners and/or Operators have failed to provide the records required by the Storm Water Permit for the monthly visual observations of storm water discharges in violation of Section B(4) of the 1997 Permit and Section XI(A)(3) of the 2015 Permit. Nor have the Facility Owners and/or Operators developed an M&RP that requires analysis for pollutants listed on the 2012 303(d) list that are associated with the industrial activities at the Facility, including copper and lead, in violation of Section XI(B)(6) of the 2015 Permit. In addition, the Facility Owners and/or Operators failed and continue to fail to develop an M&RP that requires that the applicable test methods be used when analyzing storm water samples from the Facility.

The Facility Owners and/or Operators also failed to collect and analyze storm water samples as required by the Storm Water Permit. For example, for the past five (5) years the Facility Owners and/or Operators have not collected any storm water samples in violation of Sections B(5), B(7), and B(15) of the 1997 Permit and Section XI of the 2015 Permit. Specifically, pursuant to the applicable group monitoring plan, the Facility Owners and/or Operators were required to collect samples during the annual reporting years of 2011/2012 and 2014/2015 wet seasons. The Facility Owners and/or Operators failed collect any storm water samples, however.

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[19] The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).
[20] A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

Information available to Coastkeeper also indicates that the Facility Owners and/or Operators have failed and continue to fail to collect samples from all discharge points at the Facility. Specifically, discharges from Outfalls #2 and #3 are associated with industrial activity, but samples are not collected from these discharge points.

In addition, the Facility Owners and/or Operators failed to collect required storm water samples when qualifying rain events occurred. Specifically, Robertson's reports in the 2010/2011 Annual Report and 2011/2012 Annual Report that there were "No qualifying storm event during operational hours" during those reporting years. However, as shown in Exhibit 2 rain events likely creating a discharge at the Facility did occur.

While the Facility Owners and/or Operators state in the 2013/2014 and 2014/2015 Annual Reports that the Facility "is a construction based business and during inclement weather our facility is closed," Coastkeeper has observed and has obtained publicly available information demonstrating that, in fact, the Facility does operate during storm events. This fact is supported by the Facility Owners and/or Operators recent collection of storm water samples from the Facility during a rain event.

In fact, Robertson's collected its first storm water sample for the Facility on January 5, 2016. However, the Facility Owners and/or Operators failed to analyze the January 5 sample for all required contaminants, including pH, copper, lead, and aluminum, in violation of Section XI(B)(6) of the 2015 Permit. *See* Exhibit 1. And, based on Coastkeeper's review of publicly available information including the SMARTs database, the Facility Owners and/or Operators have failed to sample any subsequent storm water discharges from the Facility though storm events likely to generate storm water runoff have occurred since January 5, 2016 (*see, e.g.,* Exhibit 2), in violation of Sections XI(B)(1-5) of the 2015 Permit.

Further, at Sections 10.4.7 and 10.4.8 the Facility SWPPP states that the Facility Owners and/or Operators will both combine storm water samples and reduce the number of locations to be sampled in each drainage area if the industrial activities and BMPs in the area are similar. Not only have the Facility Owners and/or Operators failed and continue to fail to meet the requirements of Sections XI(C)(4) and XI(C)(5) related to representative sampling reduction and qualified combined samples, application of these concepts directly contradicts the Facility Owners' and/or Operators' assertion that there is only one (1) sample location at the Facility because storm water from Outfall #2 and Outfall #3 are not associated with industrial activities. Either storm water discharging from Outfall #2 and Outfall #3 are associated with industrial activities and the Facility Owners and/or Operators have failed and continue to fail to sample those discharge locations in violation of Section B(5) of the 1997 Permit and Section XI(B)(1) of the 2015 Permit, or the Facility Owners and/or Operators have failed and continue to fail to demonstrate that storm water samples from Outfall #1 are representative of storm water discharges from Outfall #2 and Outfall #3 in violation of Section B(7)(d) of the 1997 Permit and Section XI(C)(4) of the 2015 Permit.

The Facility Owners' and/or Operators' failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of the Storm Water Permit. Every day that the Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented

M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least June 3, 2011. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

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

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. *See* 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2010-2011 Annual Report, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Coastkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above Benchmark Levels, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Facility Owners and/or Operators have also submitted incomplete Annual Reports. For instance, in the 2010/2011 and 2011/2012 Annual Reports the Facility Owners and/or Operators have failed to include required explanations for its failures to conduct certain required sampling and/or observations. In the 2012/2013 and 2013/2014 Annual Reports, as the reason no samples were collected the Facility Owners and/or Operators state that the Facility "is a construction based business and during inclement weather our facility is closed." Not only does information available to Coastkeeper demonstrate that the Facility does operate during storm events, the Storm Water Permit and the 2015 Storm Water Permit do not excuse failures to collect required samples on this basis.

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

Information available to Coastkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least June 3, 2011. These violations are ongoing, the 2015 Permit's annual reporting requirements are as stringent as the 1997 Permit requirements, and Coastkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Sections XII. and XVI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to $37,500 per day per violation for all Clean Water Act violations after June 3, 2011.

In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Coastkeeper will file a citizen suit under Section 505(a) of the Clean Water Act and Section 304(b) of the Clean Air Act for Robertson's violations of the Storm Water Permit.

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

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Sincerely,

Colin Kelly
Senior Staff Attorney
Orange County Coastkeeper

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Exhibit 1

Exhibit 1

Robertson's Irvine Sample Chart

Sample collected by Waterkeeper (W) or Discharger (D)	Date of sample collection	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria/WQO	Magnitude of CTR/WQO Exceedance
2010-2011 WET SEASON								
no samples collected								
2011-2012 WET SEASON								
no samples collected								
2012-2013 WET SEASON								
no samples collected								
2013-2014 WET SEASON								
no samples collected								
2014-2015 WET SEASON								
no samples collected								
2015-2016 REPORTING YEAR								
W	1/5/2016	Zn	0.19	mg/L	0.26	N/A	0.12	1.6
W	1/5/2016	Fe	9.3	mg/L	1	9.3	N/A	N/A
W	1/5/2016	Al	8.5	mg/L	0.75	11.3	N/A	N/A
W	1/5/2016	SC	380	umhos/cm	200	1.9	N/A	N/A
W	1/5/2016	TSS	150	mg/L	100	1.5	N/A	N/A
D	1/5/2016	Fe	8.44	mg/L	1	8.4	N/A	N/A
D	1/5/2016	pH	4	s.u.	6.0-9.0	2.0 below	6.5-8.5	2.5 below
D	1/5/2016	TSS	265	mg/L	100	2.7	N/A	N/A
				Total Exceedances		**7**		**2**

Exhibit 2

Robertson's Irvine
Exhibit 2

Santa Ana John Wayne-Orange County (Airport) Rain Station KSNA Latitude: 33.68 N Longitude: 117.87 W		
Date	**Day of Week**	**Daily Precipitation (Inches)**
10/5/2011	Wednesday	.62
11/4/2011	Friday	.34
11/6/2011	Sunday	.16
11/12/2011	Saturday	.17
11/20/2011	Sunday	.13
12/12/2011	Monday	.35
1/21/2012	Saturday	0.42
1/23/2012	Monday	.39
2/15/2012	Wednesday	.22
3/17/2012	Saturday	.55
3/18/2012	Sunday	.19
3/25/2012	Sunday	.60
4/13/2012	Friday	.41
7/13/2012	Friday	.12
7/14/2012	Saturday	.12
11/17/2012	Saturday	.14
11/30/2012	Friday	.11
12/3/2012	Monday	.30
12/13/2012	Thursday	.41
12/18/2012	Tuesday	.13
12/29/2012	Saturday	.21
1/24/2013	Thursday	.58
1/25/2013	Friday	.27
1/26/2013	Saturday	.31
2/8/2013	Friday	.16
5/6/2013	Monday	.19
7/26/2013	Friday	.11
10/9/2013	Wednesday	.17
11/21/2013	Thursday	.14
11/29/2013	Friday	.17
12/7/2013	Saturday	.14
12/19/2013	Thursday	.15
2/27/2014	Thursday	.20

Robertson's Irvine
Exhibit 2

2/28/2014	Friday	1.1
3/1/2014	Saturday	.28
4/2/2014	Wednesday	.12
11/1/2014	Saturday	.19
12/2/2014	Tuesday	.29
12/12/2014	Friday	1.97
12/17/2014	Wednesday	.11
1/11/2015	Saturday	.60
2/23/2015	Monday	.13
3/1/2015	Sunday	.19
3/2/2015	Monday	.58
5/8/2015	Friday	.11
5/14/2015	Thursday	.33
5/15/2015	Friday	.19
7/18/2015	Saturday	.18
9/9/2015	Wednesday	.29
9/15/2015	Tuesday	1.49
12/22/2015	Tuesday	.36
1/5/2016	Tuesday	.88
1/6/2016	Wednesday	1.01
2/18/2016	Thursday	.30
3/6/2016	Sunday	.33
3/7/2016	Monday	.25
3/11/2016	Friday	.42
	Total Rain Days	**57**