WISHTOYO
CHUMASH FOUNDATION

VENTURA COASTKEEPER®

January 17, 2017

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michele Wiggins-McDowell, CEO
Wiggins Lift Company
2571 Cortez Street
Oxnard, California 93036

Paul Hurbace, Vice President
Wiggins Lift Company
2571 Cortez Street
Oxnard, California 93036

Michael M. Wiggins
Registered Agent for Service of Process
Wiggins Lift Company
2571 Cortez Street
Oxnard, California 93036

Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act

To Whom It May Concern:

I am writing on behalf of Wishtoyo Foundation and Wishtoyo Foundation's Ventura Coastkeeper Program (collectively "Wishtoyo") regarding violations of the Clean Water Act[1] ("Act") and California's General Industrial Storm Water Permit[2] ("General Industrial Permit" or "Permit") occurring at Wiggins Lift Company's industrial facility located at 2571 Cortez Street in Oxnard, California 93036 ("Facility"). Section 505 of the Clean Water Act allows citizens to bring suit in federal court against facilities alleged to be in violation of the Act and/or related permits. Section 505(b) of the Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the

[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. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ ("1997 Permit"), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ ("2015 Permit"). As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implement the same statutory mandates.

initiation of a civil action under Section 505(a) of the Act, 33 U.S.C. § 1365(a), a citizen must give notice of its intention to file suit. Notice must be given to the alleged violator(s), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This communication ("Notice Letter") is issued pursuant to the Act, 33. U.S.C. §§ 1365(a) and (b) and is sent to Wiggins Lift Company, Michelle Wiggins-McDowell and Paul Hurbace (collectively "Wiggins"), and to you as the responsible owners and/or operators of the Facility, in order to: a) put Wiggins, as the owner and/or operator of the Facility, on notice of violations of the General Industrial Permit occurring at the Facility, including, but not limited to, discharges of polluted stormwater into local surface waters, and b) to provide formal notice that Wishtoyo intends to file a federal enforcement action against Wiggins for its violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342. Unless the Facility and Wiggins take the actions necessary to remedy the ongoing violations of the Act and General Industrial Permit, Wishtoyo intends to file suit in U.S. District Court following the expiration of the 60-day notice period, seeking civil penalties, injunctive relief, fees, and costs. The Facility and Wiggins are subject to civil penalties for all violations of the Act occurring since January 17, 2012.[3]

I. BACKGROUND

A. Wishtoyo Foundation and its Ventura Coastkeeper Program

Founded in 1997, the Wishtoyo Foundation ("Wishtoyo") is a 501(c)(3) non-profit public benefit grassroots corporation organized under the laws of the State of California and located at 11182 Azahar Street, Ventura, CA 93004 and 33904 Pacific Coast Highway, Malibu, CA 90265. Wishtoyo's mission is to preserve, protect and restore Chumash culture, the culture and history of coastal communities, cultural resources, and the environment. Wishtoyo has over 700 members consisting of Ventura County's diverse residents, Chumash Native Americans, and the general public who enjoy the recreational, spiritual, cultural, and aesthetic benefits of the Santa Clara River and Ventura County's coastal marine waters and environment.

Ventura Coastkeeper is a program of Wishtoyo. Ventura Coastkeeper's mission is to protect, preserve, and restore the ecological integrity and water quality of Ventura County's inland waterbodies, coastal waters, and watersheds. Ventura Coastkeeper is also a member of the Waterkeeper Alliance, a coalition of nearly 200 member programs on six continents around the world fighting for clean water and strong communities.

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[3] Wiggins is liable for both violations of the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief 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 expired permits); *Pub. Interest Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

As a program of Wishtoyo Foundation, Ventura Coastkeeper also strives to protect, preserve, and restore the natural resources that the Chumash culture, and all cultures, depend upon. The Chumash Peoples, including members of Wishtoyo Foundation, have a long history of interaction with the Santa Clara River and Ventura's coastal waters, with the native wildlife that utilize these waterbodies, and the natural Chumash cultural resources of these water bodies, of which, the Chumash Peoples utilize to maintain their lifeways, for ap (dwelling unit) construction, for Chumash basketry, and for a variety of other cultural purposes, including religious and ceremonial ones.

The unlawful discharge of polluted storm water from Wiggins negatively affects the water quality of the El Rio Drain, Santa Clara River ("SCR"), the SCR Estuary, and ultimately into the Pacific Ocean (collectively "Receiving Waters"). Wishtoyo's members live near and/or use the Receiving Waters for domestic and drinking purposes, as well as to fish, boat, swim, surf, bird watch, view wildlife, and to engage in scientific study and cultural activities. The Facility's polluted discharges impair these uses. Thus, the interests of Wishtoyo's members have been, are being, and will continue to be adversely affected by the failure of the Wiggins to comply with the Clean Water Act.

B. <u>The Clean Water Act and Storm Water Permitting</u>

With every significant rainfall event, millions of gallons of polluted stormwater originating from industrial operations pour into storm drains and local waterways. The consensus among agencies and water quality experts is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Polluted discharges of storm water cause and contribute to the impairment of water bodies directly receiving flows, and also downstream waters (including heavily used estuaries and beaches) and aquatic-dependent wildlife. Although pollution and habitat destruction have drastically diminished once abundant ecosystems in Southern California, local waterways continue to serve as essential habitat for numerous plant, fish, and animal species, as well as serve important recreational and aesthetic resources. The public's use of local waterways exposes many people, often children, to toxic metals and other contaminants in storm water discharges from industrial operations like those occurring at the Facility.

The objective of the Act is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the Act prohibits the discharge of a pollutant from any point source[4] into waters of the United States except in compliance with other requirements of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p). In California, the EPA has delegated its authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board ("Regional Board") is responsible for the issuance and enforcement of the General Industrial Permit in Region 4, which covers both the Facility and Receiving Waters. In order to discharge storm

[4] A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); see 40 C.F.R. § 122.2.

water lawfully in California, each Facility must enroll in and comply with all terms and conditions of the Permit.

1. The 1997 General Industrial Permit

The 1997 Permit required permittees to meet all applicable provision of Sections 301 and 402 of the Act. These provisions require control of pollutant discharges using Best Management Practices ("BMPs") that achieve either best available technology economically achievable ("BAT") or best conventional pollutant control technology ("BCT") to prevent or reduce pollutants.[5] 33 U.S.C. §§ 1311(b)(2)(A), (B). Rather than requiring the specific application of BAT or BCT techniques to each storm water discharge, the development and implementation of BMPs, and compliance with the terms and conditions of the 1997 Permit, served as a proxy for meeting the BAT/BCT mandate. *See* 1997 Permit, Finding 10. Conversely, failure to develop and implement adequate BMPs and/or to comply with the terms and conditions of the 1997 Permit constituted a failure to subject discharges to BAT/BCT in violation of the Act.

2. The 2015 General Industrial Permit

The 2015 Permit retains the essential structure and mandate of the 1997 Permit, including the requirement to comply with BAT/BCT standards. The 2015 Permit requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary to achieve compliance with the Effluent Limitations and Receiving Water Limitations. In addition, the 2015 Permit requires all facility operators to sample stormwater discharges more frequently than the 1997 Permit, and to compare the analytical results of sample testing to numeric action levels ("NALs"). All facility operators are required to perform Exceedance Response Actions ("ERAs") as appropriate when sample testing indicates a NAL exceedance. Failure to comply with the terms and conditions of the 2015 Permit equivalent to a failure to subject discharges to BAT/BCT and constitutes a violation of the Act.

3. Both Permits Applicable to the Facility in June 2016

Both the 1997 Permit and the 2015 Permit generally require facility operators to i) submit a Notice of Intent ("NOI") certifying the type of activity or activities undertaken at a facility and committing the operator to comply with the terms and conditions of the Permit; ii) eliminate unauthorized non-storm water discharges; iii) develop and implement a Storm Water Pollution Prevention Plan ("SWPPP"); iv) monitor storm water discharges and authorized non-storm water discharges; and v) file complete and accurate Annual Reports by July 15 of each year, in which the operator must describe the facility, summarize the year's industrial activities, and certify compliance with the terms and conditions of the Permit. In addition to these requirements, the Permit requires that all industrial facilities collect storm water samples from multiple storm

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

events during the year, and analyze samples for various pollutants associated with all industrial activity, including Total Suspended Solids ("TSS"), pH, Specific Conductance ("SC")[6], and either Total Organic Content ("TOC") or Oil and Grease ("O&G"). 1997 Permit B(5)(c)(i); 2015 Permit XI(B)(6)(a)-(b).

In designing the Act, Congress acknowledged "the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act]." 116 Cong. Rec. 33,104 (1970) (statement of Sen. Hart).[7] In response these challenges, Congress crafted Section 505 to encouraged citizen plaintiffs to act as "private attorney's general." Citizen plaintiffs, therefore, fill a critical social role by enforcing the Act's mandate and are "welcomed participants in the vindication of environmental interests." *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976).

Additionally, citizen plaintiffs fill a critical economic role. Failure to enforce the Act's prohibitions results in inefficient economic outcomes due to market failures commonly associated with common pool resources like the waterways and oceans. Enforcement actions under the Act's Section 505 help correct these market failures by forcing entities contributing to the problem to internalize the welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society—including the costs associated with human illness, habitat loss, wildlife disturbances, and impacts to tourism.

II. THE FACILITY, RECEIVING WATERS, AND APPLICABLE STANDARDS

A. The Facility's Industrial Activities

The Facility, operating under Waste Discharge Identification ("WDID") number 4 19i017490, is approximately 3.7 acres and consists of a single large assembly/office building, an attached storage building, several outdoor areas (some covered overhead) used for parking, loading/unloading, material storage, as well as certain industrial operations. The most recent SWPPP filed with the Regional Board ("2015 SWPPP") indicates that storm water is discharged from one (1) points on the northeast corner of the site.

The Facility is classified under Standard Industrial Classification ("SIC") Code 3537 (Industrial Trucks, Tractors, Trailers, and Stackers) and conducts fork lift truck manufacturing, which includes metal cutting, fabrication, assembly, painting, and inspection services. Equipment at the Facility includes small forklifts, overhead crane, flame cutting tools, welders with various gas mixtures, air powered hand held grinders, and paint spray equipment.

According to the 2015 SWPPP, while much of the supplies are kept inside the storage building, other materials (i.e. metal plate stock, various gasses, and oils) are kept outside in

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[6] The 2015 Permit does not require facilities to analyze samples for Specific Conductance.

[7] *See also* 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) "I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties."

designated storage areas. Activities at the site that are significant to storm water management include the usage and storage of substances that are (or contain) hazardous chemicals, including but not limited to the following: gases such as propane, oxygen, acetylene, carbon dioxide; liquid hydraulic oil, waste oil, motor oil, and gear oil contained in drums and tanks; and other liquid materials including diesel, waste coolant, ethylene glycol, gasoline, coolant, and degreaser. Other potential sources of pollution from Facility activities include: particulates from waste paint sludge spent paint booth filters; rubber solids from tires used and stored at the Facility; contaminated water, oil, grease, metal ions from manufacturing and storage activities; and oil, grease, and recoverable hydrocarbons from the various equipment and manufacturing activities discussed above.

B. The Santa Clara River and the Facility's Receiving Waters

1. The Santa Clara River

Flowing approximately 116 miles from the headwaters of the San Gabriel Mountains to the Pacific Ocean through a 1,600 square mile watershed, the Santa Clara River is southern California's last naturally flowing major river system. In addition to being the largest wild river remaining in southern California, the Santa Clara River provides crucial aquatic ecosystem functions in the region, including groundwater recharge and riparian habitat for endangered and rare species. It is home to as many as 17 species listed as threatened or endangered by state and federal governments, and includes critical habitat for many species including the endangered Southern California Steelhead, Santa Ana Sucker, Tidewater Goby, Unarmored Threespine Stickleback, Pacific Lamprey, California Red-Legged Frog, Arroyo Toad, Southwestern Willow Flycatcher, Western Yellow Billed Cuckoo, and Least Bell's Vireo. The Santa Clara River is also a significant input to southern California's coastal waters at the Cities of San Buenaventura and Oxnard, and a healthy, unpolluted Santa Clara River from Santa Clarita through Piru, Fillmore, Santa Paula, Saticoy, El Rio, Ventura, and Oxnard provides unmatched recreational, cultural, aesthetic, and spiritual opportunities and resources in the region. In addition, the ecosystem services provided by the Santa Clara River, as recognized by the Regional Board's Water Quality Control Plan for the Los Angeles Region ("Basin Plan") include agriculture supply, groundwater recharge, freshwater replenishment, recreation, cold and warm freshwater habitat, wildlife habitat for rare, threatened, or endangered species, wetland habitat, estuarine habitat, and migration, spawning, reproduction and development habitat for aquatic organisms.[8] Thus, it is imperative that Santa Clara River's water quality, aesthetic values, and aquatic ecosystem functions are adequately protected. In 2005, the Santa Clara River was named the "10th Most Endangered River" in the Country by the American Rivers organization due to anthropogenic impacts, such as pollution.

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[8] Specifically, the Basin Plan lists the Beneficial Uses for waters in the Santa Clara River Watershed ("Beneficial Uses") as: agriculture supply (AGR), groundwater recharge (GWR), freshwater replenishment (FRSH), water contact recreation (REC1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), wetland habitat (WET), estuarine habitat (EST), migration of aquatic organisms (MIGR), and spawning, reproduction and development (SPWN). See Basin Plan, pp. 2-1 - 2-5.

Storm water from the Wiggins Facility drains to SCR Reach 1, which is approximately 7,000 feet southeast of the Facility. *See* 2015 SWPPP, p. 9. First, surface water flows to the northeast corner of the Facility and drains into the storm drain system known. *Id.*; *see also* SWPPP Wiggins Site Plan Attachment. Next, as indicated by maps maintained by the County of Ventura[9] and the State Board,[10]water is transported southwest to the SCR Reach 1 via the El Rio Drain owned by the City of Oxnard and monitored by the Ventura Countywide Storm water Quality Management Program.[11] From the SCR Reach 1 (Hwy 101 to SCR Estuary), water flows into the SCR Estuary, SCR Estuary Beach-Surfers Knoll, McGrath Beach, and disperses across the Ventura coastline.

The beneficial uses for these Receiving Waters specifically include agriculture supply (AGR), municipal and domestic supply (MUN), groundwater recharge (GWR), water contact recreation (REC1), non-contact water recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), estuarine habitat (EST), wildlife habitat (WILD), rare, threatened, or endangered species (RARE), migration of aquatic organisms (MIGR) and spawning, reproduction and development (SPWN). *See* Basin Plan, pp. 2-1 - 2-5. The Basin Plan designates the Santa Clara River surface waters adjacent to and downstream from the Wiggins Facility as potential municipal and domestic supply (MUN) beneficial uses, and existing agriculture supply (AGR) and groundwater recharge (GWR) beneficial uses. *See* Basin Plan, pp. 2-1 - 2-5. Waters designated and used for municipal, domestic, and agricultural supply can be consumed by children, pregnant women, the elderly, and farm workers.

Discharges of polluted storm water and non-storm water to the Receiving Waters pose carcinogenic, developmental and reproductive toxicity threats to the public, and adversely affect the aquatic environment, and contribute the degradation of these already impaired waters, beaches, and recreational and wildlife resources, including the Santa Clara River's native and endangered species. For example, both the Estuary and Reach 1 of the SCR are listed as impaired for toxicity.[12] Polluted storm water discharged from the Wiggins Facility may cause and/or contribute to the impairment of water quality in the SCR, its watershed and the Estuary, and is acutely toxic to, and has sub-lethal toxicity impacts on, the Southern California Steelhead and other aquatic life in the SCR and its estuary.

For the Santa Clara River watershed aquatic ecosystem to regain its health, and for the Santa Clara River watershed's threatened and endangered species to recover and thrive, illegal, contaminated storm water discharges like those from the Wiggins Facility must be eliminated.

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[9] See Ventura Countywide Unified Storm Drain Map data, available at http://vcstormwater.org/index.php/publications/maps/ventura-countywide-unified-storm-drain-map (last visited Jan. 5, 2016).

[10] See Los Angeles Region Integrated Report Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired Waters, Appendix F, "20010 Clean Water Act 303(d) List of Water Quality Limited Sections," available at http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml (last visited 5 Jan. 2016).

[11] Water flows southerly along Cortez Street past the Ventura freeway (101 fwy.), then west across Vineyard Avenue (State Route 232), northwest along Oxnard Boulevard (Pacific Coast Highway 1), west adjacent to nearby railroad tracks, south down Ventura Road, and jettisons west into the SCR

[12] *See footnote 10.*

C. Applicable Standards Under the Act and Permit

The Act requires that any person discharging pollutants to waters of the United States from a point source obtain coverage under an NPDES permit, such as the General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). As described above, both the 1997 Permit and the 2015 Permit require that all dischargers meet all applicable provisions of Act's Sections 301 and 402. Thus, compliance with the General Industrial Permit constitutes compliance with the Act for purposes of stormwater discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Conversely, failure to comply with the terms and conditions of the Permit, including failure to develop and implement BMPs that achieve BAT/BCT, constitutes a violation of the Act.

1. *Effluent Limitations*

The Permit's Effluent Limitation—section B(3) of the 1997 Permit and V(A) of the 2015 Permit—require dischargers to reduce or prevent pollutants in their storm water discharges through the implementation of BMPs that meet BAT standards for toxic and non-conventional pollutants, and BCT standards for conventional pollutants.[13] The EPA published "benchmark" levels as numeric thresholds to aid in determining whether a facility discharging industrial storm water had implemented the requisite BAT and/or BCT as mandated by the Act.[14] EPA's benchmarks served as objective measures for evaluating whether a facility's BMPs achieve BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit. Under the 2015 Permit, the State Board established the use of "benchmarks" with Numeric Action Levels ("NALs"). *See* 2015 Permit V(A). NALs are derived from, and function similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet I(D)(5). Benchmarks and NALs values represent pollutant concentrations at which a storm water discharge could impair, or contribute to impairing, water quality and/or affect human health. The analytical results from a given facility are measured against EPA's benchmarks to determine whether BMPs are adequate to qualify as meeting the statutory mandate. An exceedance of a benchmark or NAL requires dischargers to implement improved BMPs and revise the facility SWPPP. *See* 2015 Permit Section XII. Thus, exceedances of the benchmarks and/or NALs evidence failure to comply with both the Permit and Act. Benchmarks and/or NALs have been established for core parameters (i.e. pH, TSS, O&G, SC) and other conventional industrial specific pollutants including Aluminum ("Al"), Iron ("Fe"), Zinc ("Zn"), and Copper ("Cu"). As summarized in TABLE 1 below, Wiggins must analyze sample discharges from the Facility against these benchmark/NALs.

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[13] Toxic pollutants are listed at 40 C.F.R. § 401.15; conventional pollutants are listed at 40 C.F.R. § 401.16.
[14] *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, as modified effective May 9, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

TABLE 1
BENCHMARK AND NAL VALUES APPLICABLE TO THE FACILITY

PARAMETER/ POLLUTANT	TESTING METHOD	EPA BENCHMARK	ANNUAL NAL
pH	Field Test	6.0-9.0 s.u.	n/a
TSS	SM 2540-D	100 mg/L	100 mg/L
O&G	EPA 1664 A	15 mg/L	15 mg/L
SC	E120.1	200 uhmos/cm	200 uhmos/cm
Al	EPA 200.8	0.75 mg/L	0.75 mg/L
Fe	EPA 200.7	1.0 mg/L	1.0 mg/L
Zn	EPA 200.8	0.117 mg/L	0.26 mg/L
Cu	EPA 200.8	0.0332 mg/L	0.0332 mg/L

The Permit requires facilities to collect samples of storm water discharges from each of the discharge locations—2 annual samples under the 1997 Permit, and 4 total samples under the 2015 Permit[15]—taking care that water collected is representative of the discharge from each discharge point. 1997 Permit B(5), B(7); 2015 Permit XI(B)(1)-(5). In addition to analyzing samples for the core parameters applicable to all industrial facilities (i.e. pH, SC, TSS and O&G/TOC), each storm water sample collected must be analyzed for the following: i) additional parameters based on a facility's SIC code (1997 Permit B(5)(c)(iii); 2015 Permit XI(B)(6)(d)); ii) toxic chemical and other pollutants that are likely to be present due the specific activities and/or pollutant sources at a facility (1997 Permit B(5)(c)(ii)[16]; 2015 Permit XI(B)(6)(c)[17]); and iii) potentially additional parameters related to the receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads ("TMDL") (*see e.g.* 2015 Permit XI(B)(6)).

Further, Wishtoyo puts Wiggins on notice that the 2015 Permit Effluent Limitation V.A is a separate, independent requirement with which all facilities must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of the NALs

[15] The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).
[16] Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii).
[17] Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

demonstrate that a facility is among the worst performing facilities in the State and has failed implement pollution prevention measures required by the Permit and Act, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. And even if Wiggins submits an Exceedance Response Action Plan as required by Section XII of the 2015 Permit, the violations of Effluent Limitations V.A described at Section III of this Notice Letter are ongoing.

2. *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").[18] The 2015 Permit incorporates the same standard. *See* 2015 Permit VI(A). Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California ("CTR"), 40 C.F.R. § 131.38, and the State Board's "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties" ("Basin Plan").[19] For instance, the Basin Plan set the limit for Aluminum at 1 mg/L for MUN uses, which is applicable to SCR Reach 1 which the Facility discharges to. Thus, any and all exceedance of a 1 mg/L discharge for Aluminum is a separate and distinct violation of the Permit's Receiving Water Limitations.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharge and authorized non-storm water discharges to surface waters that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit VI.B. Thus, any discharges containing pollutant concentrations in excess of levels known to adversely affect aquatic species and the environment are violations of the Permit.

3. *Monitoring and Reporting Requirements*

The Storm Water Permit requires that facilities develop and implement a stormwater monitoring and reporting program ("M&RP") prior to conducting, and in order to continue, industrial activities. The primary objective of the M&RP is to detect and measure concentrations of pollutants in a facility's storm water discharges to ensure that BMPs are in place that can achieve compliance with the Permit's Effluent Limitations and Receiving Water Limitations. *See* 1997 Permit B(2); 2015 Permit XI. An effective M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the core BAT/BCT standard. The foundational elements of an adequate M&RP are the creation and implementation of a robust SWPPP that is specific to the facility and revised/improved in response to lessons learned from implementation and data collection.

As noted above, the 1997 Permit and 2015 Permit impose substantially identical requirements on covered facilities. *See* 1997 Permit B(3)- B(16), 2015 Permit X(I) and XI(A)-

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[18] 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).
[19] *available at*
http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

XI(D). The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit B(3). The 2015 Permit increased the frequency of visual observations to monthly and requires observations to be completed at the same time samples are collected. 2015 Permit XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit B(4); 2015 XI(A)(2). Dischargers must document observations, and any responses are taken to address problems observed, including revisions made to the SWPPP. 1997 Permit B(3)-(4); 2015 Permit XI(A)(2)-(3). 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 results.

III. VIOLATIONS OF THE PERMIT AND ACT AT WIGGINS FACILITY

In the years since enrolling in the Permit, Wiggins has failed to carry out its obligations under both the Permit and Act. As discussed in further detail below, the Facility is in ongoing violation of the Permit, and its violations span both the 1997 Permit and 2015 Permit. Specifically, the Facility has discharged pollutants in violation of the Permit's Effluent Limitations, failed to develop a legally adequate M&RP; failed to develop, implement and/or update a legally adequate SWPPP to ensure the development and implementation of BMPs that achieve BAT/BCT; failed to timely develop and/or submit a Level 1 ERA evaluation onto the State Board's database; and failed to submit accurate and complete Annual Reports.

A. Effluent Limitation Violations

The citizen suit provisions of the Act provide that "any citizen" may commence a suit "against any person," including a corporation, "who is alleged to be in violation of an effluent standard or limitation under this chapter." 33 U.S.C § 1365(a)(1). The Act then defines "effluent standard or limitation" to include "a permit or condition" issued under section 402. *Id.* § 1365(f)(6). Accordingly, Wishtoyo may commence a suit alleging violations of the General Industrial Permit by the Facility. *See Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F. 3d 985 (9th Cir. 2000) (allowing citizen action for alleged stormwater permit violations holding company liable for discharges of "significant contributions of pollutants" and inadequate record keeping).

On July 1, 2015, the 2015 Permit superseded the 1997 Permit for all but enforcement purposes. Accordingly, Wiggins 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, 480-481 (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) (holding that limitation of an expired permit, when those limitations have been transferred to a newly issued permit, may be viewed as currently in effect").

Wishtoyo puts Wiggins on notice that the Permit's Effluent Limitations and Receiving Water Limitations are violated each time stormwater discharges from the Facility without having been subjected to properly developed and implemented BMPs. *See* Exhibit A: Storm Event Summary (setting forth dates of significant rain events).[20] These discharge violations are ongoing and will continue every time the Facility discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time Wiggins discharges polluted stormwater in violation of Effluent Limitations or Receiving Water Limitations is a separate and distinct violation of both the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Wiggins is subject to civil penalties for all violations of the Clean Water Act detailed below occurring since January 17, 2012.

Information available to Wishtoyo indicates that the Facility has failed and continue to fail to reduce or prevent pollutants associated with industrial activity in storm water discharges through the implementation of BMPs that achieve BAT/BCT as required by the Act through the Permit. As noted above, benchmarks are relevant and objective standards for evaluating whether a permittee' BMPs achieve compliance with BAT/BCT as required by the Permit's Effluent Limitations. Here, Wiggins must sample for conventional industrial pollutants (i.e. pH, SC,[21] TSS, O&G); pollutants likely to be present at the Facility and which have been detected as present in sampling due to the Facility's specific operations such as Al, Fe, Zn, Cu and Mg, as well as other potential pollutants present at the Facility identified in the Facility SWPPP such as Total Recoverable Petroleum Hydrocarbons ("TRPH") and Lead ("Pb").[22]

Notwithstanding the inadequacy of the sampling data (as discussed below), the Facility has self-reported on numerous occasions of parameter exceedances by orders of magnitude.[23] For example, zinc levels were more than seven (7) times its annual NAL benchmark during the 2012-13 reporting year. In the 2015-16 reporting year, aluminum and iron and zinc ranged between nine (9) and twenty (20) times above applicable benchmarks – even under the most favorable of calculations. The sampling data summarized in TABLE 2 on the following page demonstrates that the Facility has failed and continues to fail to develop or implement BMPs that achieve compliance with the Act's BAT/BCT mandates.

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[20] A significant qualified rain event (QSE) is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility. Dates of significant rain events are measured at multiple locations including five stations within three miles of the approximate discharge site.

[21] The 2015 Permit does not require facilities to analyze samples for Specific Conductance, but may be tested as an additional sampling parameter. *See* General Industrial Permit, Attachment H: Sample Collection And Handling Instructions, p. 3.

[22] According to Table 5.2 Analytical Constituents of the 2015 SWPPP, Lead is to be sampled using specific analytical method (EPA 200.8), with certain annual NALs and reporting limits (0.262 and 0.005 Mg/L, respectively); Total Recoverable Petroleum Hydrocarbons is to be tested using EPA 418.1 method.

[23] Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

TABLE 2

THE FACILITY'S ANALYTICAL RESULTS AS SUBMITTED TO THE STATE

Line	Date	TSS	Al	Fe	Zn	Cu	Pb	Other
1	Benchmark/NAL	100	0.75	1.0	0.117	0.0322	0.262	0.064
3	Units	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
3	02/06/14	83	2.40	2.90	1.00	0.043	0.045	(Mg) 0.15[c]
4	12/02/14	110	NT	NT	NT	NT	NT	NT
5	09/15/15[d]	340	6.10	14.00	2.50	NT	0.240	NT
6	01/05/16	170	4.70	9.90	0.99	NT	0.160	NT
7	03/07/16[e]	360	7.10	17.0	2.20	NT	0.170	NT
8	03/11/16	950	13.0	17.0	4.30	NT	0.460	NT

**Red indicates values reported by Wiggins exceeding applicable Effluent Limitations and/or Water Quality Limitations.*

[a] *Not detected above method detection limit according to the lab.*

[b] *Not tested by Wiggins.*

[c] *Magnesium detected under analytical method EPA 200.7, with an annual benchmark/NAL of 0.064 mg/L. See Permit, Table 2: Parameter NAL Values, Test Methods, and Reporting Units*

[d] *Sample untimely uploaded to SMARTS database on December 13, 2016 –over one year after due date.*

[e] *Invalid Qualified Storm Event since Facility likely experienced discharge within proceeding 48 hours on Mar. 5 (0.23 in.) and Mar. 6 (0.86 in.). See Exhibit A: Storm Event Summary.*

The results of storm water sample analysis, to the extent Wiggins complied with its sampling requirements (lines 3-8), indicated consistent exceedances of applicable benchmarks for multiple parameters – up to 8x above parameters for TSS, 13x for Al, 17x for Fe and 40x for Zn.

Wiggins also failed to timely submit the results from its Sep. 15, 2015 sample containing high levels of multiple parameters (i.e. TSS, SC, Al, Fe, and Zn) (line 5). Only after receiving a Level 1 Status Notification email (Sep. 23, 2016) and letter (Dec. 7, 2016) did the Facility submit the results in its Ad Hoc Monitoring Report (Dec. 13, 2016).

These discharge violations are ongoing and will continue every time Wiggins discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Wishtoyo puts Wiggins on notice that the 2015 Permit Effluent

Limitation V.A. is a separate, independent requirement with which all facilities must comply, and that carrying out the iterative process triggered by exceedances of NALs listed in TABLE 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. While exceedances of an NAL benchmark demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[24]

B. Receiving Water Limitation Violations[25]

1. Primary Receiving Water Limitation

The Basin Plan identifies beneficial uses of the Receiving Waters to include, among others, municipal and domestic water supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, and wildlife habitat. The Basin Plan provides a chemical constituent standard that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. Water designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals)..."[26] The Basin Plan provides a Maximum Contaminant Level ("MCL") for Al of 1 mg/L for MUN uses, which is applicable to SCR Reach 1 which the Facility discharges to. Thus, any and all exceedance of 1 mg/L for Aluminum (set forth in Table 2) in the Facility's storm water discharges is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Storm Water Permit, Receiving Water Limitation VI.A of the 2015 Permit and the Clean Water Act.

2. Secondary Receiving Water Limitations

Wishtoyo's review of the sampling data reported to the State and Regional Boards demonstrates that the Facility has discharged and continues to discharge polluted storm water containing pollutant concentrations that violate the Permit's secondary Receiving Water Limitations. Discharges of toxic metals such as iron, aluminum, copper, lead, and zinc from the Facility into Receiving Waters cause or contribute to: acute and chronic toxicity and sublethal toxicity impacts to aquatic life and aquatic plants; change in the diversity and abundance of aquatic life; change in aquatic community structure and function; impacts to metabolism and

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[24] "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.

[25] As described above, the primary Receiving Water Limitation requires that industrial storm water discharges not cause or contribute to an exceedance of applicable WSQ, including those established by EPA, contained in a Statewide Water Quality Control Plan, the CTR or set in the Basin Plan. 1997 Permit C(2); 2015 Permit VI(A). The secondary Receiving Water Limitation requires that industrial storm water discharges not adversely affect human health or the environment. 1997 Permit C(1); 2015 Permit VI(B).

[26] Basin Plan at 3-8.

osmoregulation of aquatic life; change in the structure and quality on benthic invertebrate habitat and food resources leading to decline in benthic invertebrate populations and diversity; and increases in aquatic organisms dietary supply of metals that can result in toxicity effects that ripple through an ecosystem's food chain. Both the Estuary and Reach 1 of the SCR to which Wiggins discharges are listed as impaired for toxicity.[27] Polluted storm water discharged from the Wiggins Facility causes and/or contributes to the impairment of water quality in the SCR, SCR Estuary, and the SCR watershed which is acutely toxic to, and have sub-lethal impacts on, the Southern California Steelhead and other aquatic life in the SCR and the SCR Estuary. Therefore, the stormwater discharges from the Facility adversely impact human health and the environment in violation of Receiving Water Limitation C(1) of the 1997 Storm Water Permit, Receiving Water Limitation VI.B of the 2015 Permit, and the Clean Water Act.

Wishtoyo puts Wiggins on notice that the 2015 Permit's Receiving Water Limitations are violated each time polluted storm water discharges from the Facility including each event summarized in Table 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged. . Each time discharges of storm water from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitations 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. §131(a). Each time discharges of storm water from the Facility violate an applicable WQS, is a separate and distinct violation of Receiving Water Limitations C(2) of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit, and Section 301(a) of the Clean Water Act. 33 U.S.C. §131(a).

C. Monitoring and Reporting Program Violation

As described above, the Permit requires Wiggins to develop and implement an M&RP that monitors pollutants in the Facility's discharges, and then to make commensurate revisions to its BMPs to ensure compliance with the Permit and Act. Wiggins has been and continues to conduct operations at the Facility with a legally inadequate and poorly implemented M&RP. Wishtoyo's principal concerns are the Facility's failure to collect the required number of storm water samples, and its failure to analyze samples collected for all parameters required by the Permit. Among others, the following constitute the principal deficiencies in the M&RP at the Facility:

- *Inadequate Sampling and Reporting Frequency*—every year between the 2011-12 and 2015-16 storm water years, the Facility has failed to collect an adequate number samples during the relevant reporting period and report them in a compliant annual report, despite the opportunity to do so. For example, the Facility collected no samples in the second reporting period (Jan. 1 – Jun. 30) for storm year 2011-12, despite having nine (9) rain events of at least 0.1 inches, four (4) of which were during non-holiday, workdays and with no rainfall in the preceding 48 hours (i.e. opportunities to test). *See* Exhibit A: Storm Event Summary. Similarly, the Facility collected no samples during the entire 2012-13 year (22 events,7 opportunities); nor the first half of the 2013-14 year (4 events, 2 opportunities); nor the second half of 2013-14 (10 events, 4 opportunities); only 1 sample

[27] *See footnote 10.*

during first half of 2015-16 (4 events, 3 opportunities), and no samples were taken during the recently completed first half of 2016-17 (8 events, 2 opportunities).

- *Incomplete Sample Results*—on numerous occasions, the Facility has failed to test sample for all necessary parameters. For example, the only sample taken during the 2014-15 reporting year (Dec. 2, 2014) did not show the results for aluminum, iron, zinc, copper, or lead—thus preventing any comparison against benchmarks for exceedances. *See* Table 2: Facility's Analytical Results, line 4). Additionally, after reporting copper and magnesium levels above annual benchmarks (33 and 134 percent, respectively), the Facility failed to test for either parameter in all of its subsequent samples.

- *Inaccurate and Misleading Reporting*—As discussed in section C.A. "Effluent Limitation Violations," the Facility submitted samples that were invalid (Mar. 7, 2016) and untimely (Sep. 15, 2015). Additionally, when finally submitting the data for the Sept. 15, 2015 sample, the Facility reported aluminum levels at 2.5 mg/L, despite the original results clearly showing levels at 6.1 mg/L.

- *Incorrect Testing Methods*—the Facility has repeatedly failed to use the appropriate testing method when testing samples. Although EPA requires its 200.8 testing method when testing for aluminum, cadmium, copper, lead, nickel, and zinc, the samples taken submitted by the Facility consistently used EPA's 200.7 methods, including multiple parameters in Feb. 6, 2014 sample and all four (4) samples taken during the 2015-16 reporting year.

- *Failure to Test for Sufficient Range of Pollutants*—the Facility operates as a lift truck manufacturer where activities threaten the discharge of various gases, oils, and liquids (e.g. propane, acetylene, hydraulic oil, waste/motor/gear oil, diesel, gasoline, new and waste coolant, ethylene glycol, degreaser, etc.). Under the 1997 Permit, facilities must analyze stormwater samples for "toxic chemicals and other pollutants that are likely to be present in stormwater discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze stormwater samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c). Despite these clear provisions requiring the Facility to augment its analysis of storm water samples beyond requirements imposed on all industrial facilities classified under SIC Code 3537, the Facility regularly tested only the minimum parameters. The Facility failed to take proper action, including continued sampling of storm water discharges for copper and magnesium and other constituents, after the copper or magnesium exceedances in Feb. 2014, as discussed above. Nor did the Facility ever test for total recoverable petroleum hydrocarbons despite being lists as a constituent to sample in its 2015 SWPPP. *See* Table 5.2, p. 28.

- *Failure to Complete ERA and Other Corrective Actions*—to date, the Facility has not completed and reported the required ERA evaluation for its effluent limitations violations. After submitting it 2015-16 Annual Report, the Regional Board notified Wiggins by courtesy email on Sep. 23, 2016 that the Facility needed to take action: (i) have an ERA

performed identifying necessary BMPs by October 1, 2016; (ii) electronically submit the ERA onto the State Board's SMARTS database, implement all additional BMPs, and revise its SWPPP accordingly by Jan. 1, 2017; and (iii) submit the revised SWPPP onto SMARTS by Feb. 1, 2017. After missing the Oct. 2016 deadline, the Regional Board again notified Wiggins of these deadlines in its letter dated Dec. 7, 2016. As of Jan. 1, 2017, Wiggins has submitted no evidence indicating any of these requirements have or will be satisfied.

Wiggins' failure to conduct sampling and monitoring as required by the General Industrial Permit demonstrates that it has failed to develop, implement, and/or revise a legally adequate M&RP, and is in violation of the Act. Every day that the Facility conducts operations in violation of the specific monitoring requirements of the Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Permit and the Act. Wiggins has been in daily and continuous violation of the Permit's M&RP requirements every day since at least January 17, 2012. These violations are ongoing, and Wishtoyo will include additional violations when information becomes available.

D. Failure to Prepare, Implement, Review and Update an Adequate SWPPP

Under the Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities. Sections A(1) and E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from the facility and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. 1997 Permit A(2), 2015 Permit X(C). BMPs described in a SWPPP must, upon full implementation, be designed to achieve compliance with the Permit's discharge requirements. To ensure ongoing compliance with the Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit A(9)-(10), 2015 Permit X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet I(1).

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

industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. 2015 Permit X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. 2015 Permit X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. 2015 Permit Factsheet I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. 2015 Permit X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. 2015 Permit X(H)(2). The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. 2015 Permit X(H)(4), (5).

Despite these clear SWPPP requirements, Wiggins has been conducting and continues to conduct industrial operations at the Facility without a legally adequate SWPPP. Wishtoyo's principal concern with the Facility's SWPPP is that it fails to develop effective BMPs for acknowledged sources of pollution which have exceeded effluent limitations – demonstrating its legal inadequacy since it does not achieve compliance with the Permit. The Facility must revise its SWPPP to incorporate and implement effect BMPs to prevent continued discharges of contaminants.

E. Failure to File True and Correct Annual Reports

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.

Wiggins has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. Information available to Wishtoyo indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above Benchmarks, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. As previously described, the Facility has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, Wiggins is in daily violation of the Permit. Every day the Facility conducts operations without reporting as required by the 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). Wiggins has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least January 17, 2012. These violations are ongoing,

and Wishtoyo will include additional violations when information becomes available, including, specifically, violations of the 2015 Permit reporting requirements. See 2015 Permit XII and XVI.

IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS

Wishtoyo puts Wiggins, Michelle Wiggins-McDowell and Paul Hurbace on notice that they are the entities responsible for the violations described above. If additional corporate or natural persons are identified as also being responsible for the violations described herein, Wishtoyo puts Wiggins on notice that it intends to include those persons in this action.

V. NAME AND ADDRESS OF NOTICING PARTY

Mati Waiya
Executive Director and Chumash Ceremonial Elder
Wishtoyo Foundation and its Ventura Coastkeeper Program
9452 Telephone Rd #432
Ventura, CA 93004
805-823-3301

VI. COUNSEL

Please direct all communications to legal counsel retained by Wishtoyo for this matter:

Gideon Kracov
Law Office of Gideon Kracov
801 Grand Avenue, Floor 11
Los Angeles, CA 90017
gk@gideonlaw.net
213-629-2071

and

Jason A. Weiner
General Counsel
Wishtoyo Foundation & Ventura Coastkeeper
9452 Telephone Rd. #432
Ventura, CA 93004
jweiner.venturacoastkeeper@wishtoyo.org
805-823-3301

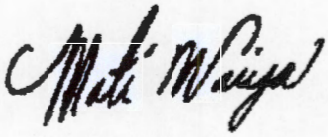
VII. PENALTIES

Pursuant to Section 309(d) of the 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 Act subjects the Facility to a penalty of up to $37,500 per day per violation. In addition to civil penalties, Wishtoyo will seek injunctive relief to prevent further violations of the Act pursuant to Sections

505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

Wishtoyo believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. Wishtoyo intends to file a citizen suit under Section 505(a) of the Act against Wiggins, the Facility and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, Wishtoyo would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, Wishtoyo suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as Wishtoyo does not intend to delay the filing of a complaint in federal court.

Sincerely,



Mati Waiya
Executive Director and Chumash Ceremonial Elder
Wishtoyo Foundation and Wishtoyo Foundation's Ventura Coastkeeper Program

Attachment A – Rain Event Summary for the Facility: 2012 through 2017

Cc: Loretta Lynch, U.S. Department of Justice
Gina McCarthy, U.S. Environmental Protection Agency
Alexis Strauss, U.S. Environmental Protection Agency (Region IX)
Thomas Howard, State Water Resources Control Board
Samuel Unger, Regional Water Quality Control Board (Region 4)
DOJ, Citizen Suit Coordinator

VIA U.S. CERTIFIED MAIL

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-001

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

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

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

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

Citizen Suit Coordinator
DOJ-Environmental and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Exhibit A

STORM EVENT SUMMARY: January 2012 - December 2017
Days with Rainfall above 0.1 inches
https://www.wunderground.com/history/airport/KOXR/2016/12/22/CustomHistory.html?dayend=28&monthend=12&yearend=2016&req_city=&req_state=&req_statename=&reqdb.zip=&reqdb.magic=&reqdb.wmo= last accessed 1/13/17

Date (mm/dd/yy)	Rainfall (inches)
01/21/12	0.91
01/23/12	0.71
03/17/12	0.73
03/25/12	1.56
04/10/12	0.23
04/11/12	0.77
04/13/12	0.37
04/25/12	0.10
04/26/12	0.11
11/28/12	0.11
11/29/12	0.22
11/30/12	0.31
12/01/12	0.16
12/02/12	0.42
12/18/12	0.15
12/23/12	0.12
12/24/12	0.47
12/29/12	0.11
01/06/13	0.13

01/24/13	0.54
01/25/13	0.14
01/26/13	0.12
02/19/13	0.14
03/07/13	0.54
03/08/13	0.34
03/31/13	0.16
05/06/13	0.15
11/20/13	0.27
11/21/13	0.21
11/29/13	0.12
12/07/13	0.24
02/06/14	0.23
02/24/14	0.54
02/25/14	0.14
02/26/14	0.68
02/27/14	0.69
02/28/14	2.25
03/01/14	0.79
03/31/14	0.15
10/31/14	0.49

12/02/14	1.31
12/03/14	0.38
12/11/14	0.16
12/12/14	1.86
12/17/14	0.21
01/10/15	0.94
01/11/15	0.58
01/26/15	0.12
02/07/15	0.20
02/22/15	0.14
02/28/15	0.30
03/01/15	0.21
04/07/15	0.12
05/14/15	0.13
06/09/15	0.16
07/18/15	0.26
09/15/15	0.61
10/04/15	0.38
12/19/15	0.26
01/05/16	1.36
01/06/16	0.81

01/07/16	0.42
01/19/16	0.17
01/31/16	0.39
02/17/16	0.22
02/18/16	0.10
03/05/16	0.23
03/06/16	0.86
03/07/16	0.34
03/11/16	0.75

04/09/16	0.39
10/28/16	0.21
10/30/16	0.16
11/20/16	0.46
11/26/16	0.51
12/15/16	0.52
12/16/16	0.28
12/22/16	0.10
12/23/16	1.47

12/30/16	0.31
1/4/17	0.70
1/5/17	0.37
1/7/17	0.37
1/9/17	0.82
1/11/17	0.32
1/12/17	.016

** Red indicates a qualified significant rain event (QSE) on a non-holiday, workday per Wiggins' 2015 SWPPP.*

*** A QSE is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility, with no discharges occurring within the preceding 48 hours.*

**** Historical rainfall data within the relevant area is measured at multiple weather stations including stations KCAOXNAR 9 (34.218, -119.169), KCAOXNAR 18 (34.228, -119.186), KCAOXNAR 17 (34.257, -119.149), KCAOXNAR 5 (34.211, -119.141), and KCAOXNAR 11 (34.221, -119.216); all located between 0.55 and 2.9 miles from the approximate discharge site (34.232, -119.167), as measured by online mapping tools (www.sunearthtools.com/tools/distance.php).*