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8 SAN FRANCISCO BAYKEEPER

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 SAN FRANCISCO BAYKEEPER, INC., a  
13 California non-profit corporation,

14 Plaintiff,

15 v.

16 RADIUS RECYCLING, INC. f.k.a.  
17 SCHNITZER STEEL INDUSTRIES, INC., U-  
18 PULL-IT, INC., PICK-N-PULL SAN JOSE  
19 AUTO DISMANTLERS, a California General  
20 Partnership, PICK-N-PULL AUTO  
21 DISMANTLERS, OAKLAND, a California  
22 General Partnership, PICK-N-PULL AUTO  
23 DISMANTLERS, LLC, PICK-N-PULL AUTO  
24 DISMANTLERS, a California General  
25 Partnership, NORPROP, INC., and PICK AND  
26 PULL AUTO DISMANTLING, INC.,

27 Defendants.

Civil No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

1. **Clean Water Act – Stormwater Discharges without Complying with Technology Based Effluent Limitations**
2. **Clean Water Act – Discharges of Stormwater in Violation of Receiving Water Limitations**
3. **Clean Water Act – Failure to Have a Valid Storm Water Pollution Prevention Plan**
4. **Clean Water Act – Failure to Conduct Monitoring and Reporting**
5. **Failure to Conduct Exceedance Response Action Reports**
6. **Clean Water Act – Falsely Certifying Annual Reports**
7. **Unfair Competition Law – Unlawful Conduct under Bus. & Prof. Code § 17200 (Fish & Game Code §§ 5650 and 5652)**
8. **Unfair Competition Law – Unlawful Conduct under Bus. & Prof. Code § 17200 (Fish & Game Code § 1602)**

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1 Plaintiff San Francisco Baykeeper (“Baykeeper”), by and through its counsel, alleges as  
2 follows:

3 **I. INTRODUCTION**

4 1. This is a third-party enforcement action, brought pursuant to section 505(a)(1) of  
5 the Federal Water Pollution Control Act (the “Clean Water Act” or “CWA”), 33 U.S.C. §  
6 1365(a)(1), to address violations of the CWA by Defendants Schnitzer Steel Industries, Inc. d/b/a  
7 Radius Recycling, Inc., U-Pull-It, Inc., Pick-N-Pull San Jose Auto Dismantlers, a California  
8 General Partnership, Pick-N-Pull Auto Dismantlers, Oakland, a California General Partnership,  
9 Pick-N-Pull Auto Dismantlers, LLC, Pick-N-Pull Auto Dismantlers, a California General  
10 Partnership, Norprop, Inc., and Pick and Pull Auto Dismantling, Inc. (collectively, “Defendants”)  
11 arising out of Defendants operations (automobile dismantling) at Pick N Pull Fairfield 11 operated  
12 at 4659 Air Base Parkway, Fairfield, California (“PNP Fairfield”), Pick N Pull Richmond  
13 operated at 1015 Market Avenue, Richmond, California (“PNP Richmond”), PickNPull Oakland  
14 70 operated at 8451 San Leandro Street, Oakland, California (“PNP Oakland”), and Pick-N-Pull  
15 Newark #43, operated at 7400 Mowry Avenue, Newark, California (“PNP Newark”)  
16 (“Facilities”). Since on or before October 27, 2018, Defendants have been discharging and  
17 continue to discharge polluted stormwater from the Facilities, in violation of the express terms and  
18 conditions of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1342. Since on or  
19 before October 27, 2018, Defendants have also violated the General Industrial Stormwater Permit  
20 issued by the State of California, NPDES General Permit No. CAS000001 [State Water Resources  
21 Control Board] Water Quality Order No. 2014-0057-DWQ as amended by Order No. 2015-0122-  
22 DWQ in 2015 and 2018 (“Industrial Stormwater Permit”). Baykeeper seeks a declaratory  
23 judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including  
24 attorney and expert witness fees, for Defendants’ repeated and ongoing violations of the CWA.

25 **II. JURISDICTION AND VENUE**

26 2. This Court has subject matter jurisdiction over the parties and this action pursuant  
27 to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), 28 U.S.C. § 1331 (an action arising  
28

1 under the laws of the United States), and 28 U.S.C. § 2201 (declaratory relief).

2 3. On or about October 27, 2023, Baykeeper provided notice of intent to file suit  
3 against Defendants for Defendants' CWA violations ("Notice Letter") to the Administrator of the  
4 United States Environmental Protection Agency (EPA); the Regional Administrator of EPA  
5 Region IX; the Executive Director of the State Water Resources Control Board ("State Board");  
6 the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region  
7 ("Regional Board") (collectively, "state and federal agencies"), and Defendants, as required by the  
8 CWA, 33 U.S.C. § 1365(b)(1)(A). A copy of the Notice Letter is attached as Exhibit 1.

9 4. More than sixty (60) days have passed since the Notice Letter was mailed to  
10 Defendants and the state and federal agencies. Neither EPA nor the State of California has  
11 commenced or is diligently prosecuting a court action to redress the violations alleged in this  
12 complaint. No claim in this action is barred by any prior administrative action pursuant to section  
13 309(g) of the CWA, 33 U.S.C. § 1319(g).

14 5. Venue is proper in the Northern District of California pursuant to section 505(c)(1)  
15 of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this  
16 judicial district.

17 6. Intradistrict assignment of this matter to the San Francisco or Oakland Division of  
18 the Court is appropriate pursuant to Civil Local Rule 3-2(d). The events or omissions which give  
19 rise to Baykeeper's claims occurred in Alameda County, which is under the jurisdiction of the San  
20 Francisco or Oakland Division of the Northern District of California.

### 21 **III. PARTIES**

#### 22 **A. Plaintiff**

23 7. Plaintiff Baykeeper, d/b/a San Francisco Baykeeper, is a non-profit public benefit  
24 corporation organized under the laws of the State of California with its main office at 1736  
25 Franklin Street, Suite 800, Oakland, California 94612. Baykeeper's approximately 3,500 members  
26 live and/or recreate in and around the San Francisco Bay area. Baykeeper's mission is to defend  
27 San Francisco Bay from the biggest threats and hold polluters and government agencies  
28 accountable to create healthier communities and help wildlife thrive. Its team of scientists and

1 lawyers investigate pollution via aerial and on-the-water patrols, strengthen regulations through  
2 science and policy advocacy, and enforce environmental laws on behalf of the public. To further  
3 its mission, Baykeeper actively seeks federal and state agency implementation of the Clean Water  
4 Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its  
5 members.

6 8. Members of Baykeeper reside in Fairfield, Richmond, Oakland, and Newark,  
7 California, as well as in many of the surrounding communities. Members of Baykeeper, including  
8 citizens, taxpayers, property owners, and residents, live, work, and travel near, and recreate in,  
9 San Francisco Bay and its tributaries, into which Defendants discharge pollutants. Baykeeper's  
10 members use and enjoy San Francisco Bay and its tributaries for recreational, educational,  
11 scientific, conservation, aesthetic, spiritual, and other purposes. Baykeeper's members' use and  
12 enjoyment of these waters are negatively affected by the pollution caused by the Facilities'  
13 operations. Defendants' discharges of stormwater containing pollutants impair each of these uses  
14 and thus harms Baykeeper and its members. Thus, the interests of Baykeeper's members have  
15 been, are being, and will continue to be adversely affected by Defendants' failure to comply with  
16 the CWA and the Industrial Stormwater Permit.

17 9. Baykeeper members use the areas downstream of the Facilities including in and  
18 along Suisun Marsh Wetlands, Suisun Bay, San Pablo Bay, San Leandro Bay, Mowry Slough, and  
19 San Francisco Bay to bird watch, view wildlife, fish, kayak, sail, boat, stand up paddleboard, wade  
20 and swim, hike, bike, walk, run, and sightsee, as well as for aesthetic enjoyment. Additionally,  
21 Baykeeper and its members use local waters to engage in educational and scientific study through  
22 pollution and habitat monitoring and restoration activities.

23 10. The Facilities' historic and ongoing discharges of pollutants into the unnamed tributary  
24 of Union Creek, Union Creek, Hill Slough, Suisun Slough, Suisun Marsh Wetlands, Suisun Bay,  
25 Wildcat Creek, San Pablo Bay, Elmhurst Creek, San Leandro Bay, Mowry Slough, and San Francisco  
26 Bay in violation of the Clean Water Act have, are, and continue to adversely affect the interests of  
27 Baykeeper and its members.

28 11. The interests of Baykeeper's members have been, are being, and will continue to be

1 adversely affected by Defendants' failure to comply with the Clean Water Act. The relief sought  
2 herein will redress the harms to Plaintiff caused by Defendants' activities.

3 12. Baykeeper has one or more members who use, explore, and recreate in areas  
4 impacted by the by the stormwater pollution herein at issue and could sue in their own right.

5 13. Baykeeper brings this action on behalf of itself and its members. Neither the claims  
6 brought by Baykeeper nor the relief Baykeeper requests requires the participation of individual  
7 members.

8 14. Baykeeper's injuries-in-fact are fairly traceable to Defendants' conduct and would  
9 be redressed by the requested relief.

10 15. Defendants' continuing failure to comply with the Clean Water Act and federal  
11 laws and regulations relating to the protection of waters of the United States has harmed, and will  
12 continue to directly and substantially harm, the interests of Baykeeper's members', hundreds of  
13 species of wildlife, and residents of the Bay Area. A decree declaring Defendants to have violated  
14 the Clean Water Act, and granting the various other remedies sought herein, will redress  
15 Baykeeper's harms.

16 16. Some of Baykeeper's members will suffer recreational, aesthetic, or other  
17 environmental injuries due to Defendants' pollution. Baykeeper's members use and enjoy San  
18 Francisco Bay and its tributaries for recreational, scientific, and aesthetic purposes and would  
19 reasonably cease these activities should San Francisco Bay's water quality become too degraded.

20 17. Defendants' stormwater pollution frustrates Baykeeper's mission. Baykeeper has  
21 diverted its limited resources to investigate, research, gather documents from regulatory agencies,  
22 and consult with experts in order to understand the extent of the harm Defendants' ongoing  
23 pollution causes in and around the unnamed tributary of Union Creek, Hill Slough, Suisun Slough,  
24 Suisun Marsh Wetlands, Suisun Bay, Wildcat Creek, San Pablo Bay, Elmhurst Creek, San  
25 Leandro Bay, Mowry Slough, and San Francisco Bay. Baykeeper has dedicated substantial  
26 resources and time into its works and investigation regarding Defendants' stormwater pollution.  
27 At the time Baykeeper undertook its investigation into the Facility, the resources spent were not  
28 related to any litigation. Baykeeper would have used its limited resources on other matters had it

1 not been for Defendants' conduct.

2 18. Continuing the commission of the acts and omissions alleged herein will cause  
3 irreparable harm to Baykeeper and its members, for which there is no adequate remedy at law.

4 **B. Defendants**

5 19. Since the transmission of the Notice Letter, Defendant Schnitzer Steel Industries,  
6 Inc. has legally changed its name to Radius Recycling, Inc. Radius Recycling, Inc. is an active  
7 corporation registered in Oregon, whose principal address is 299 SW Clay Street, Suite 400,  
8 Portland, Oregon 97201. Radius Recycling, Inc.'s registered agent is C T Corporation System 330  
9 N Brand Boulevard, Glendale, California 91203. Upon information and belief, Radius Recycling,  
10 Inc. (previously known as Schnitzer Steel Industries, Inc.) is the parent company to: Norprop, Inc.;  
11 Pick and Pull Auto Dismantling, Inc.; Pick-N-Pull Auto Dismantlers, LLC; Pick-N-Pull Auto  
12 Dismantlers, a California General Partnership; Pick-N-Pull Auto Dismantlers, Oakland, a General  
13 Partnership; Pick-N-Pull San Jose Auto Dismantlers, a California General Partnership, and U-  
14 Pull-It, Inc.<sup>1</sup> Upon information and belief, Schnitzer Steel Industries, Inc. has been a corporate  
15 owner of the Facilities since at least October 27, 2018. Upon information and belief, Schnitzer  
16 Steel Industries, Inc. has been a corporate operator of the Facilities since at least October 27,  
17 2018. Upon information and belief, in July 2023, Schnitzer Steel Industries, Inc. rebranded as  
18 Radius Recycling, Inc., and it completed its corporate name change with the California Secretary  
19 of State on February 9, 2024.

20 20. Defendant U-Pull-It, Inc. is an active corporation registered in California, whose  
21 principal address is 299 SW Clay Street, Suite 400, Portland, Oregon 97201. U-Pull-It, Inc.'s  
22 registered agent is C T Corporation System 330 N Brand Boulevard, Glendale, California 91203.  
23 Upon information and belief, it is a wholly owned subsidiary of Schnitzer Steel Industries, Inc.  
24 Upon information and belief, U-Pull-It, Inc. has been an owner of PNP Fairfield and PNP  
25 Richmond since at least October 27, 2018. The September 27, 2018 "Notice of Intent" for PNP  
26

27 <sup>1</sup> As of February 20, 2024, [www.picknpull.com](http://www.picknpull.com) states: "Pick-n-Pull Auto and Truck Dismantlers, a subsidiary of  
28 Radius Recycling." As of February 20, 2024, <https://radiusrecycling.com/locations> includes PNP Fairfield, PNP  
Newark, PNP Oakland, and PNP Richmond as auto recycling sites in Radius Recycling's Location List.

1 Fairfield to comply with the terms of the Industrial Stormwater Permit and each annual report  
2 filed for PNP Fairfield since 2018 pursuant to the Industrial Stormwater Permit named U Pull It  
3 Inc as the owner of PNP Fairfield. The September 27, 2018 “Notice of Intent” for PNP Richmond  
4 to comply with the terms of the Industrial Stormwater Permit and each annual report filed for PNP  
5 Richmond since 2018 pursuant to the Industrial Stormwater Permit named U Pull It Inc as the  
6 owner of PNP Richmond. Upon information and belief, U-Pull-It, Inc. has been an operator of  
7 PNP Fairfield and PNP Richmond since at least October 27, 2018.

8 21. Defendant Pick-N-Pull San Jose Auto Dismantlers, a California General  
9 Partnership, is a General Partnership incorporated in California, whose address is 1065  
10 Commercial Street, San Jose, California 95112. Upon information and belief, it is also a wholly  
11 owned subsidiary of Schnitzer Steel Industries, Inc. Upon information and belief, Pick-N-Pull San  
12 Jose Auto Dismantlers, a California General Partnership, has been an owner of PNP Newark since  
13 at least October 27, 2018. The September 27, 2018 “Notice of Intent” for PNP Newark to comply  
14 with the terms of the Industrial Stormwater Permit and each annual report filed for the PNP  
15 Newark since 2018 pursuant to the Industrial Stormwater Permit named Pick N Pull San Jose  
16 Auto Dismantler General Partnership as the owner of the PNP Newark. Upon information and  
17 belief, Pick-N-Pull San Jose Auto Dismantlers, a California General Partnership, has been an  
18 operator of PNP Newark since at least October 27, 2018.

19 22. Defendant Pick-N-Pull Auto Dismantlers, Oakland, a General Partnership, is a  
20 General Partnership incorporated in California, whose address is 10850 Gold Center Drive, Suite  
21 325, Rancho Cordova, California 95670. Upon information and belief, it is also a wholly owned  
22 subsidiary of Schnitzer Steel Industries, Inc. Upon information and belief, Pick-N-Pull Auto  
23 Dismantlers, Oakland, a California General Partnership, has been an owner of PNP Oakland since  
24 at least October 27, 2018. The September 27, 2018 “Notice of Intent” for PNP Oakland to comply  
25 with the terms of the Industrial Stormwater Permit and each annual report filed for the PNP  
26 Oakland since 2018 pursuant to the Industrial Stormwater Permit named Pick n Pull Auto  
27 Dismantlers Oakland General Partnership as the owner of the PNP Oakland. Upon information  
28 and belief, Pick-N-Pull Auto Dismantlers, Oakland, a California General Partnership, has been an

1 operator of PNP Oakland since at least October 27, 2018.

2 23. Defendant Pick-N-Pull Auto Dismantlers, LLC is an active limited liability  
3 company formed in California, whose principal address is 299 SW Clay Street, Suite 350,  
4 Portland, Oregon 97201. Pick-N-Pull Auto Dismantlers, LLC's registered agent is C T  
5 Corporation System 330 N Brand Boulevard, Glendale, California 91203. Pick-N-Pull Auto  
6 Dismantlers, LLC is a wholly owned subsidiary of Schnitzer Steel Industries, Inc. and an  
7 authorized partner of Pick-N-Pull Auto Dismantlers (A California Partnership). Upon information  
8 and belief, Pick-N-Pull Auto Dismantlers, LLC has been a corporate owner of the Facilities since  
9 at least October 27, 2018. Upon information and belief, Pick-N-Pull Auto Dismantlers, LLC has  
10 been a corporate operator of the Facilities since at least October 27, 2018.

11 24. Defendant Pick-N-Pull Auto Dismantlers, a California General Partnership is a  
12 General Partnership incorporated in California. Upon information and belief, Pick-N-Pull Auto  
13 Dismantlers, a California General Partnership, is a wholly owned subsidiary of Schnitzer Steel  
14 Industries, Inc. The authorized partners of Pick-N-Pull Auto Dismantlers, a California General  
15 Partnership, are: Norprop, Inc., Pick-N-Pull Auto Dismantlers, LLC, and Pick and Pull Auto  
16 Dismantling, Inc. Upon information and belief, Pick-N-Pull Auto Dismantlers, a California  
17 General Partnership, has been a corporate owner of the Facilities since at least October 27, 2018.  
18 Upon information and belief, Pick-N-Pull Auto Dismantlers, a California General Partnership, has  
19 been a corporate operator of the Facilities since at least October 27, 2018.

20 25. Defendant Norprop, Inc. is an active corporation registered in California and  
21 Oregon, whose principal address is 299 SW Clay Street, Suite 400, Portland, Oregon 97201.  
22 Norprop, Inc.'s registered agents are: C T Corporation System, 330 N Brand Boulevard, Suite  
23 700, Glendale, California 91203, and C T Corporation System, 780 Commercial Street SE, Suite  
24 100, Salem, Oregon 97301. Norprop, Inc. is a wholly owned subsidiary of Schnitzer Steel  
25 Industries, Inc. and an authorized partner of Pick-N-Pull Auto Dismantlers, a California General  
26 Partnership. Upon information and belief, Norprop, Inc. has been a corporate owner of the  
27 Facilities since at least October 27, 2018. Upon information and belief, Norprop, Inc. has been a  
28 corporate operator of the Facilities since at least October 27, 2018.

1 26. Defendant Pick and Pull Auto Dismantling, Inc. is an active corporation registered  
2 in California, whose principal address is 299 SW Clay Street, Suite 350, Portland, Oregon 97201.  
3 Pick and Pull Auto Dismantling, Inc.'s registered agent is C T Corporation System, 330 N Brand  
4 Boulevard, Glendale, California 91203. Upon information and belief, Pick and Pull Auto  
5 Dismantling, Inc. is a wholly owned subsidiary of Schnitzer Steel Industries, Inc. and an  
6 authorized partner of Pick-N-Pull Auto Dismantlers, a California General Partnership. Upon  
7 information and belief, Pick and Pull Auto Dismantling, Inc. has been a corporate owner of the  
8 Facilities since at least October 27, 2018. Upon information and belief, Pick and Pull Auto  
9 Dismantling, Inc. has been a corporate operator of the Facilities since at least October 27, 2018.

10 27. Defendants own and/or operate self-service auto dismantling operations. The  
11 Facilities' operations include draining fluids from newly received end-of-life vehicles;  
12 mounting drained vehicles on stands in the customer yard for customer access; removing radiators  
13 and cores from picked-over vehicles; crushing vehicle bodies prior to transport to a metal  
14 recycling facility and loading core parts and tires onto separate trucks for off-site recycling. The  
15 Facilities also sell a small number of used cars, car batteries, and tires. Customer activities such  
16 as vehicle parts pulling and sales transactions are done within the customer yard and sales area,  
17 respectively. Known and potential pollutants from the Facilities' operations include lead, oil and  
18 grease, aluminum, total suspended solids (TSS), iron, chemical oxygen demand (COD), zinc,  
19 cadmium, copper, mercury, selenium, windshield wiper fluid, used oil filters, used absorbent with  
20 gasoline, universal e-waste, road flares, oily absorbents and debris, nickel metal hydride battery  
21 (EV), mercury switches, lithium-ion batteries (EV), pesticides/herbicides, gasoline, crusher fluid,  
22 used oils, lead acid batteries, diesel fuel, and brake fluid.

### 23 C. The Facilities

#### 24 1. PNP Fairfield

25 28. PNP Fairfield is approximately 14 acres. Approximately 12 acres are exposed to  
26 stormwater. The site is surrounded by undeveloped open fields to the east and west, new road  
27 construction to the south, and an automobile repair shop and an auto glass store to the north,  
28 which share an ingress and egress via Wiley Lane and customer parking with PNP Fairfield.

1 29. PNP Fairfield has two drainage areas. Eastern Drainage Area 1 receives stormwater  
2 run-off from the eastern half of the customer yard and parking lot. Stormwater from this area  
3 flows into a vegetated swale along the eastern property boundary, routing flow from this area to  
4 the southeastern corner of the site, at DP-1. Western Drainage Area 2 receives stormwater run-off  
5 from the western half of the customer yard and production yard. Stormwater from this area is  
6 directed to a vegetated swale along the western property boundary, and discharges at the end of  
7 the swale at the northwestern corner of the site at DP-2. Three concrete stormwater drain inlets  
8 equipped with concrete aprons were recently installed along the western swale, and four gravel  
9 drop inlets were installed recently along the eastern swale. Oil/water separators (one in each  
10 drainage area) remove debris, oil, and grease prior to routing industrial stormwater to the swales.  
11 Industrial stormwater is indirectly discharged at DP-1 to the unnamed tributary of Union Creek,  
12 then Union Creek, then Hill Slough, then Suisun Slough, then to the Suisun Marsh Wetlands, then  
13 Suisun Bay. Industrial stormwater is discharged to land off site at DP-2. PNP Fairfield is 3 miles  
14 away from the Suisun Marsh Wetlands and 19 miles from Suisun Bay.

15 30. Suisun Marsh Wetlands are impaired for low oxygen, mercury,  
16 nitrogen/phosphorus, and salts.

17 31. Suisun Bay is impaired for dioxins, mercury, non-native aquatic plants, PBCs,  
18 selenium, and pesticides.

19 2. PNP Richmond

20 32. PNP Richmond is approximately 10.75 acres. Approximately 9 acres are exposed  
21 to stormwater. The site is bordered to east by railroad tracks, to the south by Market Avenue, to  
22 the west by private storage and railroad tracks, and to the north by American Iron & Metal, a  
23 recycling center. The site is divided into two areas by Wildcat Creek.

24 33. PNP Richmond has three drainage areas. Drainage Area 1 includes the Production  
25 Yard; Drainage Area 2 includes the Customer Yard, and Drainage Area 3 includes the customer  
26 parking lot, which PNP Richmond claims is non-industrial. Stormwater from Drainage Area 1 is  
27 directed to a retention pond at the northern tip of the site. In 2022, PNP Richmond removed  
28 discharge point DP-2, asserting the retention pond for Drainage Area 1 does not discharge.

1 Stormwater from Drainage Area 2 and Drainage Area 3 is directed to a treatment system that  
2 discharges at DP-1 to Wildcat Creek, then the Wildcat Creek Wetlands, then to San Pablo Bay.  
3 PNP Richmond is 2.5 miles from San Pablo Bay.

4 3. PNP Oakland

5 34. PNP Oakland is approximately 7 acres. Approximately 5 acres are exposed to  
6 stormwater. The site is bordered to the northeast by San Leandro Street, to the southeast by 85th  
7 Avenue, to the southwest by railroad tracks, and to the northwest by Monterey Mechanical Co., a  
8 metal fabricator.

9 35. PNP Oakland has two drainage areas. Drainage Area 1 includes all industrial areas  
10 of the site. Stormwater in Drainage Area 1 is routed through subsurface pipes to an oil/water  
11 separator and active treatment system, including aboveground equalization tanks, flocculant,  
12 settling tanks, pH adjustment, media filtration, and carbon filters, and discharges to Outfall #1 to  
13 Oakland's municipal separate storm sewer system, then to Elmhurst Creek, and then to San  
14 Leandro Bay, near Arrowhead Marsh, then to Lower San Francisco Bay. The Facility is 1.25 miles  
15 from San Leandro Bay. Drainage Area 2 is the non-industrial customer parking lot.

16 4. PNP Newark

17 36. PNP Newark is approximately 19 acres. Approximately 16 acres are exposed to  
18 stormwater. The site is bordered by undeveloped open fields to the north, east, and south, and by  
19 Mowry Avenue to the west.

20 37. PNP Newark has three drainage areas. Drainage Area 1 is the southern portion of  
21 the site, routing stormwater through a subsurface pipe to Pond A, which discharges at DP-1.  
22 Drainage Area 2 collects stormwater runoff from the northern portion of the site, routing it  
23 through subsurface pipes to Pond B, which discharges at DP-2. Both DP-1 and DP-2 discharge to  
24 an adjacent marshy area, which drains into Mowry Slough, then to South San Francisco Bay at the  
25 Don Edwards San Francisco Bay National Wildlife Refuge. PNP Newark is 0.25 miles away from  
26 Mowry Slough, and 6 miles away from South San Francisco Bay. Drainage Area 3 is non-  
27 industrial customer parking, and mostly drains to Drainage Area 2 and Pond B. Stormwater from  
28 this area drains to Mowry Avenue and then to the Newark municipal separate storm sewer system.

1 38. When, in this complaint, reference is made to any act of the Defendants, such  
2 allegations shall be deemed to mean that the officers, directors, agents, employees, or  
3 representatives of said defendants did, or authorized such acts, or failed to adequately or properly  
4 supervise, control or direct their employees and agents while engaged in the management,  
5 direction, operation, or control of the affairs of said business organization, and did so while acting  
6 in the scope of their employment or agency.

#### 7 **IV. REGULATORY BACKGROUND**

##### 8 **A. The Problem of Stormwater Pollution**

9 39. Stormwater runoff is one of the most significant sources of water pollution in the  
10 nation and has been recognized as a leading cause of significant and cumulative harmful impacts  
11 to the water quality of San Francisco Bay. With every rainfall event, hundreds of millions of  
12 gallons of polluted rainwater flow from local industrial facilities, such as the Facilities, and pour  
13 into storm drains, local waterways, wetlands, and San Francisco Bay.

14 40. The consensus among agencies and water quality specialists is that stormwater  
15 pollution accounts for more than half of the total pollution entering local creeks, rivers, and  
16 coastal waters each year.

17 41. The unnamed tributary of Union Creek, Union Creek, Hill Slough, Suisun Slough,  
18 Suisun Marsh Wetlands, Suisun Bay, Wildcat Creek, San Pablo Bay, Elmhurst Creek, San  
19 Leandro Bay, Mowry Slough, and San Francisco Bay and their connected surface waters are  
20 ecologically sensitive areas and are essential habitat for numerous cetacean, fish, bird, and other  
21 species.

22 42. These waters also provide recreational activities, including fishing, swimming,  
23 surfing, kayaking, and boating. They also provide non-contact recreational and aesthetic  
24 opportunities such as biking, wildlife observation, educational activities, and opportunities for  
25 research.

26 43. Industrial facilities like Defendants' that discharge stormwater contaminated with  
27 sediment, heavy metals, and other pollutants contribute to impairment of waters and aquatic  
28 dependent wildlife, expose the people of Fairfield, Richmond, Oakland, and Newark to toxins, and

1 harm the special social, economic, and aesthetic benefits San Francisco Bay Area waters have for  
2 locals and visitors from around the world.

3 44. Stormwater runoff from industrial sites such as the Facilities causes harm to  
4 humans and aquatic life. In particular, stormwater can contain heavy metal pollutants such as  
5 aluminum, cadmium, copper, iron, lead, mercury, nickel, selenium, tin, and zinc, as well as high  
6 concentrations of TSS, and COD. Exposure and ingestion of heavy metals can cause health  
7 problems in people and aquatic animals, including neurological, physiological, and reproductive  
8 effects. Heavy metals have been shown to alter activity in tissues and blood of fish.

9 45. High concentrations of TSS degrade optical water quality by reducing water clarity  
10 and decreasing light available to support photosynthesis. TSS have been shown to alter predator-  
11 prey relationships (for example, turbid water might make it difficult for fish to see their prey).  
12 Deposited solids alter habitat for fish, aquatic plants, and benthic organisms. TSS can also be  
13 harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic  
14 hydrocarbons (PAHs), are adsorbed onto TSS. Thus, higher concentrations of TSS mean higher  
15 concentrations of toxins associated with those sediments. Inorganic sediments, including settleable  
16 matter and suspended solids, have been shown to negatively impact species richness, diversity,  
17 and total biomass of filter feeding aquatic organisms on bottom surfaces.

18 46. Controlling polluted storm water and non-storm water discharges is essential to  
19 protecting the San Francisco Bay Area's surface waters.

#### 20 **B. The Clean Water Act**

21 47. The Clean Water Act is the primary federal statute protecting surface waters in the  
22 United States. The CWA aims to prevent, reduce, and eliminate pollution in order to “restore and  
23 maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. §  
24 1251(a)

25 48. In order to accomplish that goal, section 301(a), 33 U.S.C. § 1311(a), prohibits the  
26 discharge of any pollutant into waters of the United States unless the discharger complies with  
27 other enumerated sections of the CWA, including the prohibition on discharges not authorized by,  
28 or in violation of, the terms of a National Pollutant Discharge Elimination System (“NPDES”)

1 permit issued pursuant to section 402, 33 U.S.C. § 1342(b). *See also* 40 C.F.R. § 122.26(c)(1) and  
2 Industrial Stormwater Permit, § I.A.12.

3 49. The CWA requires all point source discharges of pollutants to waters of the United  
4 States be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. § 122.26(c)(1).

5 50. The “discharge of a pollutant” means, among other things, the addition of a  
6 pollutant to “waters of the United States” from any “point source.” 40 C.F.R. § 122.2.

7 51. The term “pollutant” includes “dredged spoil, solid waste, incinerator residue,  
8 sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive  
9 materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal,  
10 and agricultural waste discharged into water.” 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.

11 52. The term “point source” means any “discernible, confined and discrete  
12 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete  
13 fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating  
14 craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14); *see* 40 C.F.R. §  
15 122.2.

16 53. CWA section 402(b), 33 U.S.C. § 1342(b), allows each state to administer its own  
17 EPA-approved permit program for discharges. In California, EPA has approved the State Board  
18 and its nine Regional Boards to administer a NPDES permit program for the State. The State  
19 Board and Regional Boards issue individual and general NPDES permits regulating water  
20 pollutant discharges from various categories of dischargers.

21 54. CWA section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued  
22 for stormwater discharges “associated with industrial activity.”

23 55. CWA section 301(b) requires that, by March 31, 1989, all point source dischargers,  
24 including those discharging polluted stormwater, must achieve technology-based effluent  
25 limitations by utilizing the Best Available Technology Economically Achievable (BAT) for toxic  
26 and nonconventional pollutants and the Best Conventional Pollutant Control Technology (BCT)  
27 for conventional pollutants. *See* 33 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

28 56. CWA section 505(a)(1) provides for citizen enforcement against any “person” who

1 is alleged to be in violation of an “effluent standard or limitation . . . or an order issued by the  
2 Administrator or a State with respect to such a standard or limitation.” 33 U.S.C. §§ 1365(a)(1),  
3 1365(f).

4 57. A “person” under the CWA includes individuals, corporations, partnerships,  
5 associations, States, municipalities, commissions, and political subdivisions of a State, or any  
6 interstate body. 33 U.S.C. § 1362(5). Defendant is a person under the CWA.

7 58. “Effluent standard or limitation” is defined to include: (a) the prohibition in section  
8 301(a) against unpermitted discharges, and (b) any condition of an NPDES permit such as the  
9 Industrial Stormwater Permit. 33 U.S.C. § 1365(f); *Citizens for a Better Env't v. Union Oil Co.*, 83  
10 F.3d 1111, 1114 (9th Cir. 1996) (“Private citizens may bring suit pursuant to 33 U.S.C. § 1365 to  
11 enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. §  
12 1311(a). 33 U.S.C. § 1365(f)(1).”)

13 59. CWA section 505(a) authorizes third-party enforcement actions for injunctive  
14 relief. 33 U.S.C. § 1365(a). Section 505(d) allows a prevailing or substantially prevailing party in  
15 an enforcement action to recover litigation costs, including fees for attorneys, experts, and  
16 consultants where it finds that such an award is appropriate. 33 U.S.C. § 1365(d).

17 60. CWA violators are subject to an assessment of civil penalties of up to \$64,618 per  
18 day per violation for violations occurring after November 2, 2015. 33 U.S.C. § 1319(d); 40 C.F.R.  
19 §§ 19.1-19.4.

### 20 C. Water Quality Standards

21 61. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water Quality  
22 Standards, including water quality objectives and beneficial uses for navigable waters of the  
23 United States. The CWA prohibits discharges from causing or contributing to a violation of such  
24 state Water Quality Standards. *See* 33 U.S.C. § 1311(b)(1)(c); 40 C.F.R. §§ 122.4(a), (d); 40  
25 C.F.R. § 122.44(d)(1).

26 62. The State of California regulates water quality through the State Board and nine  
27 Regional Boards, and each Regional Board maintains a separate Water Quality Control Plan  
28 which contains Water Quality Standards for water bodies within its geographic area.

1 63. The San Francisco Bay Regional Water Quality Control Board has adopted the  
2 “San Francisco Bay Basin (Region 2) Water Quality Control Plan” (“Basin Plan”), as amended by  
3 Resolution No. R2-2010-0100, which sets forth the Water Quality Standards and beneficial uses  
4 for San Francisco Bay and its tributaries. The Basin Plan is the “master water quality control  
5 planning document. It designates beneficial uses and water quality objectives for waters of the  
6 State, including surface waters and groundwater” as well as “programs of implementation to  
7 achieve water quality objectives.” *See*

8 [https://www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.html](https://www.waterboards.ca.gov/sanfranciscobay/basin_planning.html).

9 64. The Basin Plan sets forth, among other things, narrative Water Quality Standards  
10 for floating material, oil and grease, sediment, settleable matter, and suspended materials. *See*  
11 Basin Plan §§ 3.3.6, 3.3.7, 3.3.9, 3.3.12-3.3.14, 3.3.21, and Table 3-4.

12 65. In addition, EPA has promulgated Water Quality Standards for toxic priority  
13 pollutants in all California water bodies (the “California Toxics Rule” or “CTR”), which apply to  
14 San Francisco Bay and its tributaries, unless expressly superseded by the Basin Plan. 65 Fed. Reg.  
15 31,682 (May 18, 2000); 40 C.F.R. § 131.38.

16 66. The Basin Plan also defines beneficial uses. In the Basin Plan, Suisun Bay has  
17 beneficial uses for: industrial service supply, industrial process supply, commercial and sport  
18 fishing, estuarine habitat, fish migration, preservation of rare and endangered species, fish  
19 spawning, wildlife habitat, water contact recreation, noncontact water recreation, and navigation.

20 67. The beneficial uses of Suisun Marsh Wetlands include estuarine habitat, fish  
21 migration, preservation of rare and endangered species, fish spawning, wildlife habitat, water  
22 contact recreation, and noncontact water recreation.

23 68. The beneficial uses of Suisun Slough include commercial and sport fishing,  
24 estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning,  
25 warm freshwater habitat, wildlife habitat, water contact recreation, noncontact water recreation,  
26 and navigation.

27 69. The beneficial uses of Hill Slough include commercial and sport fishing, estuarine  
28 habitat, preservation of rare and endangered species, wildlife habitat, water contact recreation,

1 noncontact water recreation, and navigation.

2 70. The beneficial uses of San Pablo Bay include industrial service supply, commercial  
3 and sport fishing, shellfish harvesting, estuarine habitat, fish migration, preservation of rare and  
4 endangered species, fish spawning, wildlife habitat, water contact recreation, noncontact water  
5 recreation, and navigation.

6 71. The beneficial uses of Wildcat Creek include freshwater replenishment, cold  
7 freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning,  
8 warm freshwater habitat, wildlife habitat, and water contact recreation.

9 72. The beneficial uses of Wildcat Creek Wetlands include estuarine habitat,  
10 preservation of rare and endangered species, fish spawning, wildlife habitat, water contact  
11 recreation, and noncontact water recreation.

12 73. The beneficial uses of Lower San Francisco Bay include industrial service supply,  
13 commercial and sport fishing, shellfish harvesting, estuarine habitat, fish migration, preservation  
14 of rare and endangered species, fish spawning, wildlife habitat, water contact recreation,  
15 noncontact water recreation, and navigation.

16 74. The beneficial uses of San Leandro Bay include industrial service supply, estuarine  
17 habitat, fish migration, preservation of rare and endangered species, wildlife habitat, water contact  
18 recreation, noncontact water recreation, and navigation.

19 75. The beneficial uses of Arrowhead Wetlands include estuarine habitat, preservation  
20 of rare and endangered species, fish spawning, wildlife habitat, water contact recreation, and  
21 noncontact water recreation.

22 76. The beneficial uses of South San Francisco Bay include industrial service supply,  
23 commercial and sport fishing, shellfish harvesting, estuarine habitat, fish migration, preservation  
24 of rare and endangered species, fish spawning, wildlife habitat, water contact recreation,  
25 noncontact water recreation, and navigation.

26 77. The beneficial uses of Mowry Slough include estuarine habitat, preservation of rare  
27 and endangered species, wildlife habitat, water contact recreation, and noncontact water  
28 recreation.

1 78. Stormwater discharges from industrial facilities like Defendants' which cause or  
2 contribute to exceedances of Receiving Water Limitations in the Industrial Stormwater Permit and  
3 applicable water quality objectives must comply with the Industrial Stormwater Permit, or they  
4 violate the Clean Water Act.

5 **D. The Industrial Stormwater Permit**

6 79. Section 402(p) of the CWA establishes the framework regulating industrial storm  
7 water discharges under federal, and authorized state, NPDES permit programs. 33 U.S.C. §  
8 1342(p).

9 80. Discharges composed entirely of storm water are exempt from the CWA's  
10 permitting requirements unless those discharges are associated with "industrial activity." *See* 33  
11 U.S.C. § 1342(p)(1) and (2); *Natural Res. Def. Council, Inc. v. EPA*, 966 F.2d 1292, 1304-05 (9th  
12 Cir. 1992) (detailing EPA's regulations regarding "industrial activity" sources). EPA's  
13 implementing regulations at 40 C.F.R. § 122.26 require NPDES permit authorization for facilities  
14 engaged in industrial activity that discharge to waters of the United States.

15 81. Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), establishes a  
16 framework for regulating industrial storm water discharges under the NPDES program. States  
17 with approved NPDES permit programs are authorized by section 402(b) to regulate industrial  
18 storm water discharges through individual NPDES permits issued to dischargers and/or through  
19 the issuance of a single, statewide general NPDES permit applicable to all industrial storm water  
20 dischargers. *See* 33 U.S.C. § 1342(b).

21 82. In California, the State Board is charged with regulating pollutants to protect  
22 California's water resources.

23 83. The Industrial Stormwater Permit is a statewide general NPDES permit issued by  
24 the State Board pursuant to section 402 of the Clean Water Act, 33 U.S.C. § 1342(b), and 40  
25 C.F.R § 123.25. The Industrial Stormwater Permit Order 2014-0057-DWQ as amended in 2015  
26 and 2018 is the currently active Industrial Stormwater Permit for industrial stormwater discharges  
27 applicable in California.

28 84. The State Board elected to issue a statewide general permit applicable to all

1 stormwater discharges associated with industrial activity. The State Board originally issued the  
2 Industrial Stormwater Permit on or about November 19, 1991. The State Board modified the  
3 Industrial Stormwater Permit on or about September 17, 1992. Pertinent to this action, the State  
4 Board reissued the Industrial Stormwater Permit on or about April 17, 1997, and again on or about  
5 April 1, 2014, pursuant to section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p). The  
6 current version of the Industrial Stormwater Permit went into effect on July 1, 2015.

7 85. In order to discharge stormwater lawfully in California, industrial dischargers (i.e.,  
8 facility operators) must secure coverage under the Industrial Stormwater Permit by filing a notice  
9 of intent, and comply with its terms, or obtain and comply with an individual NPDES permit.

10 Industrial Stormwater Permit, §§ I.A (Findings 8, 12, 17), Attachment C (defining “discharger”).

11 86. Compliance with the Industrial Stormwater Permit constitutes compliance with the  
12 CWA for purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).

13 Conversely, “[Industrial Stormwater] Permit noncompliance constitutes a violation of the Clean  
14 Water Act and the [California] Water Code.” Industrial Stormwater Permit, § XXI.A.

15 87. The Industrial Stormwater Permit’s Receiving Water Limitations also prohibit  
16 stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *Id.* at  
17 § VI.C.

18 88. The Industrial Stormwater Permit Receiving Water Limitations prohibit discharges  
19 that adversely impact human health or the environment. *Id.* at § VI.B.

20 89. The Industrial Stormwater Permit’s Receiving Water Limitations also prohibit  
21 discharges that cause or contribute to an exceedance of any applicable water quality standard  
22 contained in a statewide Water Quality Control Plan or the applicable Regional Board’s Basin  
23 Plan. *Id.* at § VI.A.

24 90. The Industrial Stormwater Permit requires dischargers comply with technology-  
25 based standards established in the CWA. 33 U.S.C. § 1311(b); Industrial Stormwater Permit, §  
26 V.A. The Industrial Stormwater Permit incorporates these technology-based standards as  
27 “Effluent Limitations.”

28 91. The Effluent Limitations require dischargers to reduce or prevent pollutants

1 associated with industrial activity in storm water discharges through the implementation of  
2 pollution controls. For toxic and non-conventional pollutants, this requires the Best Available  
3 Technology Economically Achievable (“BAT”). *See* Industrial Stormwater Permit, § V.A; *see*  
4 *also* 40 C.F.R. § 401.15 (listing toxic pollutants, including copper, cadmium, chromium, lead, and  
5 zinc).

6 92. For conventional pollutants this requires the Best Conventional Pollutant Control  
7 Technology (“BCT”) (collectively, the technology based effluent limitations are referred to as  
8 “BAT/BCT”). *See* Industrial Stormwater Permit, § V.A; *see also* 40 C.F.R. § 401.16 (listing  
9 conventional pollutants, including COD, TSS, oil and grease, pH, and fecal coliform).

10 93. Compliance with the BAT/BCT standard requires all dischargers implement  
11 pollution control measures—called Best Management Practices (“BMPs”)—that reduce or prevent  
12 discharges of pollution in their storm water discharge in a manner that reflects best industry  
13 practice. EPA developed a set of benchmark pollutant concentrations that are relevant and  
14 objective standards for evaluating whether a permittee’s BMPs achieve compliance with the  
15 statutory BAT/BCT standard expressed in the Industrial Stormwater Permit’s technology-based  
16 Effluent Limitations.

17 94. EPA has developed benchmark levels (“Benchmarks”) that are objective guidelines  
18 to evaluate whether a permittee’s BMPs achieve compliance with the BAT/BCT standards. Final  
19 National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater  
20 Discharges from Industrial Activities (“Multi-Sector Permit”), 80 Fed. Reg. 34,403, 34,405 (June  
21 16, 2015); Multi-Sector Permit, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector  
22 Permit, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000); Multi-Sector Permit, 86 Fed. Reg. 10269,  
23 10272 (Feb. 19, 2021).

24 95. According to EPA’s Industrial Stormwater Fact Sheet for Sector M, polluted  
25 discharges from automobile salvage yards, such as the Facilities, contain polycyclic aromatic  
26 hydrocarbons (PAHs), TSS, aluminum, and lead. The Industrial Stormwater Permit recommends  
27 these “[i]ndicator parameters” be used to aid compliance evaluations; “[f]or example, [COD]  
28 concentrations can indicate the presence of dissolved organic compounds, like residual food from

1 collected recycling materials.” Industrial Stormwater Permit, Fact Sheet § II.J.3.b.

2 96. The Industrial Stormwater Permit includes Numeric Action Limits (NALs) that are  
3 based on EPA’s Benchmarks. *Id.* at § I.M (Finding 62). The NALs do not strictly represent  
4 technology-based effluent limitations. *Id.* at § I.M (Finding 63). However, they do indicate “the  
5 overall pollutant control performance at any given facility.” *Id.* at § I.M (Finding 61).

6 **E. The Stormwater Pollution Prevention Plan**

7 97. The Industrial Stormwater Permit requires the preparation and implementation of a  
8 Storm Water Pollution Prevention Plan (“SWPPP”) prior to conducting, and in order to lawfully  
9 continue, industrial activities. Industrial Stormwater Permit, § X. To comply with the Industrial  
10 Stormwater Permit, dischargers must have developed and implemented a SWPPP by July 15,  
11 2015, including the description of BMPs that comply with the BAT/BCT standard. *See* Industrial  
12 Stormwater Permit, §§ X.B-C.

13 98. The SWPPP must identify and evaluate sources of pollutants associated with  
14 industrial activities that may affect the quality of stormwater and authorized non-stormwater  
15 discharges from the facility. *Id.* at § X.G. The SWPPP must identify and implement site-specific  
16 BMPs to reduce or prevent pollutants associated with industrial activities in stormwater and  
17 authorized non-stormwater discharges. *Id.* at § X.H. The SWPPP must include BMPs that  
18 achieve pollutant discharge reductions attainable via BAT and BCT. *Id.* at §§ I.D (Finding 32),  
19 V.A.

20 99. The SWPPP must include, among other things, a narrative description and  
21 assessment of all industrial activity, potential sources of pollutants, and potential pollutants; a site  
22 map indicating the stormwater conveyance system, associated points of discharge, direction of  
23 flow, areas of actual and potential pollutant contact, including the extent of pollution-generating  
24 activities, nearby water bodies, and pollutant control measures; a description of stormwater  
25 management practices; a description of the BMPs developed and implemented to reduce or  
26 prevent pollutants in stormwater discharges and authorized non-stormwater discharges necessary  
27 to comply with the Industrial Stormwater Permit; the identification and elimination of non-  
28 stormwater discharges; the location where significant materials are being shipped, stored,

1 received, and handled, as well as the typical quantities of such materials and the frequency with  
2 which they are handled; a description of dust and particulate-generating activities, and the  
3 identification of individuals and their current responsibilities for developing and implementing the  
4 SWPPP. *Id.* at §§ X.A-H.

5 100. A SWPPP must also describe of each industrial process occurring at a facility, and  
6 the assessment of potential pollutant sources (“Source Evaluation and Pollutant Assessment”). *See*  
7 *id.* at §§ X.C, X.F, X.G

8 101. Each of the industrial processes and all industrial activities undertaken at the  
9 Facility are pollutant sources that must be described and assessed for their potential contribution  
10 of pollutants in storm water discharges in the SWPPP’s Source Evaluation and Pollutant  
11 Assessment.

12 102. The Industrial Stormwater Permit also requires facility operators to “properly  
13 operate and maintain any facilities and systems of treatment and control ... installed or used ... to  
14 achieve compliance with the conditions of [the Industrial Stormwater Permit]” and requirements  
15 of the SWPPP at all times. *Id.* at § XXI.F.

16 103. The SWPPP and site maps must be evaluated and revised at least annually to  
17 ensure ongoing compliance. *Id.* at §§ I.J (Finding 55), X.B.1. Any failure to develop, implement,  
18 or revise a comprehensive SWPPP that contains all required elements is a violation of the  
19 Industrial Stormwater Permit, and creates liability under the CWA. Industrial Stormwater Permit,  
20 § X.B; *see also* Industrial Stormwater Permit, Fact Sheet § II.I.1.

#### 21 **F. The Monitoring and Implementation Plan**

22 104. Permittees must develop and implement a storm water monitoring and reporting  
23 program—called a Monitoring Implementation Plan (“MIP”)—prior to conducting, and in order to  
24 lawfully continue, industrial activities. *See* Industrial Stormwater Permit, §§ X.I, XI.A-D. The  
25 MIP must be included in the SWPPP. *See* Industrial Stormwater Permit, § X.A.8. The objective of  
26 the MIP is to detect and measure concentrations of pollutants in a facility’s storm water  
27 discharges, and to ensure compliance with the Industrial Stormwater Permit’s Effluent Limitations  
28 and Receiving Water Limitations. *See* Industrial Stormwater Permit, Fact Sheet § II.J.1. A lawful

1 MIP ensures that BMPs are effectively reducing and/or eliminating pollutants in a facility's storm  
2 water discharges, and is evaluated and revised whenever appropriate to ensure ongoing  
3 compliance with the Industrial Stormwater Permit. *Id.*

4 105. Facility operators must complete storm water sampling and analysis. Industrial  
5 Stormwater Permit, § XI.B. The Industrial Stormwater Permit requires the collection and analysis  
6 of two storm water samples from a Qualifying Storm Event ("QSE") between July 1 and  
7 December 31 of each reporting year, and two samples from a QSE between January 1 and June 30  
8 of each reporting year. Each sample must be collected within four hours of the start of a discharge,  
9 or the start of facility operations if the QSE occurs within the previous 12-hour period. Industrial  
10 Stormwater Permit, § XI.B.5.

11 106. Permittees must also conduct visual observations at least once a month, and at the  
12 same time sampling occurs at each discharge location. Industrial Stormwater Permit, § XI.A.  
13 Observations must document the presence of any floating and suspended material, oil and grease,  
14 discolorations, turbidity, or odor, and identify the source of any pollutants. Industrial Stormwater  
15 Permit, § XI.A.2. Dischargers must document and maintain records of observations, observation  
16 dates, locations observed, and responses taken to reduce or prevent pollutants observed in storm  
17 water discharges. Industrial Stormwater Permit, § XI.A.3.

18 107. The Industrial Stormwater Permit requires dischargers to analyze samples for,  
19 among other parameters, TSS, oil and grease, and pH; parameters identified during the pollutant  
20 source assessment; parameters identified in Table 1 of the Industrial Stormwater Permit based on  
21 the facility's standard industrial classification ("SIC") code, and applicable industrial parameters  
22 related to receiving waters with 303(d) listed impairments or approved Total Maximum Daily  
23 Loads. *Id.* at §§ XI.B.6.a-e.

24 108. The Industrial Stormwater Permit requires operators of facilities that fall under SIC  
25 Code 5015, such as the Facilities, to analyze stormwater samples for iron, lead, and aluminum. *Id.*  
26 at Table 1.

27 109. Dischargers must submit all sampling and analytical results for all samples via the  
28 State Board's Stormwater Multiple Application and Report Tracking System ("SMARTS")

1 database within 30 days of obtaining the results for each sampling event. *Id.* at § XI.B.11.a.

2 110. Dischargers that fail to develop and implement an adequate MIP that includes both  
3 visual observations, and sampling and analysis are in violation of the Industrial Stormwater  
4 Permit, and consequently the Clean Water Act. *Id.* at § II.J.3

5 **G. Exceedance Response Actions Requirements**

6 111. The Industrial Stormwater Permit requires dischargers to complete certain  
7 Exceedance Response Actions (ERAs) based on stormwater sampling results in order to assist  
8 dischargers in complying with the Industrial Stormwater Permit. *Id.* at § I.M (Finding 64).

9 112. When the Industrial Stormwater Permit became effective on July 1, 2015, all  
10 dischargers were in “Baseline status.” *See id.* at § XII.B.

11 113. A discharger’s Baseline status for any given parameter changes to “Level 1 status”  
12 if sampling results indicate an exceedance of an annual average or instantaneous NAL for that  
13 parameter. *Id.* at § XII.C.

14 114. Level 1 status commences on July 1 following the reporting year during which the  
15 exceedance(s) occurred. *See id.* at § XII.C. By October 1 following commencement of Level 1  
16 status, dischargers are required to “complete an evaluation, with the assistance of a [Qualified  
17 Industrial Stormwater Practitioner (QISP)], of the industrial pollutant sources at the facility that  
18 are or may be related to the NAL exceedance(s), and identify in the evaluation the corresponding  
19 BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future  
20 NAL exceedances and to comply with the requirements of the [Industrial Stormwater] Permit.”  
21 *See id.* at §§ XII.C.1.a-c.

22 115. Based upon this Level 1 status evaluation, the discharger is required to, as soon as  
23 practicable but no later than January 1 following commencement of Level 1 status, revise the  
24 SWPPP as necessary and implement any additional BMPs identified in the evaluation, certify and  
25 submit via the State Board’s Stormwater Multiple Application and Report Tracking System  
26 (SMARTS) database a Level 1 ERA Report prepared by a QISP that includes a summary of the  
27 Level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional  
28 BMPs for each parameter that exceeded an NAL. *See id.* at § XII.C.2.a.i-ii.

1 116. A discharger in Level 1 status must also certify and submit via SMARTS the  
2 QISP's identification number, name, and contact information (telephone number, e-mail address)  
3 no later than January 1 following commencement of Level 1 status. *See id.* at § XII.C.2.a.iii.

4 117. A discharger in Level 1 status for a parameter will return to Baseline status once  
5 the discharger has completed the Level 1 ERA Report and implemented all identified additional  
6 BMPs, and results from four consecutive QSEs that were sampled subsequent to BMP  
7 implementation indicate no additional NAL exceedances for that parameter. *See id.* at § XII.C.2.b.

8 118. A discharger in Level 1 status for any parameter changes to Level 2 status on July  
9 1 following the reporting year in which the NAL exceedance(s) occurred for that same parameter.  
10 *See id.* at § XII.D. By January 1 following commencement of Level 2 status, the discharger is  
11 required to submit via SMARTS a Level 2 ERA Action Plan to address NAL exceedance(s) in the  
12 drainage areas where the NAL exceedances occurred. *See id.* at §§ XII.D.1.a-e. The Level 2 ERA  
13 Action Plan must include a schedule and detailed description of the tasks required to complete the  
14 discharger's selected demonstration(s). *Id.* The discharger is required to submit via SMARTS a  
15 Level 2 ERA Technical Report by January 1 of the reporting year following the submittal of the  
16 Level 2 ERA Action Plan. *See id.* at §§ XII.D.2.a-c.

17 119. A discharger must annually update the Level 2 ERA Technical Report based upon  
18 additional information, including additional NAL exceedances of the same parameter and same  
19 drainage area, facility operational changes, pollutant source(s) changes, and/or information that  
20 becomes available via compliance activities. *See id.* at § XII.D.3.c. If there are no changes  
21 requiring an update of the Level 2 ERA Technical Report, then the discharger will certify in the  
22 Annual Report that there have been no changes warranting updating the Level 2 ERA Technical  
23 Report. *See id.* at § XII.D.3.c.

#### 24 **H. Annual Reports**

25 120. The Industrial Stormwater Permit requires dischargers to certify and submit via  
26 SMARTS an Annual Report by July 15 following each reporting year. *See id.* at § XVI.A.

27 121. The Annual Report shall include: a compliance checklist indicating whether a  
28 discharger complies with, and has addressed all applicable requirements of the Industrial

1 Stormwater Permit; an explanation for any non-compliance of requirements within the reporting  
2 year; an identification of all revisions made to the SWPPP within the reporting year, and the date  
3 of the Annual Evaluation. *See id.* at §§ XVI.B.1-4.

4 122. Question 3 in the Annual Report asks: “Did you sample the required number of  
5 Qualifying Storm Events during the reporting year for all discharge locations, in accordance with  
6 Section XI.B?”

7 123. Question 7 in the Annual Report states: “permitted facilities located within an  
8 impaired watershed must assess for potential pollutants that may be present in the facility’s  
9 industrial stormwater discharge” and instructs permittees to “indicate the presence of the potential  
10 pollutant at the facility.”

11 124. Question 8 in the Annual Report asks: “[h]as Discharger included the above  
12 pollutants in the SWPPP pollutant source assessment and assessed the need for analytical  
13 monitoring for the pollutants?”

## 14 V. STATEMENT OF FACTS

### 15 A. PNP Fairfield

#### 16 1. PNP Fairfield’s Operations and Stormwater Discharges

17 125. The owners/operators of PNP Fairfield operate Pick N Pull Fairfield 11 located at  
18 4659 Air Base Parkway in Fairfield, California.

19 126. PNP Fairfield discharges stormwater to the unnamed tributary of Union Creek,  
20 then to Union Creek, Hill Slough, Suisun Slough, the Suisun Marsh Wetlands, and finally to  
21 Suisun Bay, a sub-embayment of the San Francisco Bay.

22 127. Suisun Bay and its tributaries, including the unnamed tributary of Union Creek,  
23 Union Creek, Hill Slough, and Suisun Slough, as well as the Suisun Marsh Wetlands are waters of  
24 the United States and waters of the State.

25 128. PNP Fairfield is regulated by the Industrial Stormwater Permit.

26 129. The owners/operators of PNP Fairfield submitted a Notice of Intent to comply with  
27 the Industrial Stormwater Permit to the State Board on or around September 27, 2018.

28 130. Operations at PNP Fairfield generally consist of, but are not limited to, self-service

1 auto dismantling operations.

2 131. The owners/operators of PNP Fairfield have self-identified PNP Fairfield primarily  
3 as falling under SIC code 5015.

4 132. Operations at PNP Fairfield are causing pollutants to be exposed to rainfall.

5 133. Pollutants generated at PNP Fairfield are exposed to stormwater flows.

6 134. Activities at the PNP Fairfield generate significant debris and particulate matter,  
7 which contain pollutants and settle on surfaces within PNP Fairfield. During rain events, this  
8 pollution washes off of those surfaces and into stormwater discharge points, which flow to the  
9 unnamed tributary of Union Creek, then to Union Creek, Hill Slough, Suisun Slough, the Suisun  
10 Marsh Wetlands, and finally to Suisun Bay.

11 135. The types of pollutants that PNP Fairfield releases into the immediate environment  
12 are known to include or have the potential to include lead, oil and grease, aluminum, TSS, iron,  
13 COD, zinc, cadmium, copper, mercury, selenium, windshield wiper fluid, used oil filters, used  
14 absorbent with gasoline, universal e-waste, road flares, oily absorbents and debris, nickel metal  
15 hydride battery (EV), mercury switches, lithium-ion batteries (EV), pesticides/herbicides,  
16 gasoline, crusher fluid, used oils, lead acid batteries, diesel fuel, and brake fluid, and other  
17 pollutants.

18 136. PNP Fairfield's sampling results since October 27, 2018, indicate that PNP  
19 Fairfield's stormwater discharges have consistently exceeded Benchmarks for TSS, COD, pH,  
20 iron, aluminum, copper, lead, and zinc.

21 137. PNP Fairfield's sampling results indicate that the PNP Fairfield's discharges are  
22 causing or threatening to cause pollution, contamination, and/or nuisance, adversely impact  
23 human health or the environment, and violate applicable numeric Water Quality Standards and  
24 applicable narrative Water Quality Standards.

25 138. Neither PNP Fairfield's past nor current SWPPPs include adequate BMPs designed  
26 to reduce pollutant levels in discharges to BAT and BCT levels.

27 139. PNP Fairfield's SWPPP fails to include the information required by the Industrial  
28 Stormwater Permit. Specifically, PNP Fairfield's Site Map fails to identify the locations of: nearby

1 water bodies, shipping and receiving areas, material handling and processing areas, and cleaning  
2 and material reuse areas, and fails to describe containment structures and the corresponding  
3 containment capacities.

4 140. PNP Fairfield has failed to develop and implement an adequate monitoring and  
5 reporting program as required by the Industrial Stormwater Permit. Specifically, PNP Fairfield  
6 failed to consistently include cadmium, mercury, zinc, and COD as parameters for lab analysis  
7 and failed to consistently analyze its stormwater samples for pH. Additionally, PNP Fairfield  
8 failed to consistently collect stormwater samples from its second drainage area.

9 2. PNP Fairfield's Exceedance Response Action Reports

10 141. Based on self-reported data from stormwater samples, as of July 1, 2016, PNP  
11 Fairfield was in Level 1 status for aluminum and iron based on NAL exceedances during the  
12 2015-2016 reporting period.

13 142. Based on self-reported data from stormwater samples, as of July 1, 2017, PNP  
14 Fairfield was in Level 2 status for aluminum and iron based on NAL exceedances during the  
15 2016-2017 reporting period.

16 143. Based on self-reported data from stormwater samples, as of July 1, 2018, PNP  
17 Fairfield was in Level 2 status for aluminum and iron based on NAL exceedances during the  
18 2017-2018 reporting period.

19 144. PNP Fairfield's Level 2 status ERA Action Plan for aluminum and iron, submitted  
20 on SMARTS in December 2017, recommended additional BMPs.

21 145. However, the BMPs identified in PNP Fairfield's Level 2 status ERA Action Plan  
22 were insufficient to prevent NAL exceedances at PNP Fairfield and, in fact, did not achieve  
23 adequate reductions in pollutant concentrations in PNP Fairfield's stormwater discharges. *See*  
24 Industrial Stormwater Permit, § XII.D, as evidenced by the fact that sampling results from the  
25 2017-2018 reporting period showed continued exceedances of aluminum and iron.

26 146. PNP Fairfield's Level 2 status ERA Technical Report for aluminum and iron,  
27 submitted on SMARTS in December 2018, also recommended additional BMPs.

28 147. However, the BMPs identified in PNP Fairfield's Level 2 status ERA Technical

1 Report were insufficient to prevent NAL exceedances at PNP Fairfield and, in fact, did not  
 2 achieve adequate reductions in pollutant concentrations in PNP Fairfield's stormwater discharges.  
 3 *See* Industrial Stormwater Permit, § XII.D.

4 148. Based on self-reported data from stormwater samples, and as of July 1, 2019, PNP  
 5 Fairfield remained in Level 2 status for aluminum and iron based on NAL exceedances during the  
 6 2018-2019 reporting period. The NAL exceedances during 2018-2019 also indicate that PNP  
 7 Fairfield entered into Level 1 status for TSS, COD, and copper:

<b>Pollutant</b>	<b>2018-2019 Annual Average</b>	<b>Annual NAL</b>
Aluminum	3.52 mg/L	0.75 mg/L
Iron	9.5 mg/L	1.0 mg/L
TSS	114 mg/L	100 mg/L
COD	127 mg/L	120 mg/L
Copper	0.061 mg/L	0.0332 mg/L

14  
 15 149. PNP Fairfield's Level 1 ERA Report for COD, TSS, and copper, submitted on  
 16 SMARTS in December 2019, also recommended additional BMPs.

17 150. However, the BMPs identified in PNP Fairfield's Level 1 ERA Report were  
 18 insufficient to prevent NAL exceedances at PNP Fairfield and, in fact, did not achieve adequate  
 19 reductions in pollutant concentrations in PNP Fairfield's stormwater discharges. *See* Industrial  
 20 Stormwater Permit, § XII.D.

21 151. Based on self-reported data from stormwater samples, and as of July 1, 2020, PNP  
 22 Fairfield remained in Level 2 status for iron based on NAL exceedances during the 2019-2020  
 23 reporting period. The annual average for iron during the 2019-2020 reporting period was 1.2 mg/L  
 24 (Annual NAL is 1.0 mg/L). Despite having no NAL exceedance for aluminum during the 2019-  
 25 2020 reporting period, PNP Richmond failed to collect an adequate number of stormwater  
 26 samples during the 2019-2020 reporting period to return to Baseline status for aluminum.

27 152. PNP Fairfield's updated Level 2 ERA Technical Report for iron, submitted on  
 28

1 SMARTS in December 2020, also recommended additional BMPs.

2 153. However, the BMPs identified in PNP Fairfield's updated Level 2 ERA Technical  
3 Report were insufficient to prevent NAL exceedances at PNP Fairfield and, in fact, did not  
4 achieve adequate reductions in pollutant concentrations in PNP Fairfield's stormwater discharges.  
5 *See* Industrial Stormwater Permit, § XII.D.

6 154. Based on self-reported data from stormwater samples, and as of July 1, 2021, PNP  
7 Fairfield remained in Level 2 status for iron based on NAL exceedances during the 2020-2021  
8 reporting period. The annual average for iron during the 2020-2021 reporting period was 3.6 mg/L  
9 (Annual NAL is 1.0 mg/L).

10 155. PNP Fairfield's updated Level 2 ERA Technical Report for iron, submitted on  
11 SMARTS in December 2022, also recommended additional BMPs.

12 156. The lack of NAL exceedances during the 2021-2022 reporting period appears to  
13 indicate that the BMPs identified in PNP Fairfield's updated Level 2 ERA Technical Reports were  
14 sufficient to prevent NAL exceedances at PNP Fairfield, but self-reported data from stormwater  
15 samples collected during the 2022-2023 reporting period indicates continued NAL exceedances  
16 for aluminum and iron.

17 157. Based on self-reported data from stormwater samples, and as of July 1, 2023, PNP  
18 Fairfield remained in Level 2 status for aluminum and iron based on NAL exceedances during the  
19 2022-2023 reporting period. The annual average for aluminum during the 2022-2023 reporting  
20 period was 1.72 mg/L (Annual NAL is 0.75 mg/L), and the annual average for iron during the  
21 2022-2023 reporting period was 3.93 mg/L (Annual NAL is 1.0 mg/L).

22 158. PNP Fairfield failed to identify additional BMPs "necessary to prevent future NAL  
23 exceedances at PNP Fairfield and to comply with the requirements of [the Industrial Stormwater  
24 Permit]" as exceedances continued. *See* Industrial Stormwater Permit, §§ XII.C.1.c, XII.C.2.a.ii.

25 159. PNP Fairfield's updated Level 2 ERA Technical Report for iron, submitted on  
26 SMARTS in December 2023, described additional BMPs implemented in September 2023:  
27 expansion of the east and west bioswales with barrier curtain/skimmer anchored a posts;  
28 installation of three concrete stormwater drop inlets along the western bioswale; installation of

1 four stormwater inlets along the eastern bioswale; construction of concrete curbing and v-ditch  
2 east of the sales office; construction of a stormwater inlet east of the sales office; construction of a  
3 concrete apron and installation of a cleanway drop inlet filter northeast of the concrete crush pad;  
4 construction of a concrete apron and installation of a cleanway drop inlet filter northwest of the  
5 concrete crush pad; and installation of an oil/water separator north of the western bioswale.

6 160. However, the BMPs identified in PNP Fairfield’s updated Level 2 ERA Technical  
7 Report were insufficient to prevent NAL exceedances at PNP Fairfield. *See* Industrial Stormwater  
8 Permit, § XII.D.

9 161. PNP Fairfield failed to identify additional BMPs “necessary to prevent future NAL  
10 exceedances at PNP Fairfield and to comply with the requirements of [the Industrial Stormwater  
11 Permit]” as exceedances continued. *See* Industrial Stormwater Permit, §§ XII.C.1.c, XII.C.2.a.ii.

### 12 3. PNP Fairfield’s Annual Reports

13 162. PNP Fairfield’s 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023  
14 Annual Reports were certified as “true, accurate, and complete” and in compliance with the  
15 Industrial Stormwater Permit.

16 163. In response to Question 3 in the Annual Report<sup>2</sup>, in 2019-2020, PNP Fairfield  
17 answered in the affirmative, but only sampled two qualified storm events and did not explain why  
18 additional samples were not collected.

19 164. In response to Question 7 in the Annual Report<sup>3</sup>, in 2018-2019 and 2022-2023,  
20 PNP Fairfield identified mercury and selenium as present at the facility, and in 2019-2020, 2020-  
21 2021, and 2021-2022, PNP Fairfield identified mercury and selenium as not present at the facility,  
22 but PNP Fairfield’s operations were the same for all five years. Upon information and belief,  
23 mercury and selenium are present at the facility.

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24  
25 <sup>2</sup> Question 3 in the Annual Report asks: “Did you sample the required number of Qualifying Storm Events during the  
26 reporting year for all discharge locations, in accordance with Section XI.B?”

27 <sup>3</sup> Question 7 in the Annual Report states: “permitted facilities located within an impaired watershed must assess for  
28 potential pollutants that may be present in the facility’s industrial stormwater discharge” and instructs permittees to  
“indicate the presence of the potential pollutant at the facility.”

1 165. In response to Question 8 in the Annual Report<sup>4</sup>, in 2018-2019 and 2022-2023,  
 2 PNP Fairfield answered in the affirmative that it had included the pollutants identified in Question  
 3 7 in the facility SWPPP, but selenium was not assessed in PNP Fairfield's SWPPPs.

4 **B. PNP Richmond**

5 1. PNP Richmond's Operations and Stormwater Discharges

6 166. The owners/operators of PNP Richmond operate Pick N Pull Richmond located at  
 7 1015 Market Avenue in Richmond, California.

8 167. PNP Richmond discharges stormwater to Wildcat Creek, which runs through the  
 9 middle of the facility, then to San Pablo Bay a sub-embayment of the San Francisco Bay.

10 168. San Pablo Bay and its tributaries, including Wildcat Creek, are waters of the United  
 11 States and waters of the State.

12 169. PNP Richmond is regulated by the Industrial Stormwater Permit.

13 170. The owners/operators of PNP Richmond submitted a Notice of Intent to comply  
 14 with the Industrial Stormwater Permit to the State Board on or around September 27, 2018.

15 171. Operations at PNP Richmond generally consist of, but are not limited to, self-  
 16 service auto dismantling operations.

17 172. The owners/operators of PNP Richmond have self-identified PNP Richmond  
 18 primarily as falling under SIC code 5015.

19 173. Operations at PNP Richmond are causing pollutants to be exposed to rainfall.

20 174. Pollutants generated at PNP Richmond are exposed to stormwater flows.

21 175. Activities at PNP Richmond generate significant debris and particulate matter,  
 22 which contain pollutants and settle on surfaces within PNP Richmond. During rain events, this  
 23 pollution washes off of those surfaces and into stormwater discharge points, which flow to  
 24 Wildcat Creek and San Pablo Bay.

25 176. The types of pollutants that PNP Richmond releases into the immediate  
 26 environment are known to include or have the potential to include lead, oil and grease, aluminum,

27 \_\_\_\_\_  
 28 <sup>4</sup> Question 8 in the Annual Report asks: "[h]as Discharger included the above pollutants in the SWPPP pollutant source assessment and assessed the need for analytical monitoring for the pollutants?"

1 TSS, iron, COD, zinc, cadmium, copper, mercury, selenium, windshield wiper fluid, used oil  
2 filters, used absorbent with gasoline, universal e-waste, road flares, oily absorbents and debris,  
3 nickel metal hydride battery (EV), mercury switches, lithium-ion batteries (EV),  
4 pesticides/herbicides, gasoline, crusher fluid, used oils, lead acid batteries, diesel fuel, and brake  
5 fluid, and other pollutants.

6 177. PNP Richmond's sampling results since October 27, 2018, indicate that PNP  
7 Richmond's stormwater discharges have consistently exceeded Benchmarks for TSS, COD, oil  
8 and grease, pH, iron, aluminum, copper, lead, and zinc.

9 178. PNP Richmond's sampling results indicate that PNP Richmond's discharges are  
10 causing or threatening to cause pollution, contamination, and/or nuisance, adversely impact  
11 human health or the environment, and violate applicable numeric Water Quality Standards and  
12 applicable narrative Water Quality Standards.

13 179. Neither PNP Richmond's past nor current SWPPPs include adequate BMPs  
14 designed to reduce pollutant levels in discharges to BAT and BCT levels.

15 180. PNP Richmond's SWPPP fails to include the information required by the Industrial  
16 Stormwater Permit.

17 181. PNP Richmond has failed to develop and implement an adequate monitoring and  
18 reporting program as required by the Industrial Stormwater Permit. Specifically, PNP Richmond  
19 failed to include COD as a parameter for lab analysis.

## 20 2. PNP Richmond's Exceedance Response Action Reports

21 182. Based on self-reported data from stormwater samples, as of July 1, 2016, PNP  
22 Richmond was in Level 1 status for iron based on NAL exceedances during the 2015-2016  
23 reporting period.

24 183. Based on self-reported data from stormwater samples, as of July 1, 2017, PNP  
25 Richmond was in Level 1 status for aluminum, copper, zinc, and TSS, and in Level 2 status for  
26 iron based on NAL exceedances during the 2016-2017 reporting period.

27 184. Based on self-reported data from stormwater samples, as of July 1, 2018, PNP  
28 Richmond was in Level 2 status for aluminum and iron based on NAL exceedances during the

1 2017-2018 reporting period.

2 185. PNP Richmond's Level 2 status ERA Action Plan for iron, submitted on SMARTS  
3 in December 2017, recommended additional BMPs.

4 186. PNP Richmond's Level 2 status ERA Action Plan for aluminum, copper, zinc, and  
5 TSS, submitted on SMARTS in December 2018, also recommended additional BMPs.

6 187. However, the BMPs identified PNP Richmond's Level 2 status ERA Action Plans  
7 were insufficient to prevent NAL exceedances at PNP Richmond and, in fact, did not achieve  
8 adequate reductions in pollutant concentrations in PNP Richmond's stormwater discharges. *See*  
9 Industrial Stormwater Permit, § XII.D, as evidenced by the fact that sampling results from the  
10 2017-2018 reporting period showed continued exceedances of aluminum and iron.

11 188. PNP Richmond's Level 2 status ERA Technical Report for aluminum and iron,  
12 submitted on SMARTS in December 2018, also recommended additional BMPs.

13 189. However, the BMPs identified in PNP Richmond's Level 2 status ERA Technical  
14 Report were insufficient to prevent NAL exceedances at PNP Richmond and, in fact, did not  
15 achieve adequate reductions in pollutant concentrations in PNP Richmond's stormwater  
16 discharges. *See* Industrial Stormwater Permit, § XII.D.

17 190. Based on self-reported data from stormwater samples, and as of July 1, 2019, PNP  
18 Richmond remained in Level 2 status for aluminum and iron based on NAL exceedances during  
19 the 2018-2019 reporting period. The annual average for aluminum during the 2018-2019 reporting  
20 period was 1.83 mg/L (Annual NAL is 0.75 mg/L), and the annual average for iron during the  
21 2018-2019 reporting period was 1.63 mg/L (Annual NAL is 1.0 mg/L).

22 191. PNP Richmond's updated Level 2 ERA Technical Report for aluminum and iron,  
23 submitted on SMARTS in December 2019, also recommended additional BMPs.

24 192. However, the BMPs identified in PNP Richmond's updated Level 2 ERA  
25 Technical Report were insufficient to prevent NAL exceedances at PNP Richmond and, in fact,  
26 did not achieve adequate reductions in pollutant concentrations in PNP Richmond's stormwater  
27 discharges. *See* Industrial Stormwater Permit, § XII.D.

28 193. Based on self-reported data from stormwater samples, and as of July 1, 2020, PNP

1 Richmond remained in Level 2 status for aluminum and iron based on NAL exceedances during  
 2 the 2019-2020 reporting period. The annual average for aluminum during the 2019-2020 reporting  
 3 period was 4.30 mg/L (Annual NAL is 0.75 mg/L), and the annual average for iron during the  
 4 2019-2020 reporting period was 6.11 mg/L (Annual NAL is 1.0 mg/L).

5 194. PNP Richmond's updated Level 2 ERA Technical Reports for aluminum and iron,  
 6 submitted on SMARTS in August 2020, also recommended additional BMPs.

7 195. Based on self-reported data from stormwater samples, and as of July 1, 2021, PNP  
 8 Richmond remained in Level 2 status for aluminum and iron. Despite having no NAL  
 9 exceedances during the 2020-2021 reporting period, PNP Richmond failed to collect an adequate  
 10 number of stormwater samples during the 2020-2021 reporting period to return to Baseline status.

11 196. PNP Richmond's updated Level 2 ERA Technical Reports for aluminum and iron,  
 12 submitted on SMARTS in December 2021, also recommended additional BMPs.

13 197. However, the BMPs identified in PNP Richmond's updated Level 2 ERA  
 14 Technical Reports were insufficient to prevent NAL exceedances at PNP Richmond and, in fact,  
 15 did not achieve adequate reductions in pollutant concentrations in PNP Richmond's stormwater  
 16 discharges. *See* Industrial Stormwater Permit, § XII.D.

17 198. Based on self-reported data from stormwater samples, and as of July 1, 2022, PNP  
 18 Richmond remained in Level 2 status for aluminum and iron and entered Level 1 status for  
 19 copper, and TSS, based on NAL exceedances during the 2021-2022 reporting period:

<b>Pollutant</b>	<b>2021-2022 Annual Average</b>	<b>Annual NAL</b>
Aluminum	6.55 mg/L	0.75 mg/L
Iron	10.9 mg/L	1.0 mg/L
TSS	116.25 mg/L	100 mg/L
Copper	0.04 mg/L	0.0332 mg/L

25  
 26 199. PNP Richmond's Level 1 ERA Report for copper, submitted on SMARTS in  
 27 January 2023, also recommended additional BMPs.  
 28

1 200. PNP Richmond’s updated Level 2 ERA Technical Report for aluminum and iron,  
2 submitted on SMARTS in December 2022, also recommended additional BMPs.

3 201. However, the BMPs identified in PNP Richmond’s updated Level 2 ERA  
4 Technical Report and Level 1 ERA Report were insufficient to prevent NAL exceedances at PNP  
5 Richmond and, in fact, did not achieve adequate reductions in pollutant concentrations in PNP  
6 Richmond’s stormwater discharges. *See* Industrial Stormwater Permit, § XII.D.

7 202. Based on self-reported data from stormwater samples, and as of July 1, 2023, PNP  
8 Richmond remained in Level 2 status for aluminum and iron. The annual average for aluminum  
9 during the 2022-2023 reporting period was 2.33 mg/L (Annual NAL is 0.75 mg/L), and the annual  
10 average for iron during the 2022-2023 reporting period was 2.69 mg/L (Annual NAL is 1.0 mg/L).

11 203. PNP Richmond failed to identify additional BMPs “necessary to prevent future  
12 NAL exceedances at PNP Richmond and to comply with the requirements of [the Industrial  
13 Stormwater Permit]” as exceedances continued. *See* Industrial Stormwater Permit, §§ XII.C.1.c,  
14 XII.C.2.a.ii.

15 3. PNP Richmond’s Annual Reports

16 204. PNP Richmond’s 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023  
17 Annual Reports were certified as “true, accurate, and complete” and in compliance with the  
18 Industrial Stormwater Permit.

19 205. In response to Question 3 in the Annual Report<sup>5</sup>, in 2019-2020, PNP Richmond  
20 answered in the affirmative, but only sampled three qualified storm events and did not explain  
21 why additional samples were not collected.

22 206. In response to Question 7 in the Annual Report<sup>6</sup>, in 2018-2019 and 2022-2023,  
23 PNP Richmond identified mercury and selenium as present at the facility, and in 2019-2020,  
24

25 <sup>5</sup> Question 3 in the Annual Report asks: “Did you sample the required number of Qualifying Storm Events during the  
26 reporting year for all discharge locations, in accordance with Section XI.B?”

27 <sup>6</sup> Question 7 in the Annual Report states: “permitted facilities located within an impaired watershed must assess for  
28 potential pollutants that may be present in the facility’s industrial stormwater discharge” and instructs permittees to  
“indicate the presence of the potential pollutant at the facility.”

1 2020-2021, and 2021-2022, PNP Richmond identified mercury and selenium as not present at the  
 2 facility, but PNP Richmond's operations were the same for all five years. Upon information and  
 3 belief, mercury and selenium are present at the facility.

4 207. In response to Question 8 in the Annual Report<sup>7</sup>, in 2018-2019, PNP Richmond  
 5 answered in the affirmative that it had included the pollutants identified in Question 7 in the  
 6 facility SWPPP, but selenium was not assessed in PNP Richmond's SWPPPs.

### 7 **C. PNP Oakland**

#### 8 1. PNP Oakland's Operations and Stormwater Discharges

9 208. The owners/operators of PNP Oakland operate PickNPull Oakland 70 located at  
 10 8451 San Leandro Street in Oakland, California.

11 209. PNP Oakland discharges stormwater to Oakland's municipal separate storm sewer  
 12 system, then to Elmhurst Creek, and then to San Leandro Bay, near Arrowhead Marsh, then  
 13 ultimately to Lower San Francisco Bay, a sub-embayment of the San Francisco Bay.

14 210. Lower San Francisco Bay and its tributaries, Elmhurst Creek and San Leandro Bay,  
 15 are waters of the United States and waters of the State.

16 211. PNP Oakland is regulated by the Industrial Stormwater Permit.

17 212. The owners/operators of PNP Oakland submitted a Notice of Intent to comply with  
 18 the Industrial Stormwater Permit to the State Board on or around September 27, 2018.

19 213. Operations at PNP Oakland generally consist of, but are not limited to, self-service  
 20 auto dismantling operations.

21 214. The owners/operators of PNP Oakland have self-identified PNP Oakland primarily  
 22 as falling under SIC code 5015.

23 215. Operations at PNP Oakland are causing pollutants to be exposed to rainfall.

24 216. Pollutants generated at PNP Oakland are exposed to stormwater flows.

25 217. Activities at PNP Oakland generate significant debris and particulate matter, which  
 26 contain pollutants and settle on surfaces within PNP Oakland. During rain events, this pollution

27 \_\_\_\_\_  
 28 <sup>7</sup> Question 8 in the Annual Report asks: "[h]as Discharger included the above pollutants in the SWPPP pollutant source assessment and assessed the need for analytical monitoring for the pollutants?"

1 washes off of those surfaces and into stormwater discharge points, which flow to Elmhurst Creek  
2 and Lower San Francisco Bay.

3 218. The types of pollutants that PNP Oakland releases into the immediate environment  
4 are known to include or have the potential to include lead, oil and grease, aluminum, TSS, iron,  
5 COD, zinc, cadmium, copper, mercury, selenium, windshield wiper fluid, used oil filters, used  
6 absorbent with gasoline, universal e-waste, road flares, oily absorbents and debris, nickel metal  
7 hydride battery (EV), mercury switches, lithium-ion batteries (EV), pesticides/herbicides,  
8 gasoline, crusher fluid, used oils, lead acid batteries, diesel fuel, and brake fluid, and other  
9 pollutants.

10 219. PNP Oakland's sampling results since October 27, 2018, indicate that PNP  
11 Oakland's stormwater discharges have consistently exceeded Benchmarks for TSS, COD, pH,  
12 iron, aluminum, copper, and lead.

13 220. PNP Oakland's sampling results indicate that PNP Oakland's discharges are  
14 causing or threatening to cause pollution, contamination, and/or nuisance, adversely impact  
15 human health or the environment, and violate applicable numeric Water Quality Standards and  
16 applicable narrative Water Quality Standards.

17 221. Neither PNP Oakland's past nor current SWPPPs include adequate BMPs designed  
18 to reduce pollutant levels in discharges to BAT and BCT levels.

19 222. PNP Oakland's SWPPP fails to include the information required by the Industrial  
20 Stormwater Permit.

21 223. PNP Oakland has failed to develop and implement an adequate monitoring and  
22 reporting program as required by the Industrial Stormwater Permit. Specifically, PNP Oakland  
23 failed to include copper and zinc as parameters for lab analysis.

24 2. PNP Oakland's Exceedance Response Action Reports

25 224. Based on self-reported data from stormwater samples, as of July 1, 2016, PNP  
26 Oakland was in Level 1 status for aluminum, iron, copper, zinc, COD, and TSS based on NAL  
27 exceedances during the 2015-2016 reporting period.

28 225. Based on self-reported data from stormwater samples, as of July 1, 2018, PNP

1 Oakland was in Level 2 status for aluminum, iron, and COD based on NAL exceedances during  
2 the 2017-2018 reporting period.

3 226. PNP Oakland's Level 2 status ERA Action Plan for aluminum, iron, and COD,  
4 submitted on SMARTS in December 2018, recommended additional BMPs.

5 227. However, the BMPs identified in PNP Oakland's Level 2 status ERA Action Plan  
6 were insufficient to prevent NAL exceedances at PNP Oakland and, in fact, did not achieve  
7 adequate reductions in pollutant concentrations in PNP Oakland's stormwater discharges. *See*  
8 *Industrial Stormwater Permit, § XII.D.*

9 228. Based on self-reported data from stormwater samples, and as of July 1, 2019, PNP  
10 Oakland remained in Level 2 status for iron and COD based on NAL exceedances during the  
11 2018-2019 reporting period. The annual average for iron during the 2018-2019 reporting period  
12 was 2.92 mg/L (Annual NAL is 1.0 mg/L), and the annual average for COD during the 2018-2019  
13 reporting period was 453.33 mg/L (Annual NAL is 120 mg/L).

14 229. PNP Oakland's Level 2 status ERA Technical Report for iron and COD, submitted  
15 on SMARTS in December 2019, also recommended additional BMPs.

16 230. However, the BMPs identified in PNP Oakland's Level 2 status ERA Technical  
17 Report were insufficient to prevent NAL exceedances at PNP Oakland and, in fact, did not  
18 achieve adequate reductions in pollutant concentrations in PNP Oakland's stormwater discharges.  
19 *See Industrial Stormwater Permit, § XII.D.*

20 231. Based on self-reported data from stormwater samples, and as of July 1, 2020, PNP  
21 Oakland remained in Level 2 status for aluminum, iron, and COD based on NAL exceedances  
22 during the 2019-2020 reporting period:

<b>Pollutant</b>	<b>2019-2020 Annual Average</b>	<b>Annual NAL</b>
Aluminum	2.35 mg/L	0.75 mg/L
Iron	4.61 mg/L	1.0 mg/L
COD	702 mg/L	120 mg/L

27  
28 232. PNP Oakland's updated Level 2 ERA Technical Report for aluminum, iron, and

1 COD, submitted on SMARTS in December 2020, also recommended additional BMPs.

2 233. Based on self-reported data from stormwater samples, and as of July 1, 2021, PNP  
3 Oakland remained in Level 2 status for aluminum, iron, and COD based on NAL exceedances  
4 during the 2020-2021 reporting period:

Pollutant	2020-2021 Annual Average	Annual NAL
Aluminum	1.2 mg/L	0.75 mg/L
Iron	2.3 mg/L	1.0 mg/L
COD	210 mg/L	120 mg/L

9  
10 234. PNP Oakland's updated Level 2 ERA Technical Report for aluminum, iron, and  
11 COD, submitted on SMARTS in December 2021, also recommended additional BMPs.

12 235. However, the BMPs identified in PNP Oakland's updated Level 2 ERA Technical  
13 Reports were insufficient to prevent NAL exceedances at PNP Oakland and, in fact, did not  
14 achieve adequate reductions in pollutant concentrations in PNP Oakland's stormwater discharges.  
15 *See Industrial Stormwater Permit, § XII.D.*

16 236. Based on self-reported data from stormwater samples, and as of July 1, 2022, PNP  
17 Oakland remained in Level 2 status for COD, based on NAL exceedances during the 2021-2022  
18 reporting period. The annual average for COD during the 2021-2022 reporting period was 140  
19 mg/L (Annual NAL is 120 mg/L).

20 237. PNP Oakland's updated Level 2 ERA Technical Report for COD, submitted on  
21 SMARTS in December 2022, did not recommend additional BMPs.

22 238. However, the BMPs identified in PNP Oakland's updated Level 2 ERA Technical  
23 Report were insufficient to prevent NAL exceedances at PNP Oakland and, in fact, did not  
24 achieve adequate reductions in pollutant concentrations in PNP Oakland's stormwater discharges.  
25 *See Industrial Stormwater Permit, § XII.D.*

26 239. Based on self-reported data from stormwater samples, and as of July 1, 2023, PNP  
27 Oakland remained in Level 2 status for iron and COD. The annual average for iron during the  
28 2022-2023 reporting period was 1.66 mg/L (Annual NAL is 1.0 mg/L), and the annual average for

1 COD during the 2022-2023 reporting period was 285 mg/L (Annual NAL is 120 mg/L).

2 240. PNP Oakland failed to identify additional BMPs “necessary to prevent future NAL  
3 exceedances at PNP Oakland and to comply with the requirements of [the Industrial Stormwater  
4 Permit]” as exceedances continued. *See* Industrial Stormwater Permit, §§ XII.C.1.c, XII.C.2.a.ii.

5 3. PNP Oakland’s Annual Reports

6 241. PNP Oakland’s 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023  
7 Annual Reports were certified as “true, accurate, and complete” and in compliance with the  
8 Industrial Stormwater Permit.

9 242. In response to Question 7 in the Annual Report<sup>8</sup>, in 2018-2019 and 2022-2023,  
10 PNP Oakland identified mercury and selenium as present at the facility, and in 2019-2020, 2020-  
11 2021, and 2021-2022, PNP Oakland identified mercury and selenium as not present at the facility,  
12 but PNP Oakland’s operations were the same for all five years. Upon information and belief,  
13 mercury and selenium are present at the facility.

14 243. In response to Question 8 in the Annual Report<sup>9</sup>, in 2018-2019 and 2022-2023,  
15 PNP Oakland answered in the affirmative that it had included the pollutants identified in Question  
16 7 in the facility SWPPP, but mercury and selenium were not assessed in PNP Oakland’s SWPPPs.

17 **D. PNP Newark**

18 1. PNP Newark’s Operations and Stormwater Discharges

19 244. The owners/operators of PNP Newark operate Pick-N-Pull Newark #43 located at  
20 7400 Mowry Avenue in Newark, California.

21 245. PNP Newark discharges stormwater to a marshy area which drains to Mowry  
22 Slough, which ultimately drains to South San Francisco Bay at the Don Edwards San Francisco  
23 Bay National Wildlife Refuge. PNP Newark also discharges stormwater to Mowry Avenue and  
24 then to the Newark municipal separate storm sewer system.

25 \_\_\_\_\_  
26 <sup>8</sup> Question 7 in the Annual Report states: “permitted facilities located within an impaired watershed must assess for  
27 potential pollutants that may be present in the facility’s industrial stormwater discharge” and instructs permittees to  
“indicate the presence of the potential pollutant at the facility.”

28 <sup>9</sup> Question 8 in the Annual Report asks: “[h]as Discharger included the above pollutants in the SWPPP pollutant  
source assessment and assessed the need for analytical monitoring for the pollutants?”

1 246. South San Francisco Bay and its tributaries, including Mowry Slough and its  
2 surrounding marshy areas and wetlands, are waters of the United States and waters of the State.

3 247. PNP Newark is regulated by the Industrial Stormwater Permit.

4 248. The owners/operators of PNP Newark submitted a Notice of Intent to comply with  
5 the Industrial Stormwater Permit to the State Board on or around September 27, 2018.

6 249. Operations at PNP Newark generally consist of, but are not limited to, self-service  
7 auto dismantling operations.

8 250. The owners/operators of PNP Newark have self-identified PNP Newark primarily  
9 as falling under SIC code 5015.

10 251. Operations at PNP Newark are causing pollutants to be exposed to rainfall.

11 252. Pollutants generated at PNP Newark are exposed to stormwater flows.

12 253. Activities at PNP Newark generate significant debris and particulate matter, which  
13 contain pollutants and settle on surfaces within PNP Newark. During rain events, this pollution  
14 washes off of those surfaces and into stormwater discharge points, which flow to Mowry Slough  
15 and South San Francisco Bay.

16 254. The types of pollutants that PNP Newark releases into the immediate environment  
17 are known to include or have the potential to include lead, oil and grease, aluminum, TSS, iron,  
18 COD, zinc, cadmium, copper, mercury, selenium, windshield wiper fluid, used oil filters, used  
19 absorbent with gasoline, universal e-waste, road flares, oily absorbents and debris, nickel metal  
20 hydride battery (EV), mercury switches, lithium-ion batteries (EV), pesticides/herbicides,  
21 gasoline, crusher fluid, used oils, lead acid batteries, diesel fuel, and brake fluid, and other  
22 pollutants.

23 255. PNP Newark's sampling results since October 27, 2018, indicate that PNP  
24 Newark's stormwater discharges have consistently exceeded Benchmarks for TSS, pH, iron,  
25 aluminum, and copper.

26 256. PNP Newark's sampling results indicate that PNP Newark's discharges are causing  
27 or threatening to cause pollution, contamination, and/or nuisance, adversely impact human health  
28 or the environment, and violate applicable numeric Water Quality Standards and applicable

1 narrative Water Quality Standards.

2 257. Neither PNP Newark's past nor current SWPPPs include adequate BMPs designed  
3 to reduce pollutant levels in discharges to BAT and BCT levels.

4 258. PNP Newark's SWPPP fails to include the information required by the Industrial  
5 Stormwater Permit.

6 259. PNP Newark has failed to develop and implement an adequate monitoring and  
7 reporting program as required by the Industrial Stormwater Permit. Specifically, PNP Newark  
8 failed to consistently analyze its stormwater samples for copper and zinc and failed to include  
9 COD as a parameter for lab analysis.

10 2. PNP Newark's Exceedance Response Action Reports

11 260. Based on self-reported data from stormwater samples, as of July 1, 2016, PNP  
12 Newark was in Level 1 status for aluminum and iron based on NAL exceedances during the 2015-  
13 2016 reporting period.

14 261. Based on self-reported data from stormwater samples, as of July 1, 2017, PNP  
15 Newark was in Level 2 status for aluminum and iron based on NAL exceedances during the 2016-  
16 2017 reporting period.

17 262. Based on self-reported data from stormwater samples, as of July 1, 2018, PNP  
18 Newark was in Level 2 status for aluminum and iron based on NAL exceedances during the 2017-  
19 2018 reporting period.

20 263. PNP Newark's Level 2 status ERA Action Plan for aluminum and iron, submitted  
21 on SMARTS in December 2017, recommended additional BMPs.

22 264. However, the BMPs identified PNP Newark's Level 2 status ERA Action Plan  
23 were insufficient to prevent NAL exceedances at PNP Newark and, in fact, did not achieve  
24 adequate reductions in pollutant concentrations in PNP Newark's stormwater discharges. *See*  
25 Industrial Stormwater Permit, § XII.D, as evidenced by the fact that sampling results from the  
26 2017-2018 reporting period showed continued exceedances of aluminum and iron.

27 265. PNP Newark's Level 2 status ERA Technical Report for aluminum and iron,  
28 submitted on SMARTS in December 2018, also recommended additional BMPs.

1 266. However, the BMPs identified in PNP Newark's Level 2 status ERA Technical  
2 Report were insufficient to prevent NAL exceedances at PNP Newark and, in fact, did not achieve  
3 adequate reductions in pollutant concentrations in PNP Newark's stormwater discharges. *See*  
4 *Industrial Stormwater Permit*, § XII.D.

5 267. Based on self-reported data from stormwater samples, and as of July 1, 2019, PNP  
6 Newark remained in Level 2 status for aluminum and iron based on NAL exceedances during the  
7 2018-2019 reporting period. The annual average for aluminum during the 2018-2019 reporting  
8 period was 1.15 mg/L (Annual NAL is 0.75 mg/L), and the annual average for iron during the  
9 2018-2019 reporting period was 3.2 mg/L (Annual NAL is 1.0 mg/L).

10 268. PNP Newark's Level 1 ERA Report for copper and TSS and updated Level 2 ERA  
11 Technical Report for aluminum and iron, submitted on SMARTS in December 2019, also  
12 recommended additional BMPs.

13 269. However, the BMPs identified in PNP Newark's Level 1 ERA Report and updated  
14 Level 2 ERA Technical Report were insufficient to prevent NAL exceedances at PNP Newark  
15 and, in fact, did not achieve adequate reductions in pollutant concentrations in PNP Newark's  
16 stormwater discharges. *See Industrial Stormwater Permit*, § XII.D.

17 270. Based on self-reported data from stormwater samples, and as of July 1, 2020, PNP  
18 Newark remained in Level 2 status for aluminum and iron. Despite having no NAL exceedances  
19 during the 2019-2020 reporting period, PNP Newark failed to collect an adequate number of  
20 stormwater samples during the 2019-2020 reporting period to return to Baseline status.

21 271. PNP Newark's updated Level 2 ERA Technical Reports for aluminum and iron,  
22 submitted on SMARTS in December 2020, also recommended additional BMPs.

23 272. No stormwater samples were collected during the 2020-2021 reporting period, so  
24 as of July 1, 2021, PNP Newark remained in Level 2 status for aluminum and iron.

25 273. PNP Newark failed to submit an updated Level 2 ERA Technical Reports for  
26 aluminum and iron in 2021.

27 274. Based on self-reported data from stormwater samples, and as of July 1, 2022, PNP  
28 Newark remained in Level 2 status for aluminum and iron, based on NAL exceedances during the

1 2021-2022 reporting period. The annual average for aluminum during the 2021-2022 reporting  
2 period was 0.83 mg/L (Annual NAL is 0.75 mg/L), and the annual average for iron during the  
3 2021-2022 reporting period was 1.43 mg/L (Annual NAL is 1.0 mg/L).

4 275. PNP Newark's updated Level 2 ERA Technical Report for aluminum and iron,  
5 submitted on SMARTS in December 2022, also recommended additional BMPs.

6 276. However, the BMPs identified in PNP Newark's updated Level 2 ERA Technical  
7 Report and Level 1 ERA Report were insufficient to prevent NAL exceedances at PNP Newark  
8 and, in fact, did not achieve adequate reductions in pollutant concentrations in PNP Newark's  
9 stormwater discharges. *See* Industrial Stormwater Permit, § XII.D.

10 277. Based on self-reported data from stormwater samples, and as of July 1, 2023, PNP  
11 Newark remained in Level 2 status for aluminum and iron. The annual average for aluminum  
12 during the 2022-2023 reporting period was 1.3 mg/L (Annual NAL is 0.75 mg/L), and the annual  
13 average for iron during the 2022-2023 reporting period was 1.79 mg/L (Annual NAL is 1.0 mg/L).

14 278. PNP Newark failed to identify additional BMPs "necessary to prevent future NAL  
15 exceedances at PNP Newark and to comply with the requirements of [the Industrial Stormwater  
16 Permit]" as exceedances continued. *See* Industrial Stormwater Permit, §§ XII.C.1.c, XII.C.2.a.ii.

### 17 3. PNP Newark's Annual Reports

18 279. PNP Newark's 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023  
19 Annual Reports were certified as "true, accurate, and complete" and in compliance with the  
20 Industrial Stormwater Permit.

21 280. In response to Question 3 in the Annual Report<sup>10</sup>, in 2019-2020, PNP Newark  
22 answered in the affirmative, but only sampled one qualified storm event and did not explain why  
23 additional samples were not collected.

24 281. In response to Question 7 in the Annual Report<sup>11</sup>, in 2018-2019, 2019-2020, 2020-

25 \_\_\_\_\_  
26 <sup>10</sup> Question 3 in the Annual Report asks: "Did you sample the required number of Qualifying Storm Events during the  
reporting year for all discharge locations, in accordance with Section XI.B?"

27 <sup>11</sup> Question 7 in the Annual Report states: "permitted facilities located within an impaired watershed must assess for  
28 potential pollutants that may be present in the facility's industrial stormwater discharge" and instructs permittees to  
"indicate the presence of the potential pollutant at the facility."

1 2021, 2021-2022, and 2022-2023, PNP Newark failed to identify mercury and selenium as present  
2 at the facility, but PNP Newark's operations were the same as PNP Fairfield, PNP Richmond and  
3 PNP Oakland for all five years. Upon information and belief, mercury and selenium are present at  
4 the facility.

5 **E. Activities Contributing to CWA Violations**

6 282. Defendants have not developed and/or implemented adequate SWPPPs at the  
7 Facilities.

8 283. Defendants have not developed and/or implemented BMPs that adequately  
9 minimize the exposure of pollutants to stormwater at the Facilities.

10 284. Defendants have not developed and/or implemented BMPs at the Facilities that  
11 adequately control and minimize polluted runoff from the Facilities.

12 285. Defendants have not developed and/or implemented BMPs at the Facilities that  
13 adequately treat and remove pollutants in stormwater prior to discharge.

14 286. Defendants have not developed and/or implemented adequate measures to reduce  
15 or eliminate stormwater pollution that constitute BAT/BCT.

16 287. Defendants have not developed and/or implemented adequate BMPs at the  
17 Facilities to achieve stormwater discharges that meet Benchmarks, NALs, and/or applicable Water  
18 Quality Standards.

19 288. Defendants have not adequately evaluated and revised the Facilities' SWPPPs to  
20 address these failures.

21 289. Defendants have failed to properly operate and maintain the structures and systems  
22 that have been put in place at the Facilities to achieve compliance with the Industrial Stormwater  
23 Permit and its SWPPP requirements.

24 290. Defendants have not developed and/or implemented an adequate monitoring and  
25 reporting program at the Facilities.

26 291. Defendants' monitoring and reporting activities have not resulted in practices that  
27 adequately reduce or prevent pollutants from discharging from the stormwater flows from the  
28 Facilities.

1 292. Defendants' monitoring activities have not effectively identified compliance  
2 problems at the Facilities or resulted in effective revisions of the SWPPPs.

3 293. Due to Defendants' lack of effective pollution prevention measures, including  
4 effective BMPs, and their failure to implement an effective monitoring and reporting program,  
5 stormwater from the Facilities becomes polluted with many constituents. Pollutants become  
6 entrained in stormwater when such water flows over and across the outdoor areas of the Facilities.

7 294. Defendants' annual stormwater sampling results indicate that the Facilities'  
8 discharges of stormwater are consistently contaminated with higher levels of pollutants than are  
9 permissible under the Industrial Stormwater Permit and the CWA.

10 295. Defendants' annual stormwater sampling results indicate that the Facilities'  
11 discharges of stormwater are regularly contaminated with higher levels of pollutants than are  
12 consistent with BMPs that constitute BAT/BCT.

13 296. Defendants' repeated stormwater exceedances of Benchmarks since October 27,  
14 2018, for pollutants, including TSS, COD, oil and grease, pH, iron, aluminum, copper, lead, and  
15 zinc, indicate that Defendants have failed and continue to fail to meet BAT/BCT and applicable  
16 Water Quality Standards.

17 297. Defendants have not developed and/or implemented adequate Level 2 status ERA  
18 Technical Reports at the Facilities for aluminum, iron, or COD.

19 298. Defendants have certified the Facilities' Annual Reports as "true, accurate, and  
20 complete" and in compliance with the Industrial Stormwater Permit, but have repeatedly provided  
21 false responses to questions in the Annual Reports.

22 **VI. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **Discharges in Excess of Effluent Limitations in Violation of the**

25 **Industrial Stormwater Permit and the Clean Water Act**

26 **(Violations of 33 U.S.C. §§ 1311, 1342, 1365(a) and 1365(f))**

27 **(Against All Defendants)**

28 299. Plaintiff incorporates the allegations contained in all other paragraphs as though

1 fully set forth herein.

2 300. The CWA and the Industrial Stormwater Permit include effluent limitations, which  
3 prohibit the discharge of pollutants from the Facilities in concentrations above the level  
4 commensurate with the application of BAT for toxic pollutants and BCT for conventional  
5 pollutants.

6 301. Defendants have discharged and continue to discharge stormwater from the  
7 Facilities containing levels of pollutants that do not achieve compliance with the BAT/BCT  
8 requirements during every significant rain event (defined by EPA as a rainfall event generating  
9 0.1 inches or more of rain) occurring from October 27, 2018, through the present. *See* Exhibit 1,  
10 Notice Letter at Attachment 3. Defendants' failure to develop and/or implement BMPs adequate  
11 to achieve the pollutant discharge reductions attainable via BAT or BCT at the Facilities is a  
12 violation of the Industrial Stormwater Permit and the CWA. *See* Industrial Stormwater Permit, §§  
13 I.D (Finding 32), V.A; 33 U.S.C. § 1311(b).

14 302. Each day, since at least October 27, 2018, that Defendants have discharged  
15 stormwater from the Facilities containing pollutants in excess of BAT/BCT requirements is a  
16 separate and distinct violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

17 303. Defendants' CWA violations described in the paragraphs above will continue in the  
18 future, as violations of Sections I.D and V.A of the Industrial Stormwater Permit, until Defendants  
19 develop and implement BMPs at the Facilities adequate to achieve pollutant discharge reductions  
20 attainable via BAT and BCT.

21 304. By committing the acts and omissions alleged above after November 2, 2015,  
22 Defendants are subject to an assessment of civil penalties for each and every violation of the  
23 CWA in the amount of up to \$64,618 per day.

24 305. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
25 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
26 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy  
27 at law.

28 306. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an

1 actual controversy exists as to the rights and other legal relations of the Parties.

2 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

3 **SECOND CAUSE OF ACTION**

4 **Discharges in Excess of Receiving Water Limitations in Violation of the Industrial**  
5 **Stormwater Permit and the Clean Water Act**

6 **(Violations of 33 U.S.C. §§ 1311, 1342, 1365(a), and 1365(f))**

7 **(Against All Defendants)**

8 307. Plaintiff incorporates the allegations contained in all other paragraphs as though  
9 fully set forth herein.

10 308. Receiving Water Limitations of the Industrial Stormwater Permit prohibit  
11 stormwater discharges from causing or threatening to cause pollution, contamination, or nuisance.  
12 *See* Industrial Stormwater Permit, § VI.C.

13 309. Receiving Water Limitations of the Industrial Stormwater Permit require that  
14 stormwater discharges and authorized non-stormwater discharges shall not adversely impact  
15 human health or the environment. *See id.* at § VI.B.

16 310. Finally, Receiving Water Limitations of the Industrial Stormwater Permit prohibit  
17 discharges that cause or contribute to a violation of any water quality standard contained in a  
18 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. *Id.* at §  
19 VI.A.

20 311. Since at least October 27, 2018, Defendants have been discharging polluted  
21 stormwater from the Facilities in violation of the Receiving Water Limitations of the Industrial  
22 Stormwater Permit during every significant rain event (defined by EPA as a rainfall event  
23 generating 0.1 inches or more of rain). *See* Exhibit 1, Notice Letter at Attachment 3.

24 312. The polluted stormwater discharged from the Facilities during every significant  
25 rain event contains pollutants harmful to fish, plants, birds, and human health that have adversely  
26 affected, and continue to adversely affect, human health and the environment in violation of  
27 Section VI.B of the Industrial Stormwater Permit.

28 313. Discharges of polluted stormwater from the Facilities have in the past caused, and

1 will continue to cause, pollution, contamination, and/or nuisance to the waters of the United States  
2 in violation of Section VI.C of the Industrial Stormwater Permit.

3 314. Discharges of polluted stormwater from the Facilities have in the past caused, and  
4 will continue to cause or contribute to violations of the Water Quality Standards set forth in the  
5 Basin Plan in violation of Section VI.A of the Industrial Stormwater Permit.

6 315. Each and every violation of Section IV.B's Receiving Water Limitations is a  
7 separate and distinct violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

8 316. Each and every violation of Section IV.C's Receiving Water Limitations is a  
9 separate and distinct violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

10 317. Each and every violation of Section IV.A's Receiving Water Limitations is a  
11 separate and distinct violation of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

12 318. By committing the acts and omissions alleged above after November 2, 2015,  
13 Defendants are subject to an assessment of civil penalties for each and every violation of the  
14 CWA in the amount of up to \$64,618 per day.

15 319. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
16 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
17 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy  
18 at law.

19 320. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an  
20 actual controversy exists as to the rights and other legal relations of the Parties.

21 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Adequately Develop, Implement, and/or Revise a Storm Water Pollution**

24 **Prevention Plan in Violation of the Industrial Stormwater Permit**

25 **(Violations of 33 U.S.C. §§ 1311, 1342, 1365(a) and 1365(f))**

26 **(Against All Defendants)**

27 321. Plaintiff incorporates the allegations contained in all other paragraphs as though  
28 fully set forth herein.

1 322. The Industrial Stormwater Permit requires dischargers of stormwater associated  
2 with industrial activity to develop and implement an adequate SWPPP when they commence  
3 industrial activity. Industrial Stormwater Permit, § X.B.

4 323. Defendants, as of October 27, 2018, have commenced industrial activity and  
5 continue to conduct industrial activity at the Facilities.

6 324. Defendants have failed and continue to fail to develop and implement adequate  
7 SWPPPs or implement all necessary revisions to the SWPPPs for the Facilities as required by the  
8 Industrial Stormwater Permit.

9 325. Defendants have failed and continue to fail to develop or implement SWPPPs for  
10 the Facilities that include BMPs adequate to meet the requirements of Section X of the Industrial  
11 Stormwater Permit.

12 326. Defendants have failed and continue to fail to adequately develop or implement  
13 SWPPPs at the Facilities that prevent discharges from violating the Receiving Water Limitations  
14 and Effluent Limitations of the Industrial Stormwater Permit.

15 327. Each and every violation of the Industrial Stormwater Permit's SWPPP  
16 requirements at the Facilities is a separate and distinct violation of CWA section 301(a), 33 U.S.C.  
17 § 1311(a).

18 328. Defendants have been in violation of the Industrial Stormwater Permit's SWPPP  
19 requirements every day since October 27, 2018. Defendants will continue to be in violation of the  
20 SWPPP requirements each day that Defendants fail to develop and fully implement adequate  
21 SWPPPs for the Facilities.

22 329. By committing the acts and omissions alleged above after November 2, 2015,  
23 Defendants are subject to an assessment of civil penalties for each and every violation of the  
24 CWA in the amount of up to \$64,618 per day.

25 330. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
26 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
27 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy  
28 at law.

1 331. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an  
2 actual controversy exists as to the rights and other legal relations of the Parties.

3 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Adequately Develop, Implement, and/or Revise a Monitoring Implementation**

6 **Program in Violation of the Industrial Stormwater Permit and the Clean Water Act**

7 **(Violations of 33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f))**

8 **(Against All Defendants)**

9 332. Plaintiff incorporates the allegations contained in the above paragraphs as though  
10 fully set forth herein.

11 333. The Industrial Stormwater Permit requires dischargers of stormwater associated  
12 with industrial activity to develop and implement a stormwater monitoring and reporting program,  
13 called a Monitoring and Implementation Plan (MIP), prior to commencing industrial activity.  
14 Industrial Stormwater Permit, §§ X.I, XI.A-D.

15 334. Defendants have failed and continue to fail to adequately develop, implement, or  
16 revise qualifying and adequate MIPs for the Facilities in violation of the Industrial Stormwater  
17 Permit and CWA.

18 335. Defendants have been in violation of the Industrial Stormwater Permit's MIP  
19 requirements every day since October 27, 2018. Defendants will continue to be in violation of the  
20 MIP requirements each day that Defendants fail to develop and fully implement adequate MIPs  
21 for the Facilities.

22 336. Each and every violation of the Industrial Stormwater Permit's Monitoring  
23 Implementation Program requirements at the Facilities is a separate and distinct violation of the  
24 CWA.

25 337. By committing the acts and omissions alleged above after November 2, 2015,  
26 Defendants are subject to an assessment of civil penalties for each and every violation of the  
27 CWA in the amount of up to \$64,618 per day.

28 338. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §

1 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
2 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy  
3 at law.

4 339. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an  
5 actual controversy exists as to the rights and other legal relations of the Parties.

6 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to Submit Adequate Exceedance Response Action Reports in Violation of the**

9 **Industrial Stormwater Permit and the Clean Water Act**

10 **(Violations of U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f))**

11 **(Against All Defendants)**

12 340. Plaintiff incorporates the allegations contained in the above paragraphs as though  
13 fully set forth herein.

14 341. Plaintiff is informed and believes, and thereon alleges, that Defendants have  
15 submitted inadequate Level 2 ERA Technical Reports for aluminum, iron, and COD.

16 342. Defendants' violations of the Level 2 status ERA requirements of the Industrial  
17 Permit and the CWA are ongoing and continuous.

18 343. Every day Defendants conduct operations at the Facilities without adequate Level 2  
19 ERA Technical Reports is a separate and distinct violation of the Industrial Stormwater Permit  
20 and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

21 344. Defendants have been in daily and continuous violation of the Industrial  
22 Stormwater Permit Level 2 status ERA requirements every day since at least October 27, 2018.

23 345. By committing the acts and omissions alleged above after November 2, 2015,  
24 Defendants are subject to an assessment of civil penalties for each and every violation of the  
25 CWA in the amount of up to \$64,618 per day.

26 346. An action for injunctive relief under the CWA is authorized by Section 505(a) of  
27 the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above  
28 would irreparably harm Plaintiff and Plaintiff's members, for which harm Plaintiff has no plain,

1 speedy, or adequate remedy at law.

2 347. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an  
3 actual controversy exists as to the rights and other legal relations of the Parties.

4 WHEREFORE, Plaintiff prays judgment against the Defendants as set forth hereafter.

5 **SIXTH CAUSE OF ACTION**

6 **False Certification of Annual Reports in Violation of the Industrial Stormwater Permit and**  
7 **the Clean Water Act**

8 **(Violations of 33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f))**

9 **(Against All Defendants)**

10 348. Plaintiff incorporates the allegations contained in the above paragraphs as though  
11 fully set forth herein.

12 349. The Industrial Stormwater Permit requires dischargers to certify and submit via  
13 SMARTS an Annual Report by July 15 of each reporting period. Industrial Stormwater Permit, §  
14 XVI.A.

15 350. The Annual Report must include a compliance checklist indicating compliance  
16 with applicable Industrial Stormwater Permit requirements and explanations for any non-  
17 compliance with Industrial Stormwater Permit requirements. Industrial Stormwater Permit, §§  
18 XVI.B.1-2.

19 351. Plaintiff is informed and believes, and thereon alleges, that for the 2019-2020  
20 reporting year, PNP Fairfield, PNP Richmond, and PNP Newark answered Question 3 in their  
21 Annual Reports, in the affirmative, but did not collect the required number of stormwater samples.  
22 They certified the reports as in compliance with the Industrial Stormwater Permit.

23 352. Plaintiff is informed and believes, and thereon alleges, that for the 2019-2020,  
24 2020-2021, and 2021-2022 reporting years, PNP Fairfield, PNP Richmond, and PNP Oakland  
25 falsely certified their responses to Question 7, asserting mercury and selenium were not present at  
26 the Facilities despite asserting the opposite in the 2018-2019 and 2022-2023 reporting years.  
27 Defendants certified the reports as in compliance with the Industrial Stormwater Permit.

28 353. Plaintiff is informed and believes, and thereon alleges, that for the 2018-2019,

1 2019-2020, 2020-2021, 2021-2022, and 2022-2023 reporting years, PNP Newark falsely certified  
2 its responses to Question 7, asserting mercury and selenium were not present at the facility,  
3 despite PNP Newark's operations being the same as PNP Fairfield, PNP Richmond, and PNP  
4 Oakland. Defendants certified the reports as in compliance with the Industrial Stormwater Permit.

5 354. Plaintiff is informed and believes, and thereon alleges, that for the 2018-2019  
6 reporting year, PNP Fairfield, PNP Richmond, and PNP Newark, and also PNP Fairfield and PNP  
7 Oakland for the 2022-2023 reporting period, answered Question 8 in their Annual Reports, in the  
8 affirmative, but did not assess selenium in their respective SWPPPs. Defendants certified the  
9 reports as in compliance with the Industrial Stormwater Permit.

10 355. Every day Defendants conduct operations at the Facilities with falsely certified  
11 Annual Reports is a separate and distinct violation of the Industrial Stormwater Permit and section  
12 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

13 356. Defendants have been in daily and continuous violation of the Industrial  
14 Stormwater Permit's Annual Report requirements every day since at least October 27, 2018.

15 357. By committing the acts and omissions alleged above after November 2, 2015,  
16 Defendants are subject to an assessment of civil penalties for each and every violation of the  
17 CWA in the amount of up to \$64,618 per day.

18 358. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §  
19 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm  
20 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy  
21 at law.

22 359. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an  
23 actual controversy exists as to the rights and other legal relations of the Parties.

24 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

25 **SEVENTH CAUSE OF ACTION**

26 **Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200**

27 **(Cal. Fish & Game Code §§ 5650 and 5652)**

28 **(Against All Defendants)**

1 360. Plaintiff incorporates the allegations contained in the above paragraphs as though  
2 fully set forth herein.

3 361. When contaminated stormwater is discharged from the Facilities, heavy metals,  
4 TSS, COD, oil and grease, and other pollutants are deposited into the respective receiving waters.

5 362. Defendants permit heavy metals, such as copper, lead, and zinc, TSS, COD, oil and  
6 grease, and other pollutants to pass into the receiving waters via stormwater discharges from the  
7 Facilities.

8 363. Depositing, allowing to pass into, or placing in a way that permits passage of any  
9 substance or material deleterious to fish, plant life, mammals, or bird life into waters of the state is  
10 illegal and unlawful in California under Fish and Game Code section 5650(a)(6).

11 364. Heavy metals, such as copper, lead, and zinc, TSS, COD, oil and grease, and other  
12 pollutants are deleterious to fish, plant life, mammals, or bird life.

13 365. Depositing, allowing to pass into, or placing in a way that permits passage of any  
14 waste into waters of the state is illegal and unlawful in California under Fish and Game Code  
15 section 5652(a).

16 366. The receiving waters are waters of the State of California in addition to being  
17 waters of the United States.

18 367. Anything Defendants allow to leave or discharge from the Facilities is waste.

19 368. Defendants' violations of Fish and Game Code sections 5650 and 5652, the  
20 Industrial Stormwater Permit, and the Clean Water Act each constitute unlawful conduct under  
21 Business and Professions Code section 17200.

22 369. Each Defendant is a person. *See* Bus. & Prof. Code § 17201.

23 370. Baykeeper and its members have been and will continue to suffer injury and harm  
24 as a result of Defendants' unlawful conduct. Baykeeper has suffered injury in fact and monetary  
25 harm because it has dedicated resources to investigating and stopping Defendants' conduct that  
26 would not have been necessary but for Defendants' illegal actions and which could have been  
27 used on other matters.

28 371. Defendants' ongoing pollution of heavy metals, TSS, COD, oil and grease, and

1 other pollutants into the receiving waters frustrates Baykeeper's mission.

2 372. This Court has jurisdiction to enjoin Defendants' unlawful conduct that violates  
3 Fish and Game Code § 5650(a)(6) under Business and Professions Code section 17203.

4 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

5 **EIGHTH CAUSE OF ACTION**

6 **Violation of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200**

7 **(Cal. Fish & Game Code § 1602)**

8 **(Against Owners/Operators of PNP Fairfield, PNP Richmond, and PNP Oakland)**

9 373. Plaintiff incorporates the allegations contained in the above paragraphs as though  
10 fully set forth herein.

11 374. When contaminated stormwater is discharged from PNP Fairfield, PNP Richmond,  
12 and PNP Oakland, heavy metals, such as copper, lead, and zinc, TSS, COD, oil and grease, and  
13 other pollutants are deposited into the respective receiving waters.

14 375. The owners/operators of PNP Fairfield, PNP Richmond, and PNP Oakland permit  
15 heavy metals, TSS, COD, oil and grease, and other pollutants to pass into the receiving waters via  
16 stormwater discharges from the Facilities.

17 376. The receiving waters are rivers, streams, or lakes.

18 377. Depositing or disposing of waste where it may pass into any river stream or lake  
19 without notification of the discharge to the California Department of Fish and Wildlife, as well as  
20 approval of that notification, is prohibited in California under Fish and Game Code section  
21 1602(a)(1)-(4).

22 378. Plaintiff was unable to find any Fish and Game Code section 1602 notifications for  
23 PNP Fairfield, PNP Richmond, or PNP Oakland.

24 379. The owners/operators of PNP Fairfield, PNP Richmond, and PNP Oakland's  
25 violations of Fish and Game Code section 1602, the Industrial Stormwater Permit, and the Clean  
26 Water Act each constitute unlawful conduct under Business and Professions Code section 17200.

27 380. Each owner/operator of PNP Fairfield, PNP Richmond, and PNP Oakland is a  
28 person. *See* Bus. & Prof. Code § 17201.

1 381. Baykeeper and its members have been and will continue to suffer injury and harm  
2 as a result of the owners/operators of PNP Fairfield, PNP Richmond, and PNP Oakland's unlawful  
3 conduct. Baykeeper has suffered injury in fact and monetary harm because it has dedicated  
4 resources to investigating and stopping the owners/operators of PNP Fairfield, PNP Richmond,  
5 and PNP Oakland's conduct that would not have been necessary but for the owners/operators of  
6 PNP Fairfield, PNP Richmond, and PNP Oakland's illegal actions and which could have been  
7 used on other matters.

8 382. The owners/operators of PNP Fairfield, PNP Richmond, and PNP Oakland's  
9 ongoing pollution of heavy metals, TSS, COD, oil and grease, and other pollutants into the  
10 receiving waters frustrates Baykeeper's mission.

11 383. This Court has jurisdiction to enjoin the owners/operators of PNP Fairfield, PNP  
12 Richmond, and PNP Oakland unlawful conduct that violates Fish and Game Code § 1602 under  
13 Business and Professions Code section 17203.

14 WHEREFORE, Plaintiff prays for judgment against the owners/operators of PNP Fairfield, PNP  
15 Richmond, and PNP Oakland as set forth below.

16 **VII. PRAYER FOR RELIEF**

17 Plaintiff respectfully requests this Court to grant the following relief:

18 1. Judgment for Plaintiff in this matter enjoining Defendants from discharging  
19 pollutants from the Facilities to stormwater discharge points, which discharge to the unnamed  
20 tributary of Union Creek, Union Creek, Hill Slough, Suisun Slough, Suisun Marsh Wetlands,  
21 Suisun Bay, Wildcat Creek, San Pablo Bay, Elmhurst Creek, San Leandro Bay, Mowry Slough,  
22 and San Francisco Bay.

23 2. A Court Order declaring:

24 a. Defendants to have violated and to be in violation of the Clean Water Act  
25 for failing to meet effluent limitations which include the Best Available  
26 Technology Economically Achievable and Best Conventional Pollutant  
27 Control Technology requirements;

28 b. Defendants to have violated and to be in violation of the Clean Water Act

1 for discharging pollutants from the Facility in violation of the Industrial  
2 Stormwater Permit's Receiving Water Limitations;

3 c. Defendants to have violated and to be in violation of the Clean Water Act  
4 for failing to develop, implement, and/or revise adequate SWPPPs under  
5 the Industrial Stormwater Permit;

6 d. Defendants to have violated and to be in violation of the Clean Water Act  
7 for failing to develop, implement, and/or revise adequate MIPs under the  
8 Industrial Stormwater Permit;

9 e. Defendants to have violated and to be in violation of the Clean Water Act  
10 for failing comply with Industrial Stormwater Permit Level 1 status ERA  
11 requirements;

12 f. Defendants to have violated and to be in violation of the Clean Water Act  
13 for failing comply with Industrial Stormwater Permit Level 2 status ERA  
14 requirements;

15 g. Defendants to have violated and to be in violation of the Clean Water Act  
16 for falsely certifying their Annual Reports under the Industrial Stormwater  
17 Permit; and

18 h. Defendants have violated and continue to violate California Fish and Game  
19 Code sections 5650(a)(6), 5652(a), and 1602(a)(1)-(4).

20 3. A Court Order ordering Defendants to restore all receiving waters damaged by  
21 Defendants' illegal discharges of pollutants from the Facilities;

22 4. A Court Order enjoining Defendants from violating sections 301(a) and (b) and  
23 section 402(p) of the Clean Water Act and from violating the substantive and procedural  
24 requirements of the Industrial Stormwater Permit at the Facilities;

25 5. A Court Order enjoining Defendants from continuing their violations of Fish and  
26 Game Code sections 5650 and 5652 pursuant to Business and Professions Code section 17203;

27 6. A Court Order ordering the owners/operators of PNP Fairfield, PNP Richmond,  
28 and PNP Oakland to submit a notification to the California Department of Fish and Game for a

1 Lake and Streambed Alteration Agreement pursuant to California Fish and Game Code section  
2 1602 for PNP Fairfield, PNP Richmond, and PNP Oakland;

3 7. A Court Order assessing civil monetary penalties for each violation of the CWA in  
4 the amount of \$64,618.00 per day per violation;

5 8. A Court Order awarding Plaintiff its reasonable costs of suit, including attorney,  
6 witness, and consultant fees, as permitted by Section 505(d) of the Clean Water Act, 33 U.S.C. §  
7 1365(d), and California Code of Civil Procedure section 1021.5; and

8 9. Award other relief as this Court may deem just and appropriate.

9

10 Dated: February 20, 2024

Respectfully Submitted,

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SAN FRANCISCO BAYKEEPER

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/s/ Nicole C. Sasaki

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Nicole C. Sasaki

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Eric J. Buescher

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Attorneys for Plaintiff

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