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9 Attorneys for Plaintiff  
10 OUR CHILDREN'S EARTH FOUNDATION

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 OUR CHILDREN'S EARTH FOUNDATION, ) Case No.  
14 )  
Plaintiff, )  
15 )  
v. ) COMPLAINT FOR DECLARATORY  
16 ) AND INJUNCTIVE RELIEF AND  
THE CITY OF PACIFICA, a municipal corporation, ) CIVIL PENALTIES  
17 ) CLEAN WATER ACT CASE  
18 )  
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1 Plaintiff Our Children's Earth Foundation ("OCE" or "Plaintiff") alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff brings this action under section 505(a)(1) of the Clean Water Act (CWA), 33  
4 U.S.C. § 1365(a)(1), which authorizes citizens to bring civil actions against any person who is alleged  
5 to be in violation of an effluent standard or limitation established under the CWA.

6 2. This lawsuit seeks relief for Defendant City of Pacifica ("Pacifica" or "Defendant")'s illegal  
7 discharges of thousands of gallons of raw or inadequately treated sewage into waters of the United  
8 States in violation of (1) CWA section 301; (2) Pacifica's National Pollutant Discharge Elimination  
9 System (NPDES) permit to Pacifica's publicly owned treatment works ("the POTW"), NPDES Permit  
10 No. CA0038776, issued via Order No. R2-2006-0003-DWQ ("the NPDES Permit"); and, (3)  
11 Pacifica's NPDES permit regulating discharges into and from Pacifica's municipal separate storm  
12 sewer system ("the MS4")--NPDES Permit No. CAS0029921 (hereinafter the "MS4 Permit").

13 **JURISDICTION**

14 3. This Court has subject matter jurisdiction over the claims for violations of the CWA set forth  
15 in this Complaint pursuant to CWA section 505(a)(1), 33 U.S.C. § 1365(a)(1), and 28 U.S.C. section  
16 1331 (an action for declaratory, injunctive and other relief arising under the laws of the United States).

17 4. On August 24, 2009, OCE served a 60-Day Notice Letter ("Notice Letter") on Pacifica  
18 regarding Pacifica's CWA violations, and of Plaintiff's intention to file suit against Pacifica. Copies of  
19 said Notice Letter were also sent to the Administrator of the United States Environmental Protection  
20 Agency ("EPA"), the Regional Administrator of EPA Region IX, the Executive Director of the State  
21 Water Resources Control Board ("State Board"), and the Executive Officer of the Regional Water  
22 Quality Control Board, North Coast Region ("Regional Board") as required by the CWA, 33 U.S.C. §  
23 1365(b)(1)(A). A copy of this Notice Letter is attached to this Complaint.

24 5. Neither the EPA nor the State of California has commenced or is diligently prosecuting an  
25 action in court to redress the CWA violations alleged in the Notice Letter. Claims for civil penalties  
26 asserted in this action are not barred by any prior assessed administrative penalty under CWA section  
27 309(g), 33 U.S.C. § 1319(g).

28 6. This Court has personal jurisdiction over Pacifica. Pacifica is a California municipal

1 corporation doing business in California, including within the United States Northern District of  
2 California.

3 **VENUE**

4 7. Venue in the Northern District of California is proper pursuant to CWA section 505(c)(1),  
5 33 U.S.C. § 1365(c)(1), because the actions that gave rise to this case occurred within the Northern  
6 District of California and Pacifica’s offices are located in the Northern District of California.

7 **INTRADISTRICT ASSIGNMENT**

8 8. Intradistrict assignment of this matter to the San Francisco Division of the Court is  
9 appropriate pursuant to Civil Local Rule 3-2(c) in that Pacifica’s municipal corporate office is located  
10 just twelve miles south of San Francisco and the actions that gave rise to this case occurred in Pacifica  
11 and the Pacific Ocean immediately south of San Francisco County.

12 **THE PARTIES**

13 9. Plaintiff OCE is a non-profit public benefit corporation with members throughout the United  
14 States dedicated to protecting the public, especially children, from the health impacts of pollution and  
15 other environmental hazards and to improving environmental quality for the public benefit. Another  
16 aspect of OCE's mission is to participate in environmental decisionmaking, enforce environmental laws,  
17 both federal and state, to reduce pollution, and to educate the public concerning those laws and their  
18 enforcement. OCE’s members use Pacifica’s ocean waters and fresh waters for body contact water  
19 sports and other forms of recreation, wildlife observation, aesthetic enjoyment, educational study, and  
20 spiritual contemplation. These OCE members are concerned about water quality and are and will  
21 continue to be adversely affected by Pacifica’s sewage discharge violations.

22 10. Pacifica is a municipal corporation organized under the laws of the State of California.  
23 Pacifica’s POTW, which includes Pacifica’s Calera Creek Wastewater Treatment Plant (“the  
24 WWTP”) and the collection system which is appurtenant to the WWTP, are the subject of this  
25 Complaint.

26 **FACTUAL BACKGROUND**

27 11. Pacifica owns and operates the WWTP and appurtenant collection system, which  
28

1 collectively is a publicly owned treatment works as defined in CWA section 212(2)<sup>1</sup> and 40 C.F.R.  
2 section 125.58(s).

3 12. The WWTP and related collection system collects and treats sanitary sewage from  
4 Pacifica's residents and businesses. The WWTP discharges treated sanitary sewage to Pacific Ocean  
5 receiving waters. The CWA prohibits the discharge of pollutants by any person to waters of the United  
6 States except in compliance with a permit duly issued under the CWA. CWA § 301(a), 33 U.S.C. §  
7 1311(a). The CWA authorizes EPA, or states with permit programs approved by EPA, to issue  
8 NPDES permits allowing for the discharge of pollutants into waters of the United States. CWA § 402,  
9 33 U.S.C. § 1342.

10 13. NPDES permits to POTWs must include effluent limitations set according to the  
11 level of pollutant reduction attainable via the application of secondary treatment. CWA §  
12 301(b)(1)(B), 33 U.S.C. § 1311(b)(1)(B). In addition, NPDES permits must include any more  
13 stringent effluent limitations necessary to meet state water quality standards. CWA § 301(b)(1)(C), 33  
14 U.S.C. § 1311(b)(1)(C).

15 14. EPA has approved the State of California's State Water Resources Control Board and  
16 Regional Water Quality Control Boards to administer an NPDES permit program in California.

17 15. The California Regional Water Quality Control Board, Region 2 ("the Regional Board")  
18 has issued NPDES Permit No. CA0038776 to the POTW via Order No. R2-2006-0003-DWQ.

19 16. The Regional Board has further issued an NPDES permit to Pacifica (and other entities)  
20 regulating discharges into and from Pacifica's municipal separate storm sewer system ("the MS4")--  
21 NPDES No. CAS0029921.<sup>2</sup>

22 17. Pacifica has repeatedly violated the CWA by discharging raw or inadequately treated  
23 sewage from the POTW collection system without NPDES permit authorization. Pacifica has further  
24

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25 <sup>1</sup> 33 U.S.C. § 1292(2).

26 <sup>2</sup> The Regional Board issued NPDES No. CAS0029921, the MS4 Permit, via Order No. 99-  
27 59 on July 21, 1999. On February 19, 2003, the Regional Board amended the MS4 Permit via Order  
28 No. R2-2003-0023, amending Order No. 99-059. On July 21, 2004, the Regional Board further  
amended the MS4 Permit via Order Nos. R2-2004-0060 and R2-2004-0062.

1 violated the NPDES Permit by (1) discharging wastewater “at a location or in a manner different from  
2 that” authorized by the NPDES Permit, (2) by spilling sewage from the collection system in violation of  
3 conditions of the NPDES Permit that effectively prohibit such spills and (3) by discharging sewage from  
4 the WWTP that contained levels of pollutants exceeding that authorized by the NPDES Permit and/or  
5 by discharging sewage bypassed past the WWTP. Pacifica has violated the MS4 Permit by  
6 discharging raw or inadequately treated sewage to the MS4.

7 **A. Pacifica Sewage Spills**

8 18. Pacifica has repeatedly spilled raw sewage from its collection system that carries sewage  
9 to the WWTP and discharged inadequately treated sewage bypassed past the WWTP. Such raw or  
10 inadequately treated sewage has repeatedly overflowed or spilled from Pacifica sewer lines, manholes,  
11 pump stations, and various other POTW equipment/conveyances. A partial list of Pacifica’s sewage  
12 spills is attached as Exhibit 1 to the August 24, 2009 Notice Letter attached to this Complaint.

13 19. These spills have resulted from a variety of poor or inadequate system maintenance,  
14 operation, repair, replacement and rehabilitation practices. These poor practices have led to sewer line  
15 blockages (generally caused by build-up of grease, accumulation of sediment and debris, and root  
16 intrusion), unaddressed defects in sewer lines such as extensive line cracking, sags in lines, and  
17 misaligned joints; broken sewer lines, pump station equipment failures, undersized sewer lines or pump  
18 station pumping and/or storage capacity, and the overwhelming of system capacity due to excessive  
19 infiltration and inflow of storm water and ground water during wet weather.

20 20. These spills and bypasses have sent raw or inadequately treated sewage streaming into  
21 private residences and businesses, streets, storm drains, streams and the Pacific Ocean. These spills  
22 have repeatedly posed serious public health threats and created severe nuisance in exposing substantial  
23 numbers of people to raw or inadequately treated sewage. Raw or inadequately treated sewage  
24 contains a variety of human bacteriological, viral, and parasitic pathogens, and exposure to raw or  
25 inadequately treated sewage is well-known to cause various human illnesses. In addition to human  
26 waste, sanitary sewage contains various toxic chemicals from the solvents, detergents, cleansers, inks,  
27 pesticides, paints, pharmaceuticals and other chemicals discarded by households and businesses. Thus,  
28 Pacifica’s sewage spills pose serious public health risk in exposing members of the public and OCE’s

1 members to sewage-borne pathogens and various toxic pollutants. These persistent, repeated sewage  
2 spills also have threatened harm to the sensitive freshwater and marine environments of Pacifica's  
3 waters, as the pathogens and toxic pollutants in sewage can adversely affect freshwater and marine life.

4 **B. WWTP Effluent Discharge Problems**

5 21. Pacifica has repeatedly discharged sewage from the WWTP with excessive levels,  
6 i.e., levels that exceed Pacifica's NPDES permit limits, of the following pollutants: fecal coliform,  
7 ammonia (as N), copper, cyanide, total suspended solids, turbidity, excessively low pH, excessively  
8 low dissolved oxygen, and Bis(2-ethylhexyl)phthalate. The elevated fecal coliform levels indicate that  
9 Pacifica's WWTP discharges contain pathogens that risk causing disease to members of the public that  
10 might come into contact with Pacifica's sewage plume. Ammonia, copper, and cyanide are all toxic  
11 pollutants harmful to wildlife and/or human populations. Phthalates are well documented to be potential  
12 harmful to human health and the environment. The excessive levels of total suspended solids and  
13 turbidity, improper pH and improper dissolved oxygen indicate that the WWTP is generally not  
14 providing adequate treatment and that there may be additional harmful pollutants being discharged into  
15 the environment from the WWTP that Pacifica is not monitoring for.

16 //

17 **STATUTORY AND LEGAL BACKGROUND**

18 22. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge from any point source  
19 of any pollutant into navigable waters, which the CWA defines as waters of the United States, unless  
20 the discharge complies with various enumerated CWA sections. Among other things, section 301(a)  
21 prohibits discharges not authorized by, or in violation of the terms of, an NPDES permit issued pursuant  
22 to CWA section 402, 33 U.S.C. § 1342.

23 23. CWA section 402(a), 33 U.S.C. § 1342(a), provides for the issuance of permits to  
24 discharge pollutants to waters of the United States.

25 24. CWA section 402(b), 33 U.S.C. § 1342(b), allows each state to administer its own  
26 EPA-approved NPDES permit program for authorizing and regulating discharges to waters of the  
27 United States. In California, the State Board and Regional Boards administer an EPA-approved  
28 NPDES regulatory program.

1 25. CWA section 301(a) prohibits the discharge of pollutants in violation of any NPDES  
2 Permit condition, including conditions prohibiting discharges which cause or contribute to an  
3 exceedance of State water quality standards. *See* 33 U.S.C. §1311(a).

4 26. CWA section 505(a)(1), 33 U.S.C. § 1365(a), provides for citizen enforcement actions  
5 against any "person" for violations of NPDES permit requirements and for unpermitted discharges of  
6 pollutants. 33 U.S.C. §§1365(a)(1) and 1362(5).

7 27. Raw sewage spills from Pacifica's collection system and WWTP bypass discharges to the  
8 Pacific Ocean are unpermitted discharges and CWA violations. These spills and bypasses and  
9 Pacifica's discharges of pollutants in the WWTP effluent contrary to or exceeding the NPDES Permit's  
10 and the MS4 Permit's prohibitions and/or other effluent limitations in the NPDES Permit further violate  
11 the CWA.

12 28. Pacifica's discharges contain noxious pollutants, including, but not limited to, raw or  
13 inadequately treated sewage. Unauthorized discharges of such pollutants into the receiving waters  
14 adversely affect not only water quality but adjacent coastal and riparian zones that are important  
15 recreational areas for residents of and visitors to Pacifica and important habitats for many species.

16 **FIRST CLAIM FOR RELIEF**

17 Violations of the CWA

18 33 U.S.C. § 1311(a)

19 29. Plaintiff reasserts and realleges paragraphs 1 through 28 above.

20 30. Pacifica has repeatedly discharged raw sewage from its collection system and/or  
21 inadequately treated sewage bypassed past its WWTP to the Pacific Ocean, and/or tributaries to the  
22 Pacific Ocean and/or other waters of the United States since at least August 24, 2004.

23 31. Pacifica does not and could not have NPDES permit authorization to discharge raw  
24 sewage from its collection system and/or inadequately treated sewage bypassed past its WWTP to  
25 waters of the United States, which include the Pacific Ocean, all wetlands adjacent to the Pacific  
26 Ocean, freshwater streams and other waters that are tributary to the Pacific Ocean, and any wetlands  
27 adjacent to such tributaries.

28 32. All such discharges of raw or inadequately treated sewage have thus constituted the  
unauthorized discharge of pollutants in violation of CWA section 301(a), 33 U.S.C. § 1311(a), which

1 expressly provides:

2 Except as in compliance with this section and sections . . . 1342 [which provides for NPDES  
3 permit authorization for pollutant discharges] . . . the discharge of any pollutant by any person  
shall be unlawful.

4 33. Pacifica has taken inadequate affirmative steps to eliminate these violations by repairing,  
5 replacing and/or upgrading its defective collection system that is the cause of these violations. Because  
6 Pacifica has failed to take these steps, Pacifica's sewage spill discharge violations will continue in the  
7 future.

8 34. Pacifica's discharges of contaminated raw or inadequately treated sewage are adversely  
9 affecting human health and the environment.

10 35. Each day since August 24, 2004 that Pacifica has discharged, and continues to discharge  
11 raw or inadequately treated sewage and other pollutants to waters of the United States without a permit  
12 for such discharges is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

13 36. By committing the acts and omissions alleged above, Pacifica is subject to an assessment  
14 of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

15 37. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
16 Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff, for which  
17 harm Plaintiff has no plain, speedy or adequate remedy at law.

18 **SECOND CLAIM FOR RELIEF**  
19 Violations of the CWA  
20 33 U.S.C. § 1311(a); and,  
NPDES Permit, Discharge Prohibitions, § III.A

21 38. Plaintiff reasserts and realleges paragraphs 1 through 37 above.

22 39. Pacifica's NPDES Permit provides: "Discharge of wastewater at a location or in a manner  
23 different from that described by this Order is prohibited." NPDES Permit, Discharge Prohibitions, §  
24 III.A.

25 40. Pacifica's sewage spills and WWTP bypasses constitute discharges of wastewater at a  
26 location or in a manner different from that described by the NPDES Permit, which only authorizes  
27 discharge of treated wastewater from WWTP Discharge Point 001 into Calera Creek.

28 41. All such discharges of raw or inadequately treated sewage have thus constituted the



1 unauthorized discharge of pollutants in violation of an NPDES permit condition, hence a violation of  
2 CWA section 301(a), 33 U.S.C. § 1311(a).

3 42. Pacifica has taken inadequate affirmative steps to eliminate these violations by repairing,  
4 replacing and/or upgrading its defective collection system that is the cause of these violations. Because  
5 Pacifica has failed to take these steps, Pacifica's sewage spill discharge violations will continue in the  
6 future.

7 43. Pacifica's discharges of contaminated raw or inadequately treated sewage and other  
8 pollutants are adversely affecting human health and the environment.

9 44. Each day since August 24, 2004 that Pacifica has discharged, and continues to discharge  
10 raw or inadequately treated sewage and other pollutants to waters of the United States in violation of  
11 NPDES Permit, Discharge Prohibitions, § III.A is a separate and distinct violation of CWA section  
12 301(a), 33 U.S.C. § 1311(a).

13 45. By committing the acts and omissions alleged above, Pacifica is subject to an assessment  
14 of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

15 46. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. §  
16 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff,  
17 for which harm Plaintiff has no plain, speedy or adequate remedy at law.

18 **THIRD CLAIM FOR RELIEF**

19 Violations of the CWA  
20 33 U.S.C. § 1311(a); NPDES Permit's  
21 Standard Provisions - Permit Compliance, subsection I.D.;  
22 and, NPDES Permit Provision § VI.C.6.c

23 47. Plaintiff reasserts and realleges paragraphs 1 through 46 above.

24 48. As noted above, Pacifica's sewage spills have resulted from a variety of poor or  
25 inadequate system maintenance, operation, repair, replacement and rehabilitation practices. These  
26 poor practices have led to sewer line blockages (generally caused by build-up of grease, accumulation  
27 of sediment and debris, and root intrusion), unaddressed defects in sewer lines such as extensive line  
28 cracking, sags in lines, and misaligned joints; broken sewer lines, pump station equipment failures,  
undersized sewer lines or pump station pumping and/or storage capacity, and the overwhelming of  
system capacity due to excessive infiltration and inflow of storm water and ground water during wet

1 weather.

2 49. In allowing sewage spills from such poor system operation and maintenance, Pacifica has  
3 violated the NPDES Permit's Standard Provisions - Permit Compliance, subsection I.D., which  
4 provides: "The Discharger shall at all times properly operate and maintain all facilities and systems of  
5 treatment and control (and related appurtenances) which are installed or used by the Permittee to  
6 achieve compliance with the conditions of this Order."

7 50. Pacifica's collection system and WWTP constitute facilities and systems, and related  
8 appurtenances, installed or used by Pacifica to comply with the NPDES permit. Thus, in maintaining  
9 collection system conditions that have allowed sewage spills and WWTP bypasses, Pacifica has  
10 violated the NPDES Permit's Standard Provisions - Permit Compliance, subsection I.D's requirement  
11 to "at all times properly operate and maintain" Pacifica's POTW.

12 51. In addition, in maintaining collection system conditions that have allowed sewage spills,  
13 Pacifica has violated the NPDES Permit's Provisions, § VI.C.6.c., which provides that "the Discharger  
14 must properly operate and maintain its collection system."

15 52. All such discharges of raw or inadequately treated sewage and WWTP bypasses have  
16 thus constituted the unauthorized discharge of pollutants in violation of CWA section 301(a), 33 U.S.C.  
17 § 1311(a).

18 53. Pacifica has taken inadequate affirmative steps to eliminate these violations by repairing,  
19 replacing and/or upgrading its defective collection system that is the cause of these violations. Because  
20 Pacifica has failed to take these steps, Pacifica's sewage spill discharge violations will continue in the  
21 future.

22 54. Pacifica's discharges of contaminated raw or inadequately treated sewage are adversely  
23 affecting human health and the environment.

24 55. Each day since August 24, 2004 that Pacifica has maintained and continues to maintain  
25 collection system conditions that have allowed or are allowing for collection system sewage spills and/or  
26 WWTP bypass discharges constitutes a separate and distinct violation of violation of NPDES Permit  
27 Standard Provisions - Permit Compliance, subsection I.D. and NPDES Permit Provision § VI.C.6.c.

28 56. Alternatively, each day since August 24, 2004 that Pacifica has discharged, and continues

1 to discharge raw or inadequately treated sewage to waters of the United States in violation of NPDES  
2 Permit Standard Provisions - Permit Compliance, subsection I.D. and NPDES Permit Provision §  
3 VI.C.6.c is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

4 57. By committing the acts and omissions alleged above, Pacifica is subject to an assessment  
5 of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

6 58. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
7 Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff, for which  
8 harm Plaintiff has no plain, speedy or adequate remedy at law.

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10 **FOURTH CLAIM FOR RELIEF**  
11 Violations of the CWA  
12 33 U.S.C. § 1311(a); and,  
13 MS4 Permit, Discharge Prohibitions A.1.

14 59. Plaintiff reasserts and realleges paragraphs 1 through 58 above.

15 60. The MS4 Permit regulates discharges into the MS4. The MS4 Permit prohibits the  
16 discharge of non-storm water (material other than storm water) into the MS4. MS4 Permit, Discharge  
17 Prohibitions A.1.

18 61. Raw or inadequately treated sewage that enters the MS4 is not storm water. Pacifica  
19 violates the MS4 Permit every time a sewage spill from Pacifica's collection system enters the MS4.

20 *Id.*

21 62. All such discharges of raw or inadequately treated sewage have thus constituted the  
22 unauthorized discharge of pollutants in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

23 63. Pacifica has taken inadequate affirmative steps to eliminate these violations by repairing,  
24 replacing and/or upgrading its defective collection system that is the cause of these violations. Because  
25 Pacifica has failed to take these steps, Pacifica's sewage spill discharge violations will continue in the  
26 future.

27 64. Pacifica's discharges of contaminated raw or inadequately treated sewage are adversely  
28 affecting human health and the environment.

65. Each day since August 24, 2004 that Pacifica has discharged, and continues to discharge

1 raw or inadequately treated sewage to the MS4 in violation of MS4 Permit, Discharge Prohibitions A.1  
2 for such discharges is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

3 66. By committing the acts and omissions alleged above, Pacifica is subject to an assessment  
4 of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

5 67. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. §  
6 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff,  
7 for which harm Plaintiff has no plain, speedy or adequate remedy at law.

8 **FIFTH CLAIM FOR RELIEF**  
9 Violations of the CWA  
10 33 U.S.C. § 1311(a); and,  
11 WWTP Effluent Limitation Discharge Violations

12 68. Plaintiff reasserts and realleges paragraphs 1 through 67 above.

13 69. The NPDES Permit imposes effluent limitations, *inter alia*, on the WWTP's discharge of  
14 the following pollutants: fecal coliform, ammonia (as N), copper, cyanide, total suspended solids,  
15 turbidity, excessive pH, and Bis(2-ethylhexyl)phthalate.

16 70. Pacifica has repeatedly discharged wastewater from the WWTP that has violated the  
17 NPDES Permit's effluent limitations on these pollutant parameters. The attached August 24, 2009  
18 Notice Letter includes Exhibit 2, which lists by way of example some of Pacifica's effluent limitation  
19 violations.

20 71. Pacifica has taken inadequate affirmative steps to eliminate these WWTP effluent discharge  
21 violations, and thus these violations will continue in the future.

22 72. These discharges of pollutants are adversely affecting human health and the environment.

23 73. Each day since August 24, 2004 that Pacifica has discharged, and continues to discharge  
24 pollutants to waters of the United States in violation of Pacifica's WWTP Effluent Limitations is a  
25 separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

26 74. By committing the acts and omissions alleged above, Pacifica is subject to an assessment  
27 of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

28 75. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).  
Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff, for which

1 harm Plaintiff has no plain, speedy or adequate remedy at law.

2 **PRAYER FOR RELIEF**

3 76. WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

4 a. Declare that Pacifica has violated and is in continued violation of the Clean Water Act as  
5 alleged herein;

6 b. Enjoin Pacifica from discharging raw or inadequately treated sewage to waters of the United  
7 States;

8 c. Enjoin Pacifica from violating the substantive and procedural requirements of the Clean  
9 Water Act;

10 d. Order Defendants to pay civil penalties of up to \$32,500 per day per CWA violation  
11 pursuant to CWA section 309(d), 33 U.S.C. §1319(d), and 40 C.F.R. § 19.4;

12 e. Award Plaintiff's costs (including reasonable attorney and expert fees) as authorized by the  
13 CWA, 33 U.S.C. § 1365(d); and

14 f. Award such other relief as this Court may deem appropriate.

15 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

16 77. Based on Plaintiff's knowledge to date, pursuant to Civil Local Rule 3-16, the undersigned  
17 certifies that, as of this date, other than the named parties, there is no such interest to report.

18  
19  
20 DATED: November 3, 2009

Respectfully Submitted,

21  
22 *Christopher A. Sproul*

23 Attorney for Plaintiff  
24 Our Children's Earth Foundation  
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27  
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