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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

OUR CLEAN WATERS, a non-profit
corporation,

Plaintiff,

v.

Aircraft X-Ray Laboratories, Inc., a
California corporation,

Defendant.

Case No.: CV 17-8500-DMG (RAOx)

CONSENT DECREE [11]

This Consent Decree (“Consent Decree”) is entered into between Our Clean Waters (“OCW”) and Aircraft X-Ray Laboratories, Inc. (“AXL”) (all parties collectively are referred to as the “SETTLING PARTIES”) with respect to the following facts and objectives:

RECITALS

WHEREAS, OCW is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to working with communities to improve the social and natural environment.

WHEREAS, AXL owns and operates a facility located at 5216 Pacific Blvd, Huntington Park, CA 90255 (the “Facility”). Through June 30, 2015, the Facility has operated pursuant to State Water Resources Control Board Water Quality Order No. 97-

1 03-DWQ, National Pollutant Discharge Elimination System General Permit No.
2 CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated
3 with Industrial Activities Excluding Construction Activities. Beginning on July 1, 2015,
4 the Facility has operated pursuant to State Water Resources Control Board Water
5 Quality Order No. 2014-0057-DWQ, National Pollutant Discharge Elimination System
6 General Permit No. CAS000001 (hereinafter “General Permit”). A map of the Facility is
7 attached hereto as Exhibit A and incorporated by reference;

8 **WHEREAS**, on or about July 24, 2017, OCW provided AXL with a Notice of
9 Violations and Intent to File Suit (“60-Day Notice Letter”) under Section 505 of the
10 Federal Water Pollution Control Act (the “Act” or “Clean Water Act”), 33 U.S.C. §
11 1365;

12 **WHEREAS**, OCW filed its Complaint in the United States District Court for the
13 Central District of California (Our Clean Waters v. Aircraft X-RAY Laboratories, Inc., a
14 California corporation Case No. 2:17-cv-08500, on November 21, 2017;

15 **WHEREAS**, AXL denies any and all of OCW’s claims in its 60-Day Notice
16 Letter and Complaint;

17 **WHEREAS**, OCW and AXL, through their authorized representatives and
18 without either adjudication of OCW’s claims or admission by AXL of any alleged
19 violation or other wrongdoing, have chosen to resolve in full OCW’s allegations in the
20 60-Day Notice Letter and Complaint through settlement and avoid the cost and
21 uncertainties of further litigation; and

22 **WHEREAS**, OCW and AXL have agreed that it is in their mutual interest to enter
23 into this Consent Decree setting forth the terms and conditions appropriate to resolving
24 OCW’s allegations set forth in the 60-Day Notice Letter and Complaint.

25 **NOW, THEREFORE**, IT IS HEREBY STIPULATED BETWEEN THE
26 SETTLING PARTIES AND IS HEREBY ORDERED AND DECREED BY THIS
27 COURT AS FOLLOWS:

- 28 1. **Jurisdiction.** This Court has jurisdiction over the subject matter of this

1 action pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. §135(a);

2 2. **Venue.** Venue is proper in the Central District of California pursuant to
3 Section 505(c)(1) of the Clean Water Act, 33 U.S.C. §1365(c)(1) because the AXL
4 facility is located within this District;

5 3. **Effective Date.** The term “Effective Date,” as used in this Consent Decree,
6 shall mean the date that this Consent Decree is approved by the Court.

7 4. **Termination Date.** The term “Termination Date” as used in this Consent
8 Decree, shall mean June 30, 2019.

9 5. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar
10 days of the Court executing this Agreement, OCW shall file a Stipulation to Dismiss
11 thereon pursuant to Federal Rule of Civil Procedure 41(a)(2) with the United States
12 District Court for the Central District of California (“District Court”), with this Consent
13 Decree attached and incorporated by reference, specifying that OCW is dismissing with
14 prejudice all claims in OCW’s Complaint.

15 **COMMITMENTS OF AXL**

16 6. **Compliance with General Permit.** AXL agrees to operate the Facility in
17 compliance with the applicable requirements of the General Permit and the Clean Water
18 Act.

19 7. **Implemented Storm Water Controls.** AXL shall maintain in good
20 working order all storm water collection systems at the Facility currently installed or to
21 be installed pursuant to this Consent Decree, including but not limited to, existing
22 housekeeping measures.

23 8. **Additional Structural Best Management Practices.** By the Effective
24 Date, AXL shall implement the following structural best management practices
25 (“BMPs”) to improve the storm water pollution prevention measures at the Facility:

26 (a) Assure that the sections of the Facility identified on Exhibit A,
27 exclusive of indentified landscaped areas, have been paved with asphalt in a sufficient
28 manner to allow for the cleaning of the surface;

1 (b) Assure that all forklifts maintained by the company at the Facility
2 have, to the extent reasonably practical and available, low-zinc tires (i.e. tires with less
3 than 2.1% zinc) as represented by the tire dealer or manufacturer of the tires;

4 (c) Maintain at least 12 each, 4" x 72" weighted zeolite (or comparable
5 material) wattles at the facility and distribute them in the flow paths of storm water run-
6 off prior to oncoming storms.

7 9. **Confirmation of New Structural BMPs.** Within 30 days of the Effective
8 Date, AXL shall confirm to OCW the installation of the measures described above in
9 Paragraph 8.

10 10. **Monitoring of Storm Water Discharges.** AXL shall collect and analyze
11 storm water discharges from the Facility in accordance with the General Permit and this
12 Consent Decree for, at a minimum, pH, total suspended solids, oil and grease, nitrate +
13 nitrite as nitrogen, and zinc.

14 11. **Monitoring Results.** Results from the Facility's sampling and analysis
15 during the term of this Consent Decree shall be uploaded to the State Water Resources
16 Control Board's ("State Board") Storm Water Multiple Application and Report Tracking
17 System ("SMARTS") in accordance with the requirements of the General Permit.

18 12. **Additional Measures.** If the Facility's storm water sampling results during
19 the 2017-2018 and/or 2018-2019 reporting years indicate that the average of the
20 analytical results for a particular parameter indicates that storm water discharges from
21 the Facility exceed the annual NALs (as set forth in the General Permit) or if two or
22 more analytical results from samples taken for any parameter within the 2017-2018 or
23 2018-2019 reporting years exceed the instantaneous maximum NAL, AXL agrees to take
24 responsive actions to improve its storm water management practices to address
25 exceedances of the NAL attributable to its industrial sources, including re-evaluating its
26 structural and non-structural BMPs and considering implementing additional BMPs
27 aimed at reducing levels observed in storm water samples.

28 13. **Amendment of Storm Water Pollution Prevention Plan ("SWPPP").**

1 By sixty (60) days after the Effective Date, AXL shall have amended the Facility's
2 SWPPP to incorporate all changes, improvements, sample log forms, and best
3 management practices set forth in paragraph 8 of this Consent Decree. AXL shall ensure
4 that all maps, tables, and text comply with the requirements of the General Permit. AXL
5 shall ensure that the SWPPP describes all structural and non-structural BMPs and details
6 the measures to be installed.

7 **14. Mitigation Payment.** In recognition of the good faith efforts by AXL to
8 comply with all aspects of the General Permit and the Clean Water Act, and in lieu of
9 payment by AXL of any penalties, which have been disputed but may have been
10 assessed in this action if it had been adjudicated adverse to AXL, the SETTLING
11 PARTIES agree that AXL will pay the sum of \$29,500.00 to OCW for the purpose of
12 providing environmentally beneficial projects relating to water quality improvements in
13 the Los Angeles River Reach 2 watershed. Payment shall be mailed to Levitt Law, APC
14 – Client Trust, as follows: 311 Main Street, #8, Seal Beach, CA 90740. Payment shall
15 be made by AXL to OCW within five (5) calendar days of the District Court's entry of
16 the Order dismissing the action described in Paragraph 2 of this Consent Decree. AXL
17 shall copy OCW with any correspondence.

18 **15. Fees, Costs, and Expenses.** As reimbursement for OCW's investigative,
19 expert and attorneys' fees and costs, AXL shall pay OCW the sum of Twenty Thousand
20 Five Hundred (\$20,500.00). Payment shall be made by AXL within five (5) calendar
21 days of the District Court's entry of the Order dismissing the action described in
22 Paragraph 2 of this Consent Decree. Payment by AXL to OCW shall be made in the
23 form of a single check payable to "Levitt Law – Client Trust," and shall constitute full
24 payment for all costs of litigation, including investigative, expert and attorneys' fees and
25 costs incurred by OCW that have or could have been claimed in connection with OCW's
26 claims, up to and including the District Court's entry of the Order.

27 **16. Review by Federal Agencies.** OCW shall submit this Consent Decree to
28 the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") within

1 five (5) days after the lodging of this Consent Decree with this Court for review
2 consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45)
3 days after receipt of the Consent Decree by both Agencies, as evidenced by the return
4 receipts and the confirming correspondence of DOJ. In the event that the Agencies
5 comment negatively on the provisions of this Consent Decree, OCW and AXL agree to
6 meet and confer to attempt to resolve the issue(s) raised by the Agencies. If OCW and
7 AXL are unable to resolve any issue(s) raised by the Agencies in their comments, OCW
8 and AXL agree to expeditiously seek a settlement conference with the Magistrate Judge
9 assigned to this matter to resolve the issue(s). If the SETTLING PARTIES cannot
10 resolve the issue(s) through a settlement conference, this Consent Decree shall be null
11 and void. The date of (a) the Agencies' unconditioned approval of this Consent Decree,
12 (b) the expiration of the Agencies' review period, or (c) the SETTLING PARTIES'
13 resolution of all issues raised by the Agencies, whichever is earliest, shall be defined as
14 the "Agency Approval Date."

15 **17. No Admission or Finding.** This Consent Decree nor any payment pursuant
16 to the Consent Decree nor compliance with this Consent Decree shall constitute evidence
17 or be construed as a finding, adjudication, or acknowledgment of any fact, law or
18 liability, nor shall it be construed as an admission of violation of any law, rule or
19 regulation. However, this Consent Decree may constitute evidence in actions seeking
20 compliance with this Consent Decree. Evidence of the payment amount may be used to
21 enforce the payment provisions of this Consent Decree.

22 **18. Mutual Release of Liability and Covenant Not to Sue.** In consideration
23 of the above, and except as otherwise provided by this Consent Decree, the SETTLING
24 PARTIES hereby fully release each other and their respective parents, affiliates,
25 subsidiaries, divisions, insurers, successors, assigns, and current and former employees,
26 attorneys, officers, directors, members, shareholders, and agents from any and all claims
27 and demands of any kind, nature, or description whatsoever, known and unknown, and
28 from any and all liabilities, damages, injuries, actions or causes of action, either at law or

1 in equity, which it may presently have, or which may later accrue or be acquired by it,
2 arising from the Complaint or Notice Letters, including, without limitation, all claims for
3 injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of
4 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or
5 which could have been claimed in the Complaint or Notice Letters, for the alleged failure
6 of Defendant to comply with the Clean Water Act at the Facility, up to and including the
7 Termination Date.

8 **19. 1542 Acknowledgment.** The SETTLING PARTIES acknowledge that they
9 are familiar with section 1542 of the California Civil Code, which provides:

10 A general release does not extend to claims which the creditor does not know or
11 suspect to exist in his or her favor at the time of executing the release, which if
12 known by him or her must have materially affected his or her settlement with the
13 debtor.

14 The SETTLING PARTIES hereby waive and relinquish any rights or benefits they
15 may have under California Civil Code section 1542 with respect to any other claims
16 against each other arising from, or related to, the allegations and claims as set forth in the
17 60-Day Notice Letter and Complaint at the Facility up to and including the Termination
18 Date of this Consent Decree.

19 **20. No Further Actions.** For the period beginning on the Effective Date and
20 ending on the Termination Date, neither OCW, nor its officers, executive staff, members
21 of its Steering Committee or counsel will bring any enforcement action or pursue or take
22 any action with respect to any statutory or common law claim, to the full extent that any
23 of the foregoing were or could have been asserted by OCW against AXL or the
24 RELEASEES (as defined in paragraph 21, below) in the Complaint, the Notice, or
25 covered by this AGREEMENT, except as provided for in this AGREEMENT, nor will
26 they file or support other lawsuits, by contacting, providing financial assistance or
27 personnel time or taking any other affirmative actions, against or relating to the Facility
28 by other groups or individuals who would rely upon the citizen suit provision of the

1 considered to be circumstances beyond the AXL's control.

2 (a) If AXL claims impossibility, it will notify OCW in writing within
3 twenty (20) business days of the date that AXL discovers the event or circumstance that
4 caused or would cause non-performance with the terms of this Consent Decree. The
5 notice must describe the reason for the non-performance and specifically refer to this
6 section of this Consent Decree. The notice must describe the anticipated length of time
7 the non-performance may persist, the cause or causes of the non-performance, the
8 measures taken or to be taken by AXL to prevent or minimize the non-performance, the
9 schedule by which the measures will be implemented, and the anticipated date of
10 compliance. AXL will adopt all reasonable measures to avoid and minimize such non-
11 performance.

12 (b) The SETTLING PARTIES will meet and confer in good faith
13 concerning the non-performance and, if the SETTLING PARTIES concur that
14 performance was or is impossible, despite the timely good faith efforts of AXL, due to
15 circumstances beyond the control of AXL that could not have been reasonably foreseen
16 and prevented by the exercise of due diligence by AXL, new performance deadlines will
17 be established.

18 (c) If OCW disagrees with AXL's notice, or in the event that the
19 SETTLING PARTIES cannot timely agree on the terms of new performance deadlines
20 or requirements, either SETTLING PARTY may invoke the dispute resolution process
21 described in Paragraph 22 of this Consent Decree. In such proceeding, AXL will bear
22 the burden of proving that any delay in performance of any requirement of this Consent
23 Decree was caused or will be caused by force majeure and the extent of any delay
24 attributable to such circumstances.

25 24. **Construction.** The language in all parts of this Consent Decree shall be
26 construed according to its plain and ordinary meaning, except as to those terms defined
27 by law, in the General Permit, and the Clean Water Act or specifically herein.

28 25. **Choice of Law.** This Consent Decree shall be governed by the laws of the

1 United States, and where applicable, the laws of the State of California.

2 26. **Severability.** In the event that any provision, section, or sentence of this
3 Consent Decree is held by a court to be unenforceable, the validity of the enforceable
4 provisions shall not be adversely affected.

5 27. **Correspondence.** All notices required herein or any other correspondence
6 pertaining to this Consent Decree shall be sent by regular, certified, overnight mail, or e-
7 mail as follows:

8 If to OCW:

 Copy to:
 Scott L. Levitt, Esq.
 LEVITT LAW, APC
 311 Main Street, Suite #8
 Seal Beach, CA 90740
 (562) 493-7548

9
10
11
12
13 If to AXL:
 James Newton

 Copy to:
 Charles H. Pomeroy
 cpomeroy@stilespomeroy.com
 StilesPomeroy LLP
 790 E. Green Street
 Pasadena, CA 91101
 (626) 243-5599

14
15 5216 Pacific Blvd.
16 Huntington Park, CA 90255

17
18 Notifications of communications shall be deemed submitted on the date that they
19 are e-mailed, postmarked and sent by first-class mail or deposited with an overnight
20 mail/delivery service. Any change of address or addresses shall be communicated in the
21 manner described above for giving notices.

22 28. **Counterparts.** This Consent Decree may be executed in any number of
23 counterparts, all of which together shall constitute one original document. Telecopied,
24 scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be
25 originally executed counterparts of this Consent Decree.

26 29. **Assignment.** Subject only to the express restrictions contained in this
27 Consent Decree, all of the rights, duties and obligations contained in this Consent Decree
28 shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their

1 successors and assigns.

2 30. **Modification of the Agreement.** This Consent Decree, and any provisions
3 herein, may not be changed, waived, discharged or terminated unless by a written
4 instrument, signed by the SETTLING PARTIES.

5 31. **Full Settlement.** This Consent Decree constitutes a full and final
6 settlement of this matter. It is expressly understood and agreed that the Consent Decree
7 has been freely and voluntarily entered into by the SETTLING PARTIES with and upon
8 advice of counsel.


9 32. **Integration Clause.** This is an integrated Consent Decree. This Consent
10 Decree is intended to be a full and complete statement of the terms of the agreement
11 between the SETTLING PARTIES and expressly supersedes any and all prior oral or
12 written agreements covenants, representations and warranties (express or implied)
13 concerning the subject matter of this Consent Decree.

14 33. **Authority.** The undersigned representatives for OCW and AXL each
15 certify that he/she is fully authorized by the party whom he/she represents to enter into
16 the terms and conditions of this Consent Decree.

17 37. **Continuing Jurisdiction.** This Court shall retain jurisdiction to enforce the
18 terms of the Consent Decree.

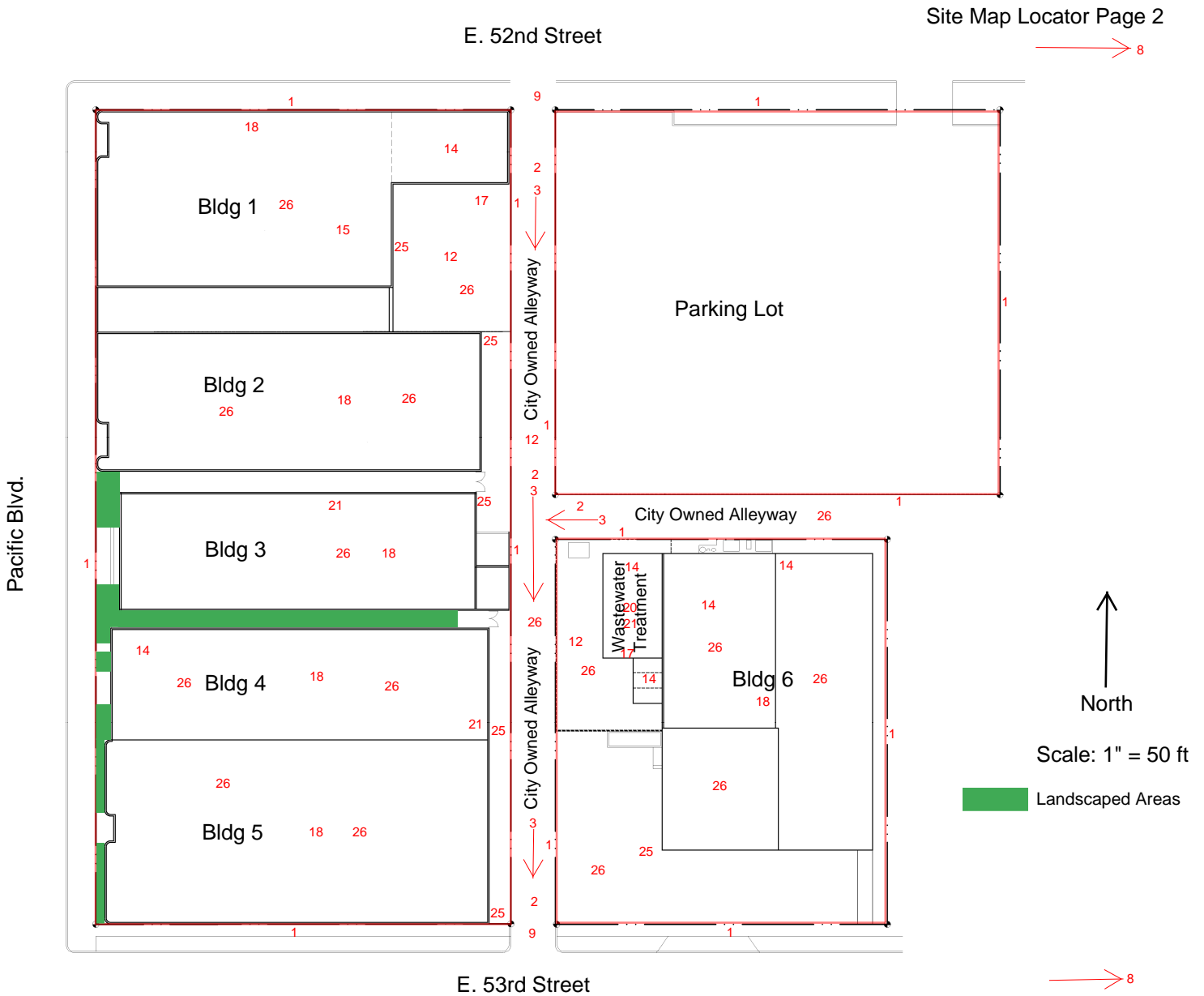
19 **IT IS SO ORDERED.**

20 DATED: December 8, 2017

21 
22 DOLLY M. GEE
23 UNITED STATES DISTRICT JUDGE
24
25
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27
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METAL FINISHING ASSOCIATION OF SOUTHERN CALIFORNIA COMPLIANCE GROUP SITE MAP Page 1 of 2

BUSINESS NAME		Aircraft X-Ray Laboratories, Inc.		
SITE ADDRESS		CITY	ZIP CODE	
5216 Pacific Blvd.		Huntington Park	90255	
DATE MAP DRAWN	MAP #	FACILITY WDID #		
10/20/2017	1	4 19I016489		



**METAL FINISHING ASSOCIATION OF SOUTHERN CALIFORNIA
COMPLIANCE GROUP
SITE MAP LOCATOR**

Page 2 of 2

BUSINESS NAME:	Aircraft X-Ray Laboratories, Inc.
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SITE MAP INFORMATION	N/A	MAP ID
FACILITIES BOUNDARIES		1
DRAINAGE AREAS		2
DIRECTION OF STORM WATER FLOW		3
AREAS IMPACTED BY DISCHARGES FROM SURROUNDING AREAS	✓	4
ON-SITE WATER BODIES	✓	5
AREAS OF SOIL EROSION	✓	6
NEARBY WATER BODIES	✓	7
MUNICIPAL STORM DRAIN INLETS		8
POINTS OF DISCHARGE		9
STRUCTURAL CONTROL MEASURES	✓	10
NON-IMPERVIOUS AREAS	✓	11
LOCATIONS WHERE MATERIALS MAY BE DIRECTLY EXPOSED TO PRECIPITATION (ONLY DURING SHIPPING/RECEIVING)		12
SIGNIFICANT SPILLS & LEAKS AREAS	✓	13
MATERIAL STORAGE AREAS / TANKS		14
SHIPPING & RECEIVING AREAS		15
FUELING AREAS	✓	16
VEHICLE & EQUIPMENT STORAGE/MAINTENANCE AREAS		17
MATERIAL HANDLING AND PROCESSING AREAS		18
AREAS OF INDUSTRIAL ACTIVITY DIRECTLY EXPOSED TO PRECIPITATION	✓	19
WASTE TREATMENT AND DISPOSAL AREAS		20
DUST/PARTICULATE GENERATION AREAS		21
AUTHORIZED NON-STORM WATER DISCHARGES	✓	22
NON-AUTHORIZED NON-STORM WATER DISCHARGES	✓	23
OTHER AREAS OF INDUSTRIAL ACTIVITIES	✓	24
STORMWATER DISCHARGE COLLECTION POINT		25
HOUSEKEEPING AREAS		26

EXHIBIT "A"



LEVITT LAW

A PROFESSIONAL CORPORATION

July 24, 2017

Aircraft X-Ray Laboratories, Inc. James Newton 5216 Pacific Blvd Huntington Park, CA, 90255	Aircraft X-Ray Laboratories, Inc. Ruben Jimenez Maintenance Supervisor 5216 Pacific Blvd Huntington Park, CA, 90255
Aircraft X-Ray Laboratories, Inc. Justin Guzman Facilities Manager 5216 Pacific Blvd Huntington Park, CA, 90255	Thomas Howard Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814
U.S. Environmental Protection Agency Gina McCarthy, Administrator Mail Code: 1101 A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Samuel Unger, Executive Officer Regional Water Quality Control Board Los Angeles Region 320 West Fourth St., Ste. 200 Los Angeles, CA 90013
Ms. Alexis Strauss Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Mr. Jeff Sessions U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-001

Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Levitt Law, APC ("Levitt Law") represents Our Clean Waters ("OCW"), a non-profit corporation organized under the laws of the State of California. This letter is to give notice that Levitt Law, on behalf of OCW, intends to file a civil action against Aircraft X-Ray Laboratories, Inc. ("Aircraft X-Ray") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Aircraft X-Ray's Facility located at 5216 Pacific Blvd., Huntington Park, CA, 90255 (the "Facility").

OCW is concerned with the environmental health of the Los Angeles River Reach 2, on behalf of the public that uses and enjoys said Water Bodies, its inflows, outflows, and other waters of the

affected Watershed; specifically, the Los Angeles River reach 1, Lower Los Angeles River, and the Los Angeles River Estuary. The public's use and enjoyment of these waters is negatively affected by the pollution caused by Aircraft X-Ray's operations. Additionally, OCW acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Aircraft X-Ray's unlawful discharge of pollutants from the Facility into conveyance channels that discharge into the Los Angeles River reach 2. The facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit").¹ The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As appropriate, OCW refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." Investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(b)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by the Clean Water Act Section 505(b), this Notice of Violations and Intent to File Suit provides notice to Aircraft X-Ray of the violations that have occurred and which continue to occur at the Facility. Consequently, OCW hereby places Aircraft X-Ray on formal notice, that after the expiration of sixty (60) days from the date of this Notice of Violations and the Intent to Sue, OCW intends to file suit in federal court against Aircraft X-Ray under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and the General Permit. The violations are described more fully below.

During the 60-day notice period, OCW is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Aircraft X-Ray contact OCW's attorneys at Levitt Law within the next twenty (20) days so these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The Aircraft X-Ray Laboratories ("Aircraft X-Ray") Facility is located at 5216 Pacific Blvd., Huntington Park, CA, 90255. The site comprises approximately 2 acres of land, approximately 1.24 miles from the Los Angeles River. Aircraft X-Ray operates as a metal finishing company that also performs non-destructive testing and painting of aerospace parts and components, and certifies that the Facility is classified under Standard Industrial Classification ("SIC") codes 3471

¹ On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial General Permit except for purposes of enforcement actions brought pursuant to the prior permit.

(Electroplating, Plating, Polishing, Anodizing, and Coloring) and 3479 (Coating, Engraving, and Allied Services, Not Elsewhere Classified). Aircraft X-Ray conducts the following industrial activities at the Facility: abrasive stripping; anodizing; etching; cleaning; painting; passivation; waste water treatment; material storage and handling; waste handling and storage; loading and unloading; maintenance; and dust and particulate generation. At a minimum, Aircraft X-Ray utilizes the following industrial materials at the Facility: metals, acids, caustics, solvents, paints, oils, abrasive media, titanium etch, tri-acid etch, deoxidizers, chromic acid anodize, Aluminex 1000, soap, and filter cake. Possible pollutants from the Facility include: pH, Total Suspended Solids ("TSS"), Oil and Grease ("O&G"), Zinc ("Zn"), Aluminum ("Al"), Iron ("Fe"), Nitrate + Nitrite ("N+N"), Chromium ("Cr"), and other pollutants. Storm water from the Facility discharges via the local storm sewer system, and/or surface runoff indirectly into the Los Angeles River Reach 2.

B. The Affected Water

The Los Angeles River Reach 2, and the overall affected Watershed are waters of the United States. The CWA requires that water bodies such as the Los Angeles River Reach 2 and its inflows and outflows meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the Los Angeles River Reach 2 include municipal and domestic supply, industrial service supply, ground water recharge, warm freshwater habitat, wildlife habitat, and water contact and non-contact recreation. Contaminated storm water from the Facility adversely affects the water quality of the Los Angeles River Reach 2, and the overall Affected Watershed, and threatens the beneficial uses and ecosystems of these waters.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311(a)). Further, it is unlawful to discharge in violation of the terms and conditions of an NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of storm water associated with industrial activities). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial General Permit in order to lawfully discharge.

Aircraft X-Ray has submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the Industrial General Permit since at least 2001 (WDID Number 4 19I016489). However, information available to OCW indicates that storm water discharges from the Facility have violated the terms of the Industrial General Permit, and have been violating, and continue to violate, the CWA.

Pursuant to Section I.A.8 of the Industrial General Permit, a facility operator must comply with all conditions of the Industrial General Permit. (Industrial General Permit, §I.A.8. [dischargers must "comply with all requirements, provisions, limitations, and prohibitions in this General Permit."]). Failure to comply with the Industrial General Permit is a Clean Water Act violation. (Industrial General Permit §XXI.A.). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial General Permit termination, revocation and re-issuance, or modification; or (c) denial of an Industrial General Permit renewal application. As an enrollee, Aircraft X-Ray has a duty to comply with the Industrial General Permit and is subject to all of the provisions therein.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial General Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants² and best conventional pollutant control technology (“BCT”) for conventional pollutants. Industrial General Permit § I(D)(32), II(D)(2); Previous Industrial General Permit, Order Part B(3). Specifically, the Permit “requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards.” (Industrial General Permit §I(D)(32); see also §V.A.). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. These benchmark levels are reflected as Numeric Action Level (NAL) values in the current Industrial General Permit (also known as Benchmark values in the Previous Industrial General Permit). These levels are set at the maximum pollutant concentration present to determine if an industrial Facility is employing BAT and BCT. (See Attachment 1 of this Notice for applicable Benchmark Values).³

Additionally, the Previous Industrial General Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. See Previous Industrial General Permit § VIII. The Previous Industrial General Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial General Permit. *Id.* Aircraft X-Ray falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the previous Industrial General Permit during its effective period.

Based on Aircraft X-Ray’s self-reporting data and/or lack thereof, Aircraft X-Ray’s self-reporting of industrial storm water discharges shows a pattern of exceedances of Benchmarks and NAL values, especially as it pertains to the parameters Zn and N+N. These exceedances are extremely significant due to the Los Angeles River Reach 2 and its associated watershed being impaired for, and especially sensitive to, these pollutants. This pattern of exceedances of Benchmarks and NAL values indicate that Aircraft X-Ray has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial General Permit and Previous Industrial General Permit. Self monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

OCW alleges and notifies Aircraft X-Ray that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark Values for Zn and N+N. Aircraft X-Ray’s ongoing discharges of storm water containing levels

² BAT is defined at 40 C.F.R. § 437.1 et seq. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ The Benchmark values are part of the EPA’s Multi-Sector General Permit (“MSGP”). See 73 Fed. Reg 56,572 (Sept 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharged From Industrial Activities).

of pollutants above EPA Benchmark values, and BAT and BCT based levels of control, also demonstrate that Aircraft X-Ray has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all storm water prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Aircraft X-Ray's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day Aircraft X-Ray discharges without meeting BAT/BCT. OCW alleges that Aircraft X-Ray has discharged storm water containing excessive levels of pollutants from the Facility to the Los Angeles River Reach 2 during significant local rain events over 0.1 inches in the last five (5) years (Attachment 2).⁴ Every significant rain event that has occurred in the last five (5) years represents a discharge of polluted storm water run-off into the Los Angeles River Reach 2. Aircraft X-Ray is subject to civil penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

B. Discharges Impairing Receiving Waters

The CWA and Industrial General Permit's Discharge Prohibitions disallow storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. See Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (2). The Industrial General Permit also prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. See Industrial General Permit, Section VI (b-c); Previous Industrial General Permit Order, Part C (1). Receiving Water Limitations of the Industrial General Permit prohibit storm water discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. See Industrial General Permit, Section VI (a); Previous Industrial General Permit Order, Part C (2). Applicable WQS are set forth in the California Toxic Rule ("CTR")⁵ and Water Quality Control Plan – Los Angeles Region (Region 4): Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (the "Basin Plan").⁶ Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan.

The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000). See http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml to reference the Region 4 Basin Plan. The beneficial uses of the Los Angeles River Reach 2 and its tributaries include municipal and domestic supply, industrial service supply, ground water recharge, warm freshwater habitat, wildlife habitat, and water contact and non-contact recreation. The non-contact water recreation use is defined as "uses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picknicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life

⁴ The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP"). See 73 Fed. Reg. 56,572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

⁵ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

⁶ The Basin Plan is published by the Los Angeles Regional Water Quality Control Board and can be accessed at <http://www.waterboards.ca.gov>

study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan establishes WQS for all Inland Surface Waters, including the Affected Water Body Watershed, which contain, but are not limited, to the following standards:

- A narrative toxicity standard which states that “all waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-38.
- A narrative oil and grease standard which states that “waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-29.
- That “waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-37.
- That “the pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-35.
- That “surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect designated beneficial use.” *Id.* at 3-24.
- That “waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-26.
- That “waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-25.
- That “waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-38.
- That “waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-37.

Additionally, the EPA has adopted freshwater numeric quality standards for Zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).

OCW alleges that Aircraft X-Ray’s storm water discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial General Permit and the WQS set forth in the Basin Plan and CTR, and is clearly in violation of the CWA. These allegations are based on Aircraft X-Ray’s self-reported data submitted to the Los Angeles Regional Water Quality Control Board. The sampling results indicate that Aircraft X-Ray’s discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS (See Attachment 1). Aircraft X-

Ray's data exhibits numerous exceedances of Zn, N+N, and pH; all of which the Los Angeles River Reach 2 and the overall affected Watershed are impaired for.

OCW alleges that each day that Aircraft X-Ray has discharged storm water from the Facility, Aircraft X-Ray's storm water has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Los Angeles River Reach 2 and the Affected Watershed. OCW alleges that Aircraft X-Ray has discharged storm water exceeding Receiving Water Limitations and/or WQS from the Facility to the Los Angeles River Reach 2 and the Affected Watershed during significant local rain events over 0.1 inches in the last five (5) years (See Attachment 2). Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial General Permit and the CWA. Aircraft X-Ray is subject to penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial General Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). See Industrial General Permit, Section X (B); Previous Industrial General Permit, Part A (I) (a) and Provision E (2). The Industrial General Permit also requires dischargers to make all necessary revisions to the existing SWPPP promptly. See Industrial General Permit, Section X (B); Previous Industrial General Permit Order, Part E (2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all Aircraft X-Ray pollutant sources, a description of the BMPs that will reduce or prevent pollutants in storm water discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a Facility manager determines that the SWPPP is in violation of any requirements of the Industrial General Permit. See Industrial General Permit, Section X (A); Previous Industrial General Permit, Part A.

Based on information available to OCW, Aircraft X-Ray has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements stated in Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit. For Example, Aircraft X-Ray's SWPPP does not include and/or Aircraft X-Ray has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A (8) of the Industrial General Permit as evidenced by the data in Attachment 1. The Facility's storm water samples have consistently exceeded EPA Benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Aircraft X-Ray has failed to sufficiently update and revise the Facility's SWPPP. The facility's SWPPP has therefore never achieved the Industrial General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

Additionally, the SWPPP states there are materials stored outdoors in the southwest area of Building 6. These materials are exposed and may be contributing pollutants to the facility's

discharge. The SWPPP does not adequately explain or justify why there is not sampling performed at this drainage area.

Accordingly, Aircraft X-Ray has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit, and Aircraft X-Ray will continue to be in violation every day until it develops and implements an adequate SWPPP. Aircraft X-Ray is subject to penalties for each violation of the Industrial General Permit and the CWA occurring within the past five (5) years.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations

The Industrial Storm Water Permit requires Facility operators to develop and implement a Monitoring Implementation Program ("MIP"). See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B (I) and Order, Part E (3). The Industrial General Permit requires that the MIP ensures that the Facility adequately detects and measures its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit. *Id.* Facility operators must ensure that their MIP practices reduce or prevent pollutants in storm water and authorized non-storm water discharges as well as evaluate and revise their practices to meet changing conditions at the Facility. *Id.* This may include revising the SWPPP as required by Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit.

The MIP must measure the effectiveness of BMPs used to prevent or reduce pollutants in storm water and authorized non-storm water discharges, and Facility operators must revise the MIP whenever appropriate. See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B. The Industrial General Permit requires Facility operators to visually observe and collect samples of storm water discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the Facility's monitoring program will satisfy these objectives. *Id.*

The Previous Industrial General Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at the facility (1997 Industrial General Permit, § B(5)). The current Industrial General Permit now mandates that facility operators sample four (rather than two) storm water discharges from all drainage locations over the course of the reporting year (2015 Industrial General Permit, §§ XI(B)(2), (3)). Although Aircraft X-Ray is part of a compliance group, which reduces the frequency of sampling required by the Facility; submitted Annual Reports indicate there was only one (1) sample performed between 2011-2012, 2012-2013, 2013-2014, 2014-2015; and only (1) one sample collected during the 2015-2016 reporting year. Aircraft X-Ray has failed to adequately explain why there is a lack of required sampling data.

Also, as previously described, Aircraft X-Ray has exposed materials in the southwest area of Building 6 and is not sampling from this drainage area. This directly affected Aircraft X-Ray's requirement to adequately detect and measure its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified

in the Industrial General Permit; and to adequately measure the effectiveness of BMPs in place at the Facility.

Aircraft X-Ray has been operating the Facility with an inadequately developed and/or inadequately implemented MIP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial General Permit. For example, the data in Attachment 1 indicates that Aircraft X-Ray's monitoring program has not ensured that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial General Permit as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in storm water as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. Similarly, the data in Attachment 1 indicates that Aircraft X-Ray's monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B.

As a result of Aircraft X-Ray's failure to adequately develop and/or implement an adequate MIP at the Facility, Aircraft X-Ray has been in daily and continuous violation of the Industrial Storm Water Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. Aircraft X-Ray will continue to be in violation of the monitoring and reporting requirement each day that Aircraft X-Ray fails to adequately develop and/or implement an effective MIP at the Facility. Aircraft X-Ray is subject to penalties for each violation of the Industrial General Permit and the CWA occurring for the last five (5) years.

Aircraft X-Ray owners and/or operators had numerous opportunities to implement a monitoring program to effectively improve its storm water discharges and ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit; but failed to do so as required. They are thus subject to penalties in accordance with the Industrial General Permit – punishable by a minimum of \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; Industrial General Permit, §XXI.Q.1).

Additionally, the 1997 Permit requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to OCW indicates Aircraft X-Ray has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the facility's ACSCE Reports provide a sufficient explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997

Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Aircraft X-Ray has not proposed sufficient BMPs that properly respond to EPA benchmark and water quality standard exceedances in violation of the General Permit.

OCW puts Aircraft X-Ray on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and CWA. Aircraft X-Ray is in ongoing violation of the General Permit every day that the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Aircraft X-Ray is subject to civil penalties for all violations of the CWA occurring over the past 5 years.

E. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by an NPDES Permit issued pursuant to Section 402 of the CWA. See 33 U.S.C. § 1311 (a), 1342. Aircraft X-Ray sought coverage for the Facility under the Industrial General Permit, which states that any discharge from an industrial Facility not in compliance with the Industrial General Permit must be either eliminated or permitted by a separate NPDES permit. Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (1). Because Aircraft X-Ray has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial General Permit, each and every discharge from the Facility described herein, not in compliance with the Industrial General Permit, has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301 (a) of the CWA, 33 U.S.C. § 131 I(a).

III. PERSON RESPONSIBLE FOR THE VIOLATIONS

Aircraft X-Ray Laboratories, Inc. ("Aircraft X-Ray") is responsible for the violations at the Facility located at 5216 Pacific Blvd., Huntington Park, CA 90255 as described above.

IV. NAME AND ADDRESS OF NOTICING PARTY

OUR CLEAN WATERS

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VI. REMEDIES

As stated previously, OCW intends, at the close of the 60-day notice period or thereafter, to file suit under CWA section 505(a) against Aircraft X-Ray for the above-referenced violations. OCW will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, OCW will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Aircraft X-Ray in this action. **The CWA imposes civil penalty liability of up to \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015, plus attorneys' fees and costs** (33 U.S.C. § 1319(d); 40 C.F.R. § 19.4). OCW will seek to recover such penalties, restitution, attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d). It should be noted that the statute of limitations is five (5) years for citizen enforcement actions brought pursuant to the federal Clean Water Act, bringing potential liabilities for the last five (5) years. Furthermore, actions are allowable under prior expired permits within the five (5) year period. (See *Illinois v. Outboard Marine, Inc.*, (7th Cir. 1982) 680 F.2d 473, 480-81 [relief granted for violations of an expired Permit]; *Sierra Club v. Aluminum Co. of Am.*, (N.D.N.Y. 1984) 585 F. Supp. 842, 853-854 [holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit]).

As noted above, OCW and its Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,



Scott L. Levitt, Esq.

ATTACHMENT 1

1. Self-Reported Sampling Conducted by Aircraft X-Ray Laboratories, Inc. Demonstrating Non-compliance with BAT/BCT

Date of Sample	Discharge Point	Parameter	EPA Benchmark Value / NAL Value	Sample Value
5/14/2015	South End Alley	Zinc	0.26 mg/L	0.56 mg/L
3/25/2016	Storm Water	Zinc	0.26 mg/L	0.42 mg/L
3/25/2016	Storm Water	Iron	1.0 mg/L	3.87 mg/L
3/25/2016	Storm Water	Nitrate + Nitrite as N	0.68 mg/L	1.11 mg/L
12/30/2016	Storm Water #1	Zinc	0.26 mg/L	0.35 mg/L
12/30/2016	Storm Water #2	Zinc	0.26 mg/L	0.35 mg/L
12/30/2016	Storm Water #3	Zinc	0.26 mg/L	0.33 mg/L
12/30/2016	Storm Water #4	Zinc	0.26 mg/L	0.34 mg/L
12/30/2016	Storm Water #4	Nitrate + Nitrite as N	0.68 mg/L	0.72 mg/L
12/30/2016	Storm Water #5	Zinc	0.26 mg/L	0.34 mg/L
12/30/2016	Storm Water #5	Nitrate + Nitrite as N	0.68 mg/L	0.72 mg/L
12/30/2016	Storm Water #6	Zinc	0.26 mg/L	0.30 mg/L
12/30/2016	Storm Water #6	Nitrate + Nitrite as N	0.68 mg/L	0.73 mg/L
2/3/2017	Storm Water #1	pH	6.0 - 9.0 s.u.	5.9 s.u.
2/3/2017	Storm Water #5	pH	6.0 - 9.0 s.u.	5.9 s.u.

2. Self-Reported Sampling Conducted by Aircraft X-Ray Laboratories, Inc. demonstrating Non-compliance with Water Quality Standards in the Los Angeles Basin Plan / California Toxics Rule

Date of Sample	Discharge Point	Parameter	Basin Plan Water Quality Objective / CTR	Sample Value
5/14/2015	South End Alley	Zinc	0.120 mg/L (CMC)	0.56 mg/L
3/25/2016	Storm Water	Zinc	0.120 mg/L (CMC)	0.42 mg/L
12/30/2016	Storm Water #1	Zinc	0.120 mg/L (CMC)	0.35 mg/L
12/30/2016	Storm Water #2	Zinc	0.120 mg/L (CMC)	0.35 mg/L
12/30/2016	Storm Water #3	Zinc	0.120 mg/L (CMC)	0.33 mg/L
12/30/2016	Storm Water #4	Zinc	0.120 mg/L (CMC)	0.34 mg/L
12/30/2016	Storm Water #5	Zinc	0.120 mg/L (CMC)	0.34 mg/L
12/30/2016	Storm Water #6	Zinc	0.120 mg/L (CMC)	0.30 mg/L
2/3/2017	Storm Water #2	Zinc	0.120 mg/L (CMC)	0.25 mg/L

2/3/2017	Storm Water #5	Zinc	0.120 mg/L (CMC)	0.22 mg/L
2/3/2017	Storm Water #6	Zinc	0.120 mg/L (CMC)	0.25 mg/L
2/3/2017	Storm Water #1	pH	6.5 - 8.5 s.u.	5.9 s.u.
2/3/2017	Storm Water #2	pH	6.5 - 8.5 s.u.	6.0 s.u.
2/3/2017	Storm Water #5	pH	6.5 - 8.5 s.u.	5.9 s.u.
2/3/2017	Storm Water #6	pH	6.5 - 8.5 s.u.	6.3 s.u.

The above referenced discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Industrial General Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Industrial General Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Industrial General Permit.

ATTACHMENT 2

Rain Dates, Aircraft X-Ray Laboratories, Inc., Huntington Park, CA
Data from KCQT Weather Station - Los Angeles Downtown (Approx. 4 miles from Aircraft X-Ray)
7-21-12 to 7-21-17
Days with Precipitation over 0.1 inch

11/17/2012	12/12/2014	10/17/2016
11/29/2012	12/16/2014	11/20/2016
11/30/2012	12/17/2014	11/21/2016
12/3/2012	12/30/2014	11/26/2016
12/18/2012	1/10/2015	12/15/2016
12/24/2012	1/11/2015	12/16/2016
12/26/2012	2/22/2015	21/21/2016
12/29/2012	2/28/2015	12/22/2016
1/6/2013	3/1/2015	12/23/2016
1/24/2013	3/2/2015	12/24/2016
1/25/2013	4/7/2015	12/30/2016
2/19/2013	5/8/2015	1/5/2017
3/8/2013	5/14/2015	1/9/2017
5/6/2013	7/8/2015	1/11/2017
11/21/2013	9/15/2015	1/12/2017
11/29/2013	10/5/2015	1/19/2017
12/19/2013	12/13/2015	1/20/2017
2/2/2014	12/19/2015	1/22/2017
2/27/2014	1/5/2016	1/23/2017
2/28/2014	1/6/2015	2/3/2017
3/1/2014	1/7/2015	2/6/2017
3/2/2014	1/31/2016	2/7/2017
4/1/2014	2/17/2016	2/10/2017
10/31/2014	2/18/2016	2/11/2017
11/1/2014	3/6/2016	2/17/2017
11/30/2014	3/7/2016	5/7/2017
12/2/2014	3/11/2016	
12/3/2014	4/8/2016	