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Christopher A. Sproul (Bar No. 126398)
Jodene Isaacs (Bar No. 226895)
Brian Orion (Bar No. 239460)
Environmental Advocates
5135 Anza Street
San Francisco, California 94121
Telephone: (415) 533-3376
Facsimile: (415) 358-5695
Email: csproul@enviroadvocates.com, jisaacs@enviroadvocates.com,
borion@enviroadvocates.com

ORIGINAL

William Verick (Bar No. 140972)
Klamath Environmental Law Center
Fredric Evenson (Bar No. 198059)
Law Offices of Fredric Evenson
424 First Street
Eureka, California 95501
Telephone: (707) 268-8900
Facsimile: (707) 268-8901
Email: wverick@igc.org, ecorights@earthlink.net

Attorneys for Plaintiff
ECOLOGICAL RIGHTS FOUNDATION

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

ECOLOGICAL RIGHTS FOUNDATION

Plaintiff,

v.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

) Case No. C 09-03704 SBA
)
)
) FIRST AMENDED COMPLAINT
) FOR DECLARATORY AND
) INJUNCTIVE RELIEF AND CIVIL
) PENALTIES
)
) CASE UNDER THE CLEAN WATER
) ACT AND RESOURCE
) CONSERVATION AND RECOVERY
) ACT

DEMAND FOR JURY TRIAL

1 Plaintiff Ecological Rights Foundation (“ERF”) 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) and the citizens suit provisions of the Resource Conservation and Recovery
5 Act (RCRA), 42 U.S.C § 6901 *et seq.* The CWA authorizes citizens to bring civil actions against
6 any person who is in violation of an effluent standard or limitation established under the CWA.
7 RCRA authorizes citizens to bring civil actions against any person who is a past or present
8 generator of solid waste and who violates RCRA by contributing to the past or present handling,
9 storage, treatment, transportation or disposal of any solid waste which may present an imminent
10 and substantial endangerment to health or the environment.

11 2. Defendant Pacific Gas and Electric Company (“PG&E”) is discharging pollutants
12 from numerous power poles located in Alameda, Contra Costa, Marin and San Francisco
13 Counties, California (“the Poles”) to waters of the United States without a CWA National
14 Pollution Discharge Elimination (“NPDES”) permit in violation of CWA section 301(a), 33
15 U.S.C. § 1311(a), which is an effluent standard or limitation established under the CWA. When
16 it rains, these power poles discharge storm water runoff, which contains a wood treatment
17 mixture of oil and an active ingredient – pentachlorophenol, into waters of the United States.
18 These waters include San Francisco Bay, its tributaries and adjacent wetlands. Because of the
19 way it is manufactured, pentachlorophenol is necessarily and invariably contaminated with a
20 suite of similar, but even more toxic chemicals. These contaminants include the various
21 congeners of polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (collectively
22 hereinafter “dioxins”) and hexachlorobenzene. Once in the environment, these toxic chemicals
23 enter the food chain and cause and threaten to cause cancer, reproductive, developmental and
24 immunological harm to humans and other mammals, fish, birds and other wildlife.

25 3. This complaint also seeks to remedy PG&E’s generation, treatment, storage, and/or
26 disposal of solid wastes from the Poles in violation of RCRA. These highly toxic chemicals are
27 discarded when they leak, spill, drip and ooze out of the Poles and are then deposited into the
28 soil, sediment and water around the Poles. These wastes are washed into waterways. Dust

1 containing them is blown into the air, and PG&E's toxic wastes are deposited on and around
2 public thoroughfares where they are tracked into the homes of the people who use those
3 thoroughfares. People, domestic animals and wildlife are thus exposed to these highly toxic bio-
4 accumulative wastes as contaminants in the food they ingest, the air they breathe, and when they
5 directly ingest toxic dust through hand to mouth activity. PG&E's generation, treatment, storage,
6 and or disposal of solid wastes from the Poles thus violates RCRA because it poses (or may
7 pose) an imminent and substantial endangerment to health and the environment.

8 JURISDICTION

9 4. This Court has subject matter jurisdiction over the claims for violations of the CWA
10 set forth in this First Amended Complaint pursuant to CWA section 505(a)(1), 33 U.S.C. §
11 1365(a)(1), section 7002 of RCRA, 42 U.S.C. § 6972(a)(1)(A), and 28 U.S.C. section 1331 (an
12 action for declaratory, injunctive and other relief arising under the laws of the United States).

13 5. On June 4, 2009, ERF served a 60 and 90 Day Notice Letter ("Notice Letter") on
14 PG&E regarding PG&E's violations of the CWA and the RCRA. That letter informed PG&E of
15 Plaintiff's intention to file suit against PG&E. Plaintiff also sent copies of the Notice Letter to
16 the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional
17 Administrator of EPA Region IX, the Executive Director of the State Water Resources Control
18 Board ("State Board"), and the Executive Officer of the Regional Water Quality Control Board,
19 San Francisco Bay Region ("Regional Board") as required by the CWA, 33 U.S.C. §
20 1365(b)(1)(A). Pursuant to 42 U.S. C. § 6872(b)(1)(A) and 40 CFR § 254.2, Plaintiff also served
21 copies of the Notice Letter on the Board Chair of the California Integrated Waste Management
22 Board and the Director of California's Department of Toxic Substances Control. All return
23 receipts for the copies of the Notice Letter that plaintiff mailed to the above persons were signed
24 by the recipients on or before June 10, 2009. A copy of the Notice Letter is attached to this
25 Amended Complaint.

26 6. Neither the EPA nor the State of California has commenced or is diligently
27 prosecuting an action to redress the violations of the CWA and the RCRA that plaintiff alleged in
28 the Notice Letter. Neither the EPA nor the State of California is engaging in a removal action

1 under section 104 of the Comprehensive Environmental Response, Compensation, and Liability
2 Act of 1980 (“CERCLA”), 42 U.S.C. § 9604. Neither the EPA nor the State of California has
3 incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the
4 CERCLA, 42 U.S.C. § 9604, or is diligently proceeding with a remedial action under the
5 CERCLA, 42 U.S.C. § 9601 *et seq.* The EPA has not obtained a court order or issued an
6 administrative order under section 106 of the CERCLA, 42 U.S.C. § 9606, or section 7003 of the
7 RCRA, 42 U.S.C. § 6973, pursuant to which a responsible party is diligently conducting a
8 removal action, Remedial Investigation and Feasibility Study, or proceeding with a remedial
9 action. Claims for civil penalties that plaintiff asserts in this action are not barred by any prior
10 administrative penalty under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

11 7. This Court has personal jurisdiction over PG&E. PG&E is a California corporation
12 doing business in California, including within the United States Northern District of California.

13 VENUE

14 8. Venue in the Northern District of California is proper pursuant to section 505(c)(1) of
15 the CWA, 33 U.S.C. § 1365(c)(1) and under section 7002 of the RCRA, 42 U.S.C. § 69782(a),
16 because the actions that gave rise to this case occurred within the Northern District of California
17 and PG&E’s offices are located in the Northern District of California.

18 INTRADISTRICT ASSIGNMENT

19 9. Intradistrict assignment of this matter to the San Francisco Division of the Court is
20 appropriate pursuant to Civil Local Rule 3-2(c) in that PG&E’s main corporate office is located
21 in San Francisco and some of the actions that gave rise to this case occurred in San Francisco or
22 Marin counties.

23 THE PARTIES

24 10. Plaintiff Ecological Rights Foundation (“ERF”) is a non-profit public benefit
25 corporation with offices in Garberville, California. ERF has members throughout California.
26 Among other advocacy activities, ERF focuses on harm caused by toxic pollution, particularly as
27 that pollution degrades or harms surface and ground waters, the soil, the food supply, human
28 health and the health and survival of wildlife. ERF represents citizens who are striving to protect

1 the environment from pollution and to secure the multitude of public and private benefits that
2 follow from clean, vibrant waters: safe drinking water, abundant and diverse wildlife
3 populations, healthy recreational opportunities, and economic prosperity from commercial
4 fishing and other commercial activities that depend on clean water. ERF also represents citizens
5 who seek to protect themselves, their loved ones, their pets and domestic animals, their food
6 supply and wildlife they enjoy from the harm caused by exposures to toxic chemicals. ERF's
7 members use waters into which PG&E has discharged contaminated storm water runoff from the
8 Poles. These waters include San Francisco Bay, its tributaries, and adjacent wetlands. ERF's
9 members use these waters for recreation, fishing, wildlife observation, aesthetic enjoyment,
10 educational study, and spiritual contemplation. ERF members are concerned about water quality
11 and are being adversely affected by PG&E's discharges to waters of the United States alleged
12 herein. ERF members, their children and pets use public thoroughfares along which the Poles are
13 located. Some ERF members are homeowners and PG&E maintains Poles on these members'
14 property. These Poles deposit PG&E's toxic waste on these ERF members' property. ERF's
15 members themselves, their loved ones, as well as their pets and domestic animals and the wildlife
16 ERF members enjoy thus all come into contact with the carcinogenic and teratogenic waste that
17 is discharged from PG&E's Poles. ERF's members are subject to an increased risk of adverse
18 health consequences – cancer, immunotoxicity and developmental abnormalities in their unborn
19 children – as a result of their constant proximity to the toxic solid waste that leaks, spills, drips
20 and oozes from PG&E's Poles. For those ERF members who own real property upon which
21 PG&E maintains Poles, PG&E disposes toxic solid waste on their property. The toxic solid
22 waste that PG&E deposits on their property potentially subjects ERF's members to an unpleasant
23 choice: Either leave PG&E's toxic waste on their property thus continuing to subject themselves
24 and their loved ones to increased risk of cancer and birth defects, or themselves spend the money
25 that it would take to remove this toxic waste from their property and dispose of it lawfully.

26 11. PG&E is a corporation organized under the laws of the State of California with its
27 corporate headquarters located in San Francisco, California.

28

1 **FACTUAL BACKGROUND**

2 12. PG&E is an electrical utility that supplies electricity to, *inter alia*, Alameda, Contra
3 Costa, Marin and San Francisco Counties, California. PG&E distributes electricity in Alameda,
4 Contra Costa, Marin and San Francisco Counties via an electrical grid, the wires for which are
5 suspended by power poles that are treated with an oil-pentachlorophenol mixture.

6 13. PG&E owns, operates and maintains the Poles. A mixture containing
7 pentachlorophenol as its active ingredient has been used to pressure treat the Poles. This wood
8 treatment mixture also contains the various congeners of dioxins, hexachlorobenzene, 2,3,4,6
9 tetrachlorophenol, 2,4,6 trichlorophenol, 2,4 dichlorophenol and 2,6 dichlorophenol. The carrier
10 for the wood treatment mixture used on these Poles is oil. Over time, this oil-wood treatment
11 mixture leaks out of each Pole into or onto whatever surface the Pole contacts. This oil-wood
12 treatment mixture also oozes to the surface of that part of the Pole that is above ground, and then
13 itself drips, or is washed off the pole by rainwater. As a result, dioxins, hexachlorobenzene, and
14 pentachlorophenol from the Poles are carried by storm water runoff discharged from the Poles to
15 San Francisco Bay, its tributaries and adjacent wetlands. These toxic pollutants contaminate San
16 Francisco Bay, its tributaries and adjacent wetlands.

17 14. Dioxins and hexachlorobenzene are part of a class of compounds that the scientific
18 community identifies as “dioxin-like” compounds. These chemicals are called dioxin-like
19 compounds because they tend to affect organisms in the same way as does the most potent toxic
20 chemical of this class, 2,3,7,8 tetrachlorodibenzo-p-dioxin, but have different potencies for
21 causing toxicological effects. Dioxins and hexachlorobenzene bio-accumulate and bio-magnify
22 in organisms. These chemicals degrade very slowly and they bind to fatty substances. What this
23 means is that if a fish eats many microscopic organisms, each of which has ingested a low level
24 of dioxin and hexachlorobenzene, the dioxin and hexachlorobenzene from each microscopic
25 organism will remain in the fatty tissues and fluids of the fish, resulting in a much greater
26 concentration of these chemicals in the fish. Similarly, any fish that feeds on fish that have eaten
27 microscopic organisms that have ingested dioxins and hexachlorobenzene will have even greater
28 concentrations of these chemicals in its fatty tissues and fluids. This same bio-magnifying

1 process applies up any food chain, especially resulting in high concentrations of these chemicals
2 in the fatty tissues and fluids of animals at the top of a food chain, such as osprey, bald eagles,
3 salmon, raccoons, bear, seals, whales and humans. This bio-magnified amount concentrated in
4 fatty tissues and fluids is commonly referred to as the “body burden” of these chemicals.

5 15. Exposure to dioxins and hexachlorobenzene can increase the body burden of these
6 chemicals, particularly in species like humans who are at the top of long food chains. Any
7 increase in body burdens of these chemicals increases the human risk of several toxic end points
8 including cancer, developmental toxicity, reproductive toxicity, and immunotoxicity. Because of
9 the present high body burdens of these compounds in humans and other animals, any increment
10 in dosage will generate an increased risk of toxicity in humans and other animals. Because there
11 is such a wide range of species of animals for which exposure to dioxin-like compounds has been
12 shown to disrupt prenatal development and to cause embryo/fetal mortality, exposure to dioxins
13 and hexachlorobenzene is likely to increase the risk of embryo/fetal mortality in both fish, birds
14 and marine mammals. Exposure to dioxins and hexachlorobenzene can increase the risk that
15 wildlife, including fish, birds, and mammals will suffer decreased immune system function, and
16 thus bear an increased risk that they will contract, or succumb to viral, bacterial, parasitic, and
17 neoplastic infections and diseases. As body burdens of these chemicals increase, so does the risk
18 that all of the above mentioned species will suffer the above referenced toxic endpoints.

19 16. The discharge of pollutants from the Poles into San Francisco Bay, its tributaries and
20 adjacent wetlands poses a significant threat to the health of persons and the local environment.
21 Numerous members of the public, including Plaintiff’s members, are exposed daily to the
22 dioxins, hexachlorobenzene and pentachlorophenol discharged from the Poles into San Francisco
23 Bay, its tributaries and adjacent wetlands, thus exposing these individuals to significant risks to
24 their health.

25 17. The San Francisco Bay Basin Plan ("Basin Plan") seeks to protect and maintain
26 aquatic ecosystems and the resources those systems provide to society. The Basin Plan
27 acknowledges discharges of urban industrial site storm water as a significant source of pollution
28 adversely affecting the quality of local waters. Contaminated storm water discharges from the

1 Poles adversely impacts the water quality of the Bay watershed and threatens the ecosystem of
2 this watershed, which includes significant habitat for listed rare and endangered species. The
3 discharge of pollutants from the Poles also negatively impacts the water and aquatic sediments
4 adjacent to the Poles.

5 18. San Francisco Bay, its tributaries and adjacent wetlands are ecologically sensitive
6 areas. Although pollution and habitat destruction have drastically diminished the Bay's
7 once-abundant and varied fisheries, the Bay, its tributaries and wetlands are still essential habitat
8 for dozens of fish and bird species as well as macroinvertebrate and invertebrate species. Storm
9 water contaminated with dioxins, hexachlorobenzene and pentachlorophenol harms the special
10 aesthetic and recreational significance that San Francisco Bay, its tributaries, and its adjacent
11 wetlands has for people in the surrounding communities. San Francisco Bay, its tributaries, and
12 its adjacent wetlands are used by kayakers, swimmers, and windsurfers, as well as recreational
13 and subsistence anglers. The public's usage of the Bay for water contact sports exposes many
14 people to the contaminants in storm water runoff. Non-contact recreational and aesthetic
15 opportunities, such as wildlife observation, also are impaired by storm water contaminants
16 discharged to San Francisco Bay, its tributaries, and its adjacent wetlands.

17 19. PG&E disposes of carcinogenic and teratogenic solid waste from the Poles –
18 dioxins, hexachlorobenzene and pentachlorophenol – when these chemicals leak, spill and drip
19 from the Poles, are discharged from them, and are thus discarded into the environment. These
20 dioxins, hexachlorobenzene and pentachlorophenol contaminate surface waters, including
21 ephemeral waters, ditches, various drainage structures, the sidewalks, curbs, shoulders and
22 crosswalks of public thoroughfares, and any other dirt and sediment PG&E's toxic waste
23 contacts. Dust impregnated with PG&E's carcinogenic and teratogenic waste is blown into the
24 air during dry seasons. It is deposited on the lawns and gardens of people who live in Alameda,
25 Contra Costa, Marin and San Francisco Counties. This waste contaminates the produce these
26 people grow in their gardens. People and animals breathe this waste. They step in it and track it
27 into their homes. Pets and wildlife get it on their fur and then lick it off, thus ingesting it.
28 PG&E's waste, when tracked into the homes of residents of Alameda, Contra Costa, Marin and

1 San Francisco Counties is ingested by children who play on rugs and carpets which have become
2 repositories for this waste. Each pole leaves a plume of highly toxic carcinogens and teratogens
3 in the soil on property that belongs to many homeowners, as well as many businesses and
4 governmental entities, in Alameda, Contra Costa, Marin and San Francisco Counties, thus
5 bringing thousands of citizens of these counties into close, daily, contact with PG&E's toxic
6 waste.

7 **STATUTORY AND LEGAL BACKGROUND**

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

13 21. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), allows for the issuance of permits
14 to discharge pollutants to waters of the United States.

15 22. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows each state to administer its
16 own EPA-approved NPDES permit program for authorizing and regulating discharges to waters
17 of the United States. In California, the State Board and Regional Boards administer an
18 EPA-approved NPDES regulatory program.

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

22 24. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) requires that NPDES permits be
23 issued for storm water discharges associated with industrial activities, including construction
24 activity.

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

28

1 26. The State Board has issued an NPDES general permit pursuant to section 402 of the
2 CWA, 33 U.S.C. § 1342(b) and 40 C.F.R § 123.25 that authorizes and regulates storm water
3 discharges from industrial facilities (“the Industrial Permit”). To discharge storm water lawfully
4 in California, industrial dischargers must secure coverage under the Industrial Permit and comply
5 with its terms, or obtain and comply with an individual NPDES permit.

6 27. Facilities discharging, or having the potential to discharge, storm water associated
7 with industrial activities that have not obtained an individual NPDES permit were required to
8 apply for coverage under the Industrial Permit by filing an NOI by October 1992. Industrial
9 Permit, Provision E(1); Industrial Permit, Attachment 3.

10 28. Discharge Prohibition A(1) and Special Condition D(1) of the Industrial Permit
11 prohibits the discharge of materials other than storm water (i.e. non-storm water discharges) if
12 such materials contain or constitute pollutants, whether directly or indirectly, to a storm sewer
13 system or to waters of the United States.

14 29. Discharge Prohibition A(2) of the Industrial Permit prohibits storm water discharges
15 and non-storm water discharges that cause or threaten to cause pollution, contamination, or
16 nuisance.

17 30. Effluent Limitation B(2) of the Industrial Permit prohibits storm water discharges
18 which contain hazardous substances equal to or greater than a reportable quantity listed in 40
19 C.F.R. Part 117 and/or 40 C.F.R. Part 302 ("Reportable Quantities").

20 31. Effluent Limitation B(3) of the Industrial Permit requires operators to develop and
21 implement Best Management Practices ("BMPs") that achieve compliance with Best Available
22 Technology Economically Achievable ("BAT") for toxic, or non-conventional, pollutants and
23 Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.

24 32. Receiving Water Limitation C(1) of the Industrial Permit prohibits storm water
25 discharges and non-storm water discharges that adversely impact human health or the
26 environment.

27 33. Receiving Water Limitation C(2) of the Industrial Permit prohibits storm water
28 discharges and non-storm water discharges that cause or contribute to an exceedance of any

1 applicable water quality standard contained in a Statewide Water Quality Control Plan or the
2 applicable Regional Board's Basin Plan.

3 34. Section A(1) and Provision E(2) of the Industrial Permit require dischargers to have
4 developed and implemented a Storm Water Pollution Prevention Plan ("SWPPP") by October 1,
5 1992, that meets all of the requirements of the Industrial Permit.

6 35. The objective behind the SWPPP requirements is to identify and evaluate sources of
7 pollutants associated with industrial activities that may affect the quality of storm water
8 discharges from the industrial site, and ensure the implementation of site-specific BMPs to
9 reduce or prevent pollutants associated with industrial activities in storm water discharges.
10 Industrial Permit, section A(2).

11 36. To ensure its effectiveness, every permittee must evaluate its SWPPP annually
12 pursuant to the requirements of section A(9), and must revise its SWPPP as necessary to ensure
13 compliance with the Industrial Permit. Industrial Permit, section A(9) & (10).

14 37. Sections A(3) through A(10) of the Industrial Permit set forth the requirements for a
15 SWPPP, which include:

16 a. A site map showing the facility boundaries, storm water drainage areas with flow
17 patterns, nearby water bodies, the location of the storm water collection, conveyance and
18 discharge system, structural control measures, areas of actual and potential pollutant contact, and
19 areas of industrial activity. Industrial Permit, section A(4).

20 b. A list of significant materials handled and stored at the site. Industrial Permit, section
21 A(5).

22 c. A description of potential pollutant sources including industrial processes, material
23 handling and storage areas, dust and particulate generating activities, a description and listing of
24 significant spills and leaks including toxic and hazardous substances, and a list of all non-storm
25 water discharges and their sources and a description of locations where soil erosion may occur.
26 Industrial Permit, section A(6);

27 d. An assessment of potential pollutant sources at the site and a description of the BMPs
28 to be implemented at the site that will reduce or prevent pollutants in storm water discharges and

1 non-storm water discharges, including structural BMPs where non-structural BMPs are not
2 effective. Industrial Permit, sections A(7) and (8);

3 e. Site inspections to identify areas contributing to storm water discharges, to evaluate
4 the effectiveness of the SWPPP measures in reducing pollutant loading, and to evaluate whether
5 pollution control measures set out in the SWPPP are adequate and properly implemented;
6 Dischargers must also certify, based on annual site inspections, that the facility is in compliance
7 with the Industrial Permit and to report any non-compliance. Industrial Permit, sections A(9);
8 and

9 f. The BMPs utilized to achieve compliance with BAT/BCT. Industrial Permit, Effluent
10 Limitation B(3).

11 38 Section B(1) and Provision E(3) of the Industrial Permit require industrial
12 dischargers to develop and implement an adequate monitoring and reporting program ("M&RP")
13 prior to the beginning of industrial operations, or by October 1, 1992.

14 39. The objective of the M&RP is to ensure that storm water discharges are in
15 compliance with the Industrial Permit's Discharge Prohibitions, Effluent Limitations, and
16 Receiving Water Limitations. Industrial Permit, section B(2).

17 40. The M&RP must ensure that BMPs are effectively reducing and/or eliminating
18 pollutants at the site, and are evaluated and revised whenever appropriate. Industrial Permit,
19 section B(2)(a).

20 41. Sections B(3) through B(16) of the Industrial Permit set forth the following M&RP
21 requirements:

22 a. dischargers must conduct quarterly dry season visual observations of all drainage areas
23 at the site for the presence of non-storm water discharges. Industrial Permit, section B(3);

24 b. dischargers must conduct visual observations of storm water discharges from one
25 storm event per month during the wet season (defined as October 1-May 30). Industrial Permit,
26 section B(4);

1 c. dischargers must document the presence of any floating or suspended material, oil and
2 grease, discolorations, turbidity, odor and the source of any pollutants. Industrial Permit, section
3 B(3)(d) and B(4)(c);

4 d. dischargers must maintain records of observations, observation dates, locations
5 observed, and responses taken to eliminate non-storm water discharges and to reduce or prevent
6 pollutants from contacting non-storm water and storm water discharges. Industrial Permit,
7 sections B(3)(d) and B(4)(c);

8 e. dischargers must visually observe and collect samples of storm water discharges from
9 all locations where storm water is discharged. Sample collection from all discharge points must
10 occur during the first storm event of the wet season and during at least one other storm event of
11 the wet season, for a total of two samples per wet season. Industrial Permit, section B(5) and (7);
12 and

13 f. discharges must analyze all storm water samples for total suspended solids ("TSS"),
14 pH, specific conductance, total organic carbon ("TOC") or oil and grease, and toxic chemicals
15 and other pollutants that are likely to be present in the discharges. Industrial Permit, section
16 B(5)(c).

17 42. Dischargers must submit "Annual Reports" to the Regional Board by July 1 of each
18 year which include, *inter alia*, a summary of visual observations, sampling results, laboratory
19 reports, a report of any non-compliance, and an explanation as to why a facility did not
20 implement any activities required by the Industrial Permit. Industrial Permit, section B(14).

21 43. Section 7002 of the RCRA prohibits any past, or present generator, past or present
22 transporter, or past or present owner or operator of a treatment, storage or disposal facility, from
23 contributing to the past or present handling, storage, treatment, transportation, or disposal of any
24 solid or hazardous waste which may present an imminent and substantial endangerment to health
25 or the environment.

1 **FIRST CLAIM FOR RELIEF**

2 Violation of the CWA
33 U.S.C. § 1311(a)

3 44. Plaintiff reasserts and realleges paragraphs 1 through 43 above.

4 45. The CWA prohibits the discharge of a pollutant to waters of the United States from a
5 point source without an NPDES permit. 33 U.S.C. § 1311(a).

6 46. PG&E discharges pollutants from several of the Poles, each of which constitutes a
7 point source, into San Francisco Bay and/or its tributaries and/or its adjacent wetlands. PG&E
8 has failed to obtain NPDES permit authorization (either via the Industrial Permit or an individual
9 permit) for storm water pollutant discharges from the Poles into waters of the United States

10 47. San Francisco Bay, its tributaries, all wetlands adjacent to the Bay or these
11 tributaries are waters of the United States.

12 48. The Poles are point sources.

13 49. PG&E has violated section 301(a) of the CWA, 33 U.S.C. § 1311(a), due to its
14 discharges from the Poles of pollutant-bearing storm water runoff every day that significant rain
15 falls in the vicinity of the Poles. These violations have occurred since at least June 4, 2004.

16 50. PG&E will continue to violate section 301(a) of the CWA, 33 U.S.C. § 1311(a),
17 each day that, without an appropriate NPDES Permit, PG&E discharges pollutants from the Poles
18 into waters of the United States. These continuing violations will include every future day that
19 significant rain falls in the vicinity of the Poles.

20 51. An action for relief under the CWA is authorized by section 505(a) of the CWA, 33
21 U.S.C. § 1365(a). These acts and omissions are continuing and if allowed to continue will
22 irreparably harm Plaintiff.

23 **SECOND CLAIM FOR RELIEF**

24 Violation of the CWA
33 U.S.C. §§ 1311(a), 1342

25 52. Plaintiff reasserts and realleges paragraphs 1 through 51 above.

26 53. PG&E's failure to apply for and obtain an NPDES Permit for the discharge of
27 pollutants from the Poles is an ongoing violation of the CWA and 40 C.F.R. § 122.21(a), which
28

1 imposes a duty to apply for NPDES permit authorization on all persons who discharge pollutants
2 to waters of the United States from a point source.

3 54. Each day that PG&E maintains the Poles without applying for and obtaining NPDES
4 Permit authorization for discharges of pollutants from the Poles is a separate and distinct CWA
5 violation.

6 55. An action for relief under the CWA is authorized by section 505(a) of the CWA, 33
7 U.S.C. § 1365(a). These acts and omissions are continuing and if allowed to continue will
8 irreparably harm Plaintiff.

9 **THIRD CLAIM FOR RELIEF**

10 Violation of the RCRA
42 U.S.C. § 6972(a)(1)(B)

11 56. Plaintiff reasserts and realleges paragraphs 1 through 55 above.

12 57. Through its ownership and operation of the Poles, PG&E is a past and present
13 generator of solid waste. PG&E has contributed and is contributing to the past and present
14 handling, storage, treatment, transportation and disposal of solid waste such that PG&E's waste
15 may present an imminent and substantial endangerment to health and the environment.

16 58. An action for relief under the RCRA is authorized by section 7002 of the RCRA, 42
17 U.S.C. § 6972(a)(1)(B). PG&E's acts and omissions, as alleged above, are continuing. If
18 allowed to continue these acts and omissions will irreparably harm Plaintiff.

19 **REMEDY**

20 59. Plaintiff has no plain, speedy, and adequate remedy, in the ordinary course of law,
21 other than the relief sought in this Complaint, because there is no other mechanism for
22 compelling PG&E to take the action necessary under the CWA to abate its unlawful discharges
23 of pollutants to waters of the United States, and to take action under the RCRA to abate PG&E's
24 unlawful disposal of solid waste.

25 **PRAYER FOR RELIEF**

26 60. WHEREFORE, Plaintiff respectfully requests that this Court grant the following
27 relief:

1 a. Declare that PG&E has violated and is in continued violation of the Clean Water Act
2 as alleged herein;

3 b. Enjoin PG&E from discharging pollutants from the Poles to waters of the United
4 States;

5 c. Enjoin PG&E to apply for and secure NPDES permit authorization under the Industrial
6 Permit or an Individual Permit;

7 d. Enjoin PG&E from violating the substantive and procedural requirements of the Clean
8 Water Act and the Industrial Permit;

9 e. Order PG&E to pay civil penalties of up to \$32,500 per day per CWA violation
10 pursuant to section 309(d) of the Clean Water Act, 33 U.S.C. §1319(d), and the Adjustment of
11 Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

12 f. Declare that PG&E has violated and is in continued violation of the Resource
13 Conservation and Recovery Act as alleged herein;

14 g. Enjoin PG&E from disposing of solid waste from the poles in such ways as may pose
15 an imminent and substantial endangerment to health or the environment;

16 h. Enjoin PG&E to remove and lawfully dispose of the solid waste it has unlawfully
17 deposited into the environment; and

18 i. Award such other relief as this Court may deem appropriate.

19 **DEMAND FOR JURY**

20 61. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury trial in
21 this matter.

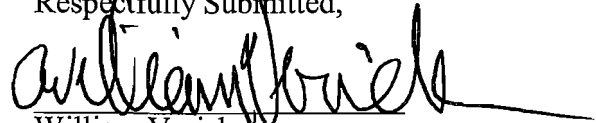
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1 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

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

5
6 Dated: September 3, 2009

Respectfully Submitted,

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8 William Verick
9 Attorney for Plaintiff
10 Ecological Rights Foundation

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June 4, 2009

Peter A. Darbee, President
and CEO
Pacific Gas & Electric
Company
One Market Spear Tower,
Suite 2400
San Francisco, CA 94105

Linda Y.H. Cheng
Agent for Service of Process
Pacific Gas & Electric
Company
77 Beale Street, 32nd Floor
San Francisco, CA 94105

Dorothy R. Rice
Executive Director
State Water Resources
Control Board
1001 "I" Street
Sacramento, CA 95814

Lisa Jackson, Administrator
U.S. EPA
1200 Pennsylvania Ave,
N.W.
Washington, D.C. 20460

Linda Yoshii
Acting Regional
Administrator
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eric Holder, Attorney
General
U.S. Department of Justice
950 Pennsylvania Avenue,
N.W.
Washington, D.C. 20530-
0001

Maziar Mouassaghi
Acting Director
Department of Toxic
Substances Control
1001 "I" Street
Sacramento, CA 95814

Margo Reid Brown
Board Chair
California Integrated Waste
Management Board
1001 "I" Street, MS 24B
Sacramento, CA 94814

Bruce Wolf
Executive Director
Regional Water Quality
Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Notice of Violations of Federal Law and Notice of Intent to Begin Citizen
Enforcement Action

Greetings:

I write on behalf of the Ecological Rights Foundation (hereinafter, "ERF") to notify you of violations of federal law caused by power poles located in Alameda, Contra Costa, Marin and San Francisco Counties, California ("the Poles"). ERF has conducted an investigation of power poles to determine the extent to which they discharge, leak, spill, drip, deposit and discard toxic chemicals that endanger health and the environment. These power poles discharge, leak, spill, drip, deposit and discard a wood treatment mixture of oil and an active ingredient – pentachlorophenol. Because of the way it is manufactured, pentachlorophenol is necessarily and

invariably contaminated with a suite of similar, but even more toxic chemicals. These contaminants include all of the various congeners and isomers of polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (hereinafter "dioxin" or "dioxins") and hexachlorobenzene. These power poles discharge, leak, spill, drip, deposit and discard these toxic chemicals, which are deposited on the surface environments surrounding the poles and entrained in storm water run-off which is then carried into surface waterbodies and, eventually, to the larger aquatic complex of bays commonly known collectively as "San Francisco Bay" or "the Bay". Once in the environment, these toxic chemicals enter the food chain and cause and threaten to cause cancer, reproductive, developmental and immunological harm to humans and other mammals, fish, birds and other wildlife. This letter begins the process by which ERF will seek available remedies under the federal Resource Conservation and Recovery Act ("RCRA") and the federal Clean Water Act ("CWA"). ERF will pursue these remedies so as to prevent future disposal and discharge of this waste and pollution. ERF will further seek civil penalties for CWA violations.

I. The Noticing Party

ERF is organized under the laws of the State of California. ERF's main office is at 867 "B" Redwood Drive, Garberville, California, 95542. ERF's telephone number is (707) 923-4372. Members of ERF reside in Alameda, Contra Costa, Marin and San Francisco Counties, California and use and enjoy the public streets, sidewalks, parks, and other public places and water bodies located in these counties.

II. The Noticed Party

Pacific Gas & Electric Company ("PG&E") is an electrical utility that supplies electricity to Alameda, Contra Costa, Marin and San Francisco Counties, California. PG&E distributes electricity in Alameda, Contra Costa, Marin and San Francisco Counties via an electrical grid, the wires for which are suspended by wooden power poles that are treated with the above-referenced oil-pentachlorophenol mixture. PG&E owns and maintains these power poles, which are the Poles to which this Notice pertains.

III. Factual Background: The Problem with Power Poles

_____ PG&E owns, operates and maintains the Poles referred to in this letter. A mixture containing pentachlorophenol as its active ingredient has been used to pressure treat the Poles. This wood treatment mixture contains all of the various congeners and isomers of dioxins. This mixture also contains hexachlorobenzene, 2,3,4,6 tetrachlorophenol, 2,4,6 trichlorophenol, 2,4 dichlorophenol and 2,6 dichlorophenol. The carrier for the wood treatment mixture used on these Poles is oil. Over time, this oil-wood treatment mixture leaks out of each Pole into or onto the surface the Pole contacts. This oil-wood treatment mixture also oozes to the surface of that

part of the Pole that is above ground, and then itself drips, or is washed off the pole by rainwater. As a result, dioxins, hexachlorobenzene, and pentachlorophenol from the Poles is deposited onto or into the pavement, the soil, and other surfaces (such as water) that surround the Poles. In addition, storm water runoff from the Poles carries these pollutants from the Poles to storm drains and/or water bodies adjoining or near the Poles. These toxic pollutants contaminate the pavement, the soil and storm drains and/or water bodies adjoining or near the Poles. Additional sources of waste contaminants being released from the Poles and then further disbursed to the environment are as follows: (1) When workers and other persons make contact with the Poles, wood chips are frequently dislodged from the Poles and fall to the ground and are then spread around the vicinity of the Poles. (2) Many persons nail, tack, tape, or otherwise attach paper notices and advertisements to the Poles; these paper notices soak up and absorb dioxins, hexachlorobenzene, and pentachlorophenol from the Poles. These paper notices are subsequently removed from the Poles and further distributed in the environment or are blown off the Poles and land on the sidewalks, streets, or ground adjoining the Poles. (3) Woodpeckers bore into the Poles, and release sawdust from the Poles to the ground and into the environment (including, but not limited to exposing the woodpeckers to dioxins, hexachlorobenzene, and pentachlorophenol from the Poles). (4) Dioxins, hexachlorobenzene, and pentachlorophenol that has dripped, oozed, washed or otherwise been released from the Poles to adjoining surface areas is tracked by pedestrians, cyclists, pets, cars and landscaping activity into wider distribution in the environment, including into the homes and onto the rugs and carpets of people who live in Alameda, Contra Costa, Marin and San Francisco counties. (5) Storm water that runs off the Poles and collects in puddles on streets or other publicly used areas is a source of public contact with dioxins, hexachlorobenzene, and pentachlorophenol from the Poles.

On February 27 and March 25, 2006, ERF collected rainwater that dripped directly off power poles located along Pleasant Hill Road near that road's intersection with Church Street across from Nancy Boyd Creek, in Martinez, California. ERF had that rainwater analyzed for pentachlorophenol and dioxins. All of the Poles investigated had been treated with the above-referenced oil-pentachlorophenol mixture. Pentachlorophenol that dripped off one Pole was detected at levels so high that it exceeded the calibration limits of the test. The results were reported as greater than 1000 micrograms per liter (" $> 1000 \mu\text{g/L}$ "). Dioxins were reported as the toxic equivalence of 2,3,7,8 tetrachlorinated dibenzo-p-dioxin ("dioxin TEQ"). The dioxin concentration in the rainwater that dripped off a power pole was reported as 1383 picograms TEQ per liter ("1383 pg/L"). Water pooled around the base of Poles was also sampled and tested for dioxin concentration. Two samples were taken from around the bottom of two separate Poles. One sample contained a dioxin TEQ concentration of 579 pg/L and the other 610 pg/L. Finally, water from a ditch into which pentachlorophenol from the Poles was deposited was sampled as it discharged from culverts into Nancy Boyd Creek in Martinez, California. Two samples were collected. One sample contained a dioxin TEQ concentration of 8.5 pg/l and the other 28.07 pg/L. These water samples were taken during an intense rainfall event such that literally millions of gallons of water were flowing through the relevant culverts and into Nancy

Boyd Creek. Nancy Boyd Creek is a tributary of Alhambra Creek, which flows into Suisan Bay in Martinez California, near the Carquinez Strait. This is evidence that, in absolute terms, a shocking quantity of pentachlorophenol and dioxin from the Poles was flowing through Nancy Boyd Creek and, eventually, into San Francisco Bay.

ERF's sampling of the storm water runoff from the above-mentioned Poles in Martinez is representative of the levels (and the absolute quantities) of pentachlorophenol and dioxins that, with each significant rainstorm, is discharged into waterbodies from the numerous Poles that have been treated with pentachlorophenol and that are located throughout Alameda, Contra Costa, Marin and San Francisco Counties, California.

The disposal and discharge of toxic wastes and pollutants from the Poles poses a significant threat to the health of persons and to the local environment. Numerous members of the public are exposed daily to the dioxins, hexachlorobenzene and pentachlorophenol wastes released/discarded from the Poles into public streets, sidewalks, parks, other surface areas accessible to the public and San Francisco Bay and its tributaries, exposing these individuals to significant health risks.

The San Francisco Bay Basin Plan ("Basin Plan") seeks to protect and maintain aquatic ecosystems and the resources those systems provide to society. The Basin Plan acknowledges discharges of urban industrial site storm water as a significant source of pollution adversely affecting the quality of local waters. Contaminated storm water discharged from the Poles adversely impacts the water quality of the Bay watershed and threatens the ecosystem of this watershed, which includes significant habitat for listed rare and endangered species. The discharge of pollutants from the Poles also negatively impacts the water and aquatic sediments adjacent to the Poles.

The Bay and its shoreline and tributaries are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished the Bay's once-abundant and varied fisheries, the Bay and its tributaries are still essential habitat for dozens of fish and bird species as well as macroinvertebrate and invertebrate species. Storm water contaminated with dioxins, hexachlorobenzene and pentachlorophenol harms the special aesthetic and recreational significance that the Bay has for people in the surrounding communities. The Bay and its tributaries are used by kayakers, swimmers, and windsurfers, as well as recreational and subsistence anglers. The public's use of the Bay for water contact sports exposes many people to the contaminants in storm water runoff. Non-contact recreational and aesthetic opportunities, such as wildlife observation, also are damaged by storm water contaminants discharged to the Bay. Under Section 303(d) of the federal CWA, the Bay has been listed as impaired for dioxin because of public health concerns raised by the concentration of dioxins in the tissues of fish caught in San Francisco Bay.

IV. Specific Permits, Standards, Regulations, Conditions, Requirements or Orders Violated

A. RCRA Standard Violated

With regard to RCRA, this Notice pertains to PG&E's violation of 42 U.S.C. § 6972(a)(1)(B) (Section 7002 of the Solid Waste Disposal Act), which provides that:

Any person may commence a civil action on his own behalf – against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

For purposes of 42 U.S.C. § 6972(a)(1)(B), PG&E is a generator of waste oil-pentachlorophenol mixture and has contributed and is contributing to the past, present and future storage and disposal of solid waste, to wit: the oil-pentachlorophenol mixture referenced above (including all of the toxic contaminants referenced above which make up that oil-pentachlorophenol mixture), and all soil, sediment and water contaminated with the oil-pentachlorophenol mixture. PG&E's disposal of this waste presents an imminent and substantial endangerment to health and the environment.

B. CWA Effluent Limitations Violated

With regard to the CWA, this Notice pertains to PG&E's violation of CWA § 301(a), which provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit. 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). CWA § 301(a)'s prohibition on unpermitted discharges constitutes an "effluent limitation" within the meaning of CWA section 505(f), 33 U.S.C. § 1365(f). The Poles discharge storm water associated with industrial activity to San Francisco Bay and its tributaries, and that storm water is contaminated with pollutants. So far as ERF is aware, PG&E lacks any NPDES permit authorizing storm water discharges from the Poles, thus rendering all discharges of storm water (all of which contain pollutants) from the Poles unlawful.

To the extent that PG&E is authorized by General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Permit") to discharge storm water from any of the Poles, these storm

water discharges are conditioned on PG&E's compliance with the terms of the General Permit. Each of these permit terms constitutes an "effluent limitation" within the meaning of CWA section 505(f), 33 U.S.C. § 1365(f). PG&E's storm water discharges have violated several of these permit terms, thereby violating CWA effluent limitations.

C. The Activity that Constitutes the Violations

1. Location of the Violations at Issue

This notice of intention to file citizen suit pertains to each and every Pole located in San Francisco, Alameda, Contra Costa, and Marin counties, to the extent the Pole has been treated with the above-referenced oil-pentachlorophenol mixture. PG&E maintains an extensive database with information about the treatment method used on every Pole it owns. PG&E knows every single Pole in the above-referenced counties that has been treated with the oil-pentachlorophenol mixture. Given PG&E's ownership, control and usage of these Poles, PG&E knows the location of each of these Poles. These Poles include, but are not limited to, the Poles identified in the attached Exhibits A and B. The itemization of Poles in Exhibits A and B are provided by way of example to illustrate ERF's concern with the Poles; there are thousands of additional Poles that have been treated with the above-referenced oil-pentachlorophenol mixture and to which this Notice pertains. These "additional" Poles are located at conspicuous, plainly visible locations – such as along public thoroughfares, on school grounds, in public parks, next to playgrounds, and in the front and back yards of private citizens – throughout Alameda, Contra Costa, Marin and San Francisco Counties, California. These additional Poles pose risks similar to those posed by the Poles listed in Exhibits A and B.

2. Imminent and Substantial Endangerment to Health and the Environment in Violation of RCRA

Disposal of waste from the Poles causes an imminent and substantial endangerment to health and the environment. As discussed above, waste from the Poles is disposed when the oil-pentachlorophenol mixture used to treat the Poles spills, leaks, discharges and drips from the Poles and is deposited at the bottom of each pole. Over time, this oil-wood treatment mixture leaks out of each Pole into or onto the surface the Pole contacts. This oil-wood treatment mixture also oozes to the surface of that part of the Pole that is above ground and then itself drips, or is washed off the pole by rainwater, which then carries the oil-wood treatment mixture onto or into the surfaces surrounding the Poles and/or is deposited into the soil, aquatic sediments, and the storm drains and/or water bodies adjoining or near the Poles. This toxic mixture contaminates the surface areas, storm drains and/or water bodies near the Poles. Additional ways that PG&E's chlorophenolic wastes (and their more toxic contaminants) from the Poles are disposed of, released or further distributed to the environment are as follows: (1) When workers and other persons make contact with the Poles, wood chips are frequently

dislodged from the Poles, fall to the ground and are then spread around the vicinity of the Poles. (2) Many persons nail, tack, tape, staple or otherwise attach paper notices and advertisements to the Poles; these paper notices soak up and absorb oil, dioxins, hexachlorobenzene, and pentachlorophenol from the Poles. These paper notices are subsequently removed from the Poles or are blown off the Poles and land on the ground near the Poles. (3) When PG&E and/or its agents perform maintenance work on the Poles, attach wires or cables or other hardware to the Poles, or replace or add cross arms on the Poles, PG&E and its agents drill holes in, or saw into, the Poles thus generating sawdust which is released to the surfaces beneath the Poles and the environment. (4) Weathering and aging of the Poles causes them to erode, thus sloughing off chips, dust and particles of wood impregnated with pentachlorophenol and its highly toxic contaminants. (5) Woodpeckers and insects bore into the Poles, and release sawdust from the Poles to the surface below the Poles and into the environment (including, but not limited to exposing the woodpeckers and insects to dioxins, hexachlorobenzene, and pentachlorophenol from the Poles). (6) Dioxins, hexachlorobenzene, and pentachlorophenol that has leaked, dripped, oozed, washed or otherwise been released from the Poles to adjoining surface areas are tracked by pedestrians, wild and domestic animals, cyclists, cars, landscaping activity and blown by the wind into wider distribution in the environment, including into the homes of people who live near the Poles or who otherwise come into contact with wastes from the Poles. (7) Storm water that runs off the Poles and collects in puddles on streets or other publicly used areas is a source of public contact with dioxins, hexachlorobenzene, and pentachlorophenol from the Poles.

Disposal of these chemicals into the environment causes an imminent and substantial endangerment to health and the environment. The chemicals in the oil-wood treatment mixture are highly toxic and are known to the State of California, the federal government and the World Health Organization to cause cancer, immunotoxicity, birth defects and other reproductive toxicity. Currently existing published, peer reviewed literature shows that pentachlorophenol is routinely contaminated with dioxins and hexachlorobenzene. Dioxins and hexachlorobenzene are manufacturing impurities that are found in virtually all samples of technical grade pentachlorophenol, which is widely used to treat power Poles to this day. For example, a report published by the California State Water Resources Control Board cites to a 1981 study of the concentration of dioxins in the commercial oil-pentachlorophenol mixture used on PG&E's Poles. This study shows that the oil-pentachlorophenol mixture contained 4.5% pentachlorophenol and 7.6 parts per million dioxin (with a dioxin TEQ of approximately 0.6 parts per *million*). EPA Region 9 has set a preliminary remediation goal for dioxin TEQ in residential soil of 3.9 parts per *trillion*. The dioxin TEQ in PG&E's waste oil-pentachlorophenol mixture is thus approximately 150,000 *times* the EPA Region 9 provisional remediation goal for residential soil. Any disposal of this waste oil-pentachlorophenol mixture from Poles can reasonably be expected also to include the disposal of its dioxin and hexachlorobenzene contaminants at very high concentrations.

In assessing cancer hazard from dioxins, it is safe to rely on a linear, no-threshold model for genotoxic chemicals. A linear no-threshold model for cancer risk assessment is a standard toxicological method used to assess cancer risk. For example, under 22 Cal. Code Regs. 27 Cal. Code Regs section 25701(a)(5), the California Office of Environmental Health Hazard Assessment ("OEHHA") has found that "the absence of a carcinogenic threshold dose shall be assumed and no-threshold models shall be utilized" when assessing cancer risk from a particular carcinogen. OEHHA has determined that, in the absence of convincing data which shows a threshold below which there is no risk of cancer, it is standard toxicological practice to assume no threshold exists for cancer hazard. Under the linear no-threshold model, exposure to extremely low levels of a carcinogen increases the quantitative risk of contracting cancer, even if that risk is very small. Based on currently existing published, peer reviewed studies, there is no significant evidence to show that there is a threshold below which there is no cancer risk from exposure to dioxins. Data exists which demonstrates biological effects of dioxins in the nanogram and picogram range, i.e., at levels substantially below those previously found to be toxic for these chemicals.

Based on a review of current, published, peer reviewed literature, dioxins and hexachlorobenzene, when discharged into a terrestrial or aquatic environment, can be ingested and concentrated in the fatty tissues of aquatic and terrestrial organisms. This literature demonstrates that dioxins and hexachlorobenzene bio-accumulate and bio-magnify in organisms. These chemicals degrade very slowly and they bind to fatty substances. What this means is that if a fish eats many microscopic organisms, each of which has ingested a low level of dioxin and hexachlorobenzene, the dioxin and hexachlorobenzene from each microscopic organism will remain in the fatty tissues and fluids of the fish, resulting in a much greater concentration of these chemicals in the fish. Similarly, any fish that feeds on fish that have eaten microscopic organisms that have ingested dioxins and hexachlorobenzene will have even greater concentrations of these chemicals in its fatty tissues and fluids. This same bio-magnifying process applies up any food chain, especially resulting in high concentrations of these chemicals in the fatty tissues and fluids of animals at the top of a food chain, such as osprey, bald eagles, salmon, raccoons, bear, seals, whales and humans. This bio-magnified amount concentrated in fatty tissues and fluids is commonly referred to as the "body burden" of these chemicals.

Dioxins and hexachlorobenzene are part of a class of compounds that the scientific community identifies as "dioxin-like" compounds. These chemicals are called dioxin-like compounds because they tend to affect organisms in the same way as does the most potent toxic chemical of this class, 2,3,7,8 tetrachlorodibenzo-p-dioxin, but have different potencies for causing toxicological effects. It is the generally accepted practice within the scientific community to assess the toxicological effects of dioxins and hexachlorobenzene based on their relative potencies compared to the potency of 2,3,7,8 tetrachlorodibenzo-p-dioxin. These relative potencies have been set by various organizations including the World Health Organization ("WHO").

An extensive body of literature on the carcinogenicity and developmental, reproductive and immunotoxicity of dioxins and related compounds in laboratory studies exists. These studies provide adequate evidence that 2,3,7,8 tetrachlorodibenzo-p-dioxin is a carcinogen in laboratory animals based on long-term bioassays conducted in both sexes of rats and mice. All studies have produced positive results, leading to the conclusion that tetrachlorodibenzo-p-dioxin is a multistage carcinogen increasing the incidence of tumors at sites distant from the site of treatment and at doses well below the maximum tolerated dose. 2,3,7,8 tetrachlorodibenzo-p-dioxin has been shown to be a carcinogen in hamsters, which are relatively resistant to the effects of dioxin-like compounds. Recent data have shown 2,3,7,8 tetrachlorodibenzo-p-dioxin to be a liver carcinogen in small fish.

Recent peer reviewed studies of human populations exposed to dioxins and related compounds has strengthened the inference, based on all the evidence from mechanistic, animal, and epidemiological studies that these compounds are appropriately characterized as human carcinogens. Recently, the International Agency for Research on Cancer ("IARC"), the cancer research arm of the World Health Organization, has upgraded its assessment of 2,3,7,8 tetrachlorodibenzo-p-dioxin to the status of being known to cause cancer in humans. The IARC did this as part of a broadly and extensively peer reviewed process.

Dioxins and hexachlorobenzene can cause developmental and reproductive toxicity in both animals and humans. The potential for dioxins and related compounds to cause reproductive and developmental toxicity in animals has been recognized for many years and there is extensive, peer reviewed literature regarding these effects.

A wide variety of developmental events, crossing three vertebrate classes and several species within each class, can be perturbed by dioxins and dioxin-like compounds, suggesting that dioxins have the potential to disrupt a large number of critical developmental events at specific developmental stages. Some of these changes can disrupt organ system structure and irreversibly impair organ function. A general finding in fish, bird, and mammalian species is that the embryo or fetus is more sensitive to dioxin-induced mortality than the adult. In mammals, postnatal functional alterations involving learning behavior and the developing reproductive system are sensitive to prenatal dioxin exposure at low levels (in the parts per billion range or lower). The developing immune system is also highly sensitive to extremely low dioxin levels. Alterations in developing systems and diminished prenatal viability and growth have been observed at maternal dioxin body burdens and/or daily dioxin doses during gestation above 100 nanograms per kilogram of body weight in virtually every species tested. Higher dose levels can be demonstrated to result in prenatal mortality.

Individual species vary in their sensitivity to any particular dioxin effect. The evidence available to date indicates that humans most likely fall in the middle of the range of sensitivity for individual effects among animals. In dioxin-exposed men, subtle changes in biochemistry

and physiology, such as enzyme induction, altered levels of circulating reproductive hormones, or reduced glucose tolerance, have been detected in a limited number of available studies. These findings, coupled with knowledge derived from animal experiments, suggest the potential for adverse impacts on human metabolism and developmental and/or reproductive biology and, perhaps other effects in the range of current human exposures at nanograms per kilogram (parts per trillion) levels. As body burdens of dioxin-like compounds increase, the probability and the severity, as well as the spectrum of human noncancer effects most likely increase. Hence, any additional increase in body burden of dioxin-like compounds increases the risk of harmful toxicological effects.

The immune system is a particularly vulnerable target for the toxicity of dioxin-like compounds, including dioxins and hexachlorobenzene. The ability of an animal to resist and/or control viral, bacterial, parasitic, and neoplastic diseases is determined by both nonspecific and specific immunological functions, which can be adversely affected by very low levels of dioxin-like compounds in body tissues.

Evidence has accumulated to demonstrate that the immune system is a target for toxicity of dioxins and structurally related compounds. The evidence has derived from numerous studies in various animal species. Animal studies suggest that some immunotoxic responses may be evoked at very low levels of dioxin exposure, which indicates the potential for similar risk to humans.

In summary, exposure to dioxins and hexachlorobenzene can increase the body burden of these chemicals, particularly in species like humans who are at the top of long food chains. Any increase in body burdens of these chemicals increases the human risk of several toxic end points including cancer, developmental toxicity, reproductive toxicity, and possibly immunotoxicity. Because of the present high body burdens of these compounds in humans and wildlife, any increment in dosage will generate an increased risk of toxicity in humans. Because there is such a wide range of species of animals for which exposure to dioxin-like compounds has been shown to disrupt prenatal development and to cause embryo/fetal mortality, exposure to dioxins and hexachlorobenzene is likely to increase the risk of embryo/fetal mortality in both fish, birds and marine mammals. Exposure to dioxins and hexachlorobenzene can increase the risk that wildlife, including fish, birds, and mammals will suffer decreased immune system function, and thus bear an increased risk that they will contract, or succumb to viral, bacterial, parasitic, and neoplastic infections and diseases. As body burdens of these chemicals increase, so does the risk that all of the above mentioned species will suffer the above referenced toxic endpoints.

Because the toxic chemicals in the oil-pentachlorophenol mixture are so long lived and because they bio-accumulate and biomagnify in living organisms, many species, including fish, birds, and mammals, including humans, that participate in the food chain affected by PG&E's Poles, bear an increased risk of suffering the toxic endpoints discussed above.

Consequently, PG&E is hereby placed on formal notice that after the expiration of ninety (90) days from the date of this Notice of Violation and Intent to file suit, ERF intends to file suit in federal court against PG&E under 42 U.S.C. section 6972(a)(1)(B) for violation of RCRA.

3. CWA Violations

During every significant local rain event over the past five years, PG&E has discharged contaminated storm water from many of the Poles into (1) San Francisco Bay, San Pablo Bay, Suisan Bay, or Carquinez Strait and wetlands adjacent to these waters (collectively, "the Bay") or (2) creeks and streams that flow into the Bay and wetlands adjacent to these waters. In addition, during every significant rainstorm over the past five years, PG&E has discharged contaminated storm water from many of the Poles into storm drains that lead to various creeks and streams that flow into the Bay or that lead directly to the Bay. Discharges into such storm drains causes pollutants to be discharged to the Bay and/or streams and creeks that are tributaries to the Bay and their adjoining wetlands. By way of example and illustration, ERF has set forth in the attached Exhibit B an exemplary list of a subset of the Poles from which storm water has discharged into these waters or storm drains. Given PG&E's ownership, operation, and maintenance of the Poles, PG&E knows the location of each additional Pole (i.e., Poles in addition to those listed in Exhibit B) that are situated such that storm water runoff from the Poles will reach these waters or storm drains.

These creeks and streams and the Bay are all waters of the United States within the meaning of the CWA. The CWA requires that these water bodies meet water quality objectives/criteria which protect specific "beneficial uses." The beneficial uses of the Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning and wildlife habitat.

Significant local rain events are reflected in the rain gauge data available at <http://cdec.water.ca.gov> and <http://lwf.ncdc.noaa.gov/oa/ncdc.html>. The attached Exhibit C compiles all dates in the last five (5) years when a significant rain event occurred—i.e., the dates that PG&E discharged storm water from the Poles.

It is unlawful to discharge pollutants to waters of the United States, such as the Bay and its tributaries, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. So far as ERF is aware, PG&E lacks NPDES permit authorization for discharges of pollutants into waters of the United States from the Poles, rendering all discharges of storm water from the Poles to waters of the United States unlawful under the CWA. To the extent that PG&E has sought and acquired NPDES permit authorization under the General Permit, PG&E is violating terms of the General Permit.

The Effluent Limitations of the General Permit, E.3, prohibit the Poles from discharging pollutants above the level commensurate with application of Best Available Control Technology ("BAT") and Best Conventional Technology ("BCT"). The Poles are discharging pollutants such as dioxins, hexachlorobenzene, and pentachlorophenol above a level commensurate with application of BAT and BCT, as PG&E has failed to employ measures that constitute BAT and BCT for power poles—which would include using power poles that are not treated with pentachlorophenol (such as cement or metal poles or wood poles treated with less toxic preservatives).

The Discharge Prohibitions of the General Permit, A.2, prohibit storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. The Discharge Prohibitions of the General Permit, A.2, prohibit storm water discharges to surface or groundwater that adversely impact human health or the environment. The Receiving Water Limitations of the General Permit, C.2, prohibit storm water discharges that cause or contribute to an exceedance of applicable Water Quality Standards. Applicable Water Quality Standards are set forth in the Basin Plan,¹ the National Toxics Rule and the California Toxics Rule (the National Toxics Rule and the California Toxics Rule are hereinafter collectively referred to as "the CTR").²

The Basin Plan, *inter alia*, establishes the following Water Quality Standards for San Francisco Bay and its tributaries:

All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms. Detrimental responses include, but are not limited to, decreased growth rate and decreased reproductive success of resident or indicator species. There shall be no acute toxicity in ambient waters. Acute toxicity is defined as a median of less than 90 percent survival, or less than 70 percent survival, 10 percent of the time, of test organisms in a 96-hour static or continuous flow test. *Id.* There shall be no chronic toxicity in ambient waters. Chronic toxicity is a detrimental biological effect on growth rate, reproduction, fertilization success, larval development, population abundance, community composition, or any other relevant measure of the health of an organism, population, or community.

¹ The Basin Plan is published by EPA on the internet at: http://www.epa.gov/waterscience/standards/wqslibrary/ca/ca_9_san_francisco.pdf. The Basin Plan is also published by the Regional Board on the internet at: <http://www.swrcb.ca.gov/rwqcb2/basinplan.htm>

² 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. 31682.

The CTR, *inter alia*, sets limits on levels of dioxins, hexachlorobenzene, and pentachlorophenol.

PG&E's storm water discharges from all the Poles located adjacent to the Bay or its tributaries or to storm drains that discharge to the Bay or its tributaries have caused or contributed to an exceedance of these Water Quality Standards set forth in the Basin Plan and CTR by causing or contributing to causing excessive levels of dioxins, hexachlorobenzene, and pentachlorophenol to be in applicable waters.

The General Permit, Section A: Storm Water Pollution Prevention Plan Requirements, ¶ 1 requires dischargers covered by the General Permit and commencing industrial activities before October 1, 1992 to develop and implement an adequate SWPPP by October 1, 1992. Section A ¶ 1 of the General Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly, and in any case no later than August 1, 1997.

The SWPPP must include, among other requirements, the following: (a) identification of all the members of a storm water pollution prevention team responsible for developing and implementing the SWPPP, General Permit Section A, ¶ 3; (b) a site map showing the storm water conveyance system and areas of actual and potential pollutant contact and all areas of on-going industrial activity, General Permit Section A, ¶ 4; (c) a list of significant materials handled and stored at the site including quantities and frequencies, General Permit Section A, ¶ 5; (d) all potential pollutant sources, industrial processes, material handling and storage, dust and particulate generating activities, significant spills and leaks, non-storm water discharges, and potential soil erosion activity must be described, General Permit Section A, ¶ 6; (e) an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective must be included, General Permit Section A, ¶¶ 7, 8; (f) specification of Best Management Practices ("BMPs") designed to reduce pollutant discharge to BAT and BCT levels, including BMPs already existing and BMPs to be adopted or implemented in the future, General Permit Section A, ¶ 8; (g) a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP as necessary after the evaluation has been completed, General Permit Section A, ¶ 9.; and (h) revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the General Permit, General Permit Section A, ¶ 10.d. Facility operators are required at all times to operate properly and to maintain any facilities and systems of treatment and control (and related appurtenances) which have been installed or used to achieve compliance with the conditions of the General Permit and the requirements of the SWPPP, General Permit Section C, ¶ 5.

PG&E has failed to develop or implement a SWPPP for the Poles that meets any of these requirements.

Each and every day that PG&E has discharged storm water from each of the Poles to waters of the United States as described herein constitutes a separate CWA violation. Each and every day that PG&E continues in the future to discharge storm water from each of the Poles described herein will constitute additional violations of the CWA.

Each and every day that PG&E has failed to develop and implement a SWPPP for the Poles constitutes a separate CWA violation. PG&E will continue to violate the General Permit in the future each day that it continues to fail to acquire General Permit authorization and develop and implement a SWPPP that complies with the General Permit.

Consequently, ERF hereby places PG&E on formal notice that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, ERF intends to file suit in federal court against PG&E under CWA section 505(a), 33 U.S.C. § 1365(a), for violations of the CWA.

IV. The Persons Responsible for Violating RCRA and the CWA

The following persons are responsible for violating RCRA and the CWA as further described in this letter:

Pacific Gas & Electric Company
One Market Spear Tower, Suite 2400
San Francisco, CA 94105

A. Dates of Violation of RCRA, 42 U.S.C. § 6972(a)(1)(B)

Dioxins, hexachlorobenzene and pentachlorophenol have been discharged, leaked, spilled, dripped and discarded from the Poles, including during every significant rainstorm during the past five years. These chemicals have been deposited on the soil and in the water adjacent to the poles every day during the past five years. Thereafter, these contaminants have remained in the soils and sediments near the Poles (and in the sediments of waterbodies downstream of the Poles) on every day during the past five years, posing an imminent and substantial endangerment to health and the environment of the locality and region on every day during the past five years. Accordingly, PG&E has been violating this RCRA provision continuously for at least the past five years. Thus, the dates of violations to which this Notice pertains are each and every single day dating back five years from the date of this letter. ERF further puts PG&E on notice that these violations will continue on every day into the future until PG&E removes the soils and sediments near the Poles that are contaminated with dioxins, hexachlorobenzene and pentachlorophenol and replaces the Poles with poles that do not discharge, leak, spill, drip and/or discard dioxins, hexachlorobenzene or pentachlorophenol (such that future releases of these compounds from the Poles to the environment are halted).

B. Dates of Violation of the CWA

Each and every day in the five years preceding the date of this letter that PG&E has discharged storm water from each of the Poles to waters of the United States as described herein constitutes a separate CWA violation. As described above, PG&E has discharged storm water on each and every day of significant rainfall during these past five years. The dates of significant rainfall are listed on the attached Exhibit C. ERF further puts PG&E on notice that these violations will continue in the future until PG&E replaces the Poles with power poles that do not discharge pentachlorophenol and its contaminants.

In addition PG&E has failed to develop and implement a SWPPP for the Poles that complies with the General Permit. PG&E has separately violated the CWA on each and every day of the five years preceding the date of this letter by failing to develop and implement a SWPPP for the Poles during this period. ERF further puts PG&E on notice that these violations will continue in the future until PG&E obtains General Permit authorization and prepares and implements a SWPPP for the Poles that fully complies with the General Permit.

V. Full Name, Address and Telephone Number of the Person Giving Notice

The full name, address and telephone number of the person providing this Notice is:

Ecological Rights Foundation
867 "B" Redwood Drive
Garberville, CA 95542

ERF's telephone number is (707) 923-4372.

VI. Name, Address and Telephone Numbers of Noticing Party's Counsel

William Verick
Fredric Evenson
424 First Street
Eureka, CA 95501
(707) 268-8900

David Williams
Brian Acree
370 Grand Avenue, Suite 5
Oakland, CA 94610
(510) 271-0826

Christopher Sproul
Jodene Isaacs
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
(415) 533-3376


ERF would be happy to discuss effective remedies for the violations referenced in this Notice. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate these discussions immediately so that a resolution may be reached before the end of the 60-day notice period (for ERF's alleged CWA violations) and 90-day notice period (for ERF's alleged RCRA violations). Although ERF is always interested in avoiding unnecessary litigation,

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in order to preserve its remedies, ERF will not delay filing a complaint if a satisfactory remedy has not been reached by the time the applicable notice periods have expired.

Cordially,

William Verick

**EXHIBIT A TO ERF NOTICE LETTER:
Location of the Poles Violating RCRA**

Poles in Corte Madera

1. On Redwood Highway, south of the intersection of Redwood Highway and Wornum, Corte Madera.

Poles in Larkspur

2. On Redwood Highway, north of the intersection of Redwood Hwy and Wornum, just into Larkspur (pole 14/ 126).
3. Within the Corte Madera Marsh, near the boundary between Larkspur and Corte Madera, on the western boundary of the Corte Madera Marsh.
4. In front of 2150 Redwood Highway, near De Bel Roofing Supply.
5. North of Pole No. 4 on Redwood Highway.
6. North of Pole No. 5 on Redwood Highway and around the corner on unnamed side street, next to building located around the corner.
7. A series of poles adjacent to “Greenbrae Boardwalk,” a walkway leading to several homes that are raised up on stilts. The poles are installed in a marsh adjoining San Francisco Bay.

Poles in San Rafael

8. At the northeast corner of the intersection of Las Gallinas & Manuel Freitas Parkway, near the Northgate Shopping Mall (pole 1065).
9. At the southeast corner of the intersection of Las Gallinas & Manuel Freitas Parkway, near the Northgate Shopping Mall, San Rafael
10. Toward the end of Mooring Road, on the west side of the street.
11. Toward the end of Mooring Road, on the east side of the street.
12. Near the intersection of Belle and Park Street.
13. ___Near the intersection of Jewell and Broadview in front of 222 Broadview.
14. Near the intersection of Mark Twain & Lowell Avenue, in front of 215 Mark Twain.

15. In front of 11 Mabry Way.
16. A series of poles located in the Santa Venetia Marsh extending from the end of Vendola Avenue well into the marsh.

Poles in Sausalito

17. At the intersection of Bridgeway and Humboldt.
18. On Humboldt, east of the intersection of Bridgeway and Humboldt.
19. Adjacent to the Sausalito Police Station Parking lot, on Humboldt, east of the intersection of Bridgeway and Humboldt.

Poles in San Francisco

20. In front of 5500 Anza Street, at the corner of Anza Street and 46th Avenue.
21. At the southeast corner of 44th Avenue and Anza Street (pole 110021957).
22. At the southeast corner of 43rd and Anza Street.
23. In front of 5120 Anza Street.
24. 37th Avenue, near the corner of Anza Street, right next to Lafayette Elementary School.
25. At the northeast corner of 37th Avenue and Anza Street, across the street from Lafayette Elementary School.
26. In front of 622 36th Avenue, across the street from Lafayette Elementary School.
27. In front of 676 36th Avenue.
28. At the northwest corner of 38th Avenue and Balboa.
29. In front of 3828 Balboa Avenue.
30. In front of 3320/3322 Balboa Avenue.

Poles in Albany

31. Marin Avenue at Sante Fe, southeast corner, Pole No. 110253335, adjacent to Marin Elementary School.
32. Marin Avenue at Sante Fe, southeast corner, Pole No. 110253336, adjacent to Bright Star Montessori Pre-School.

33. Sante Fe Street south of Marin, Pole #110253331, adjacent to Marin Elementary School.

Poles in Berkeley

34. Virginia at Eastshore Highway, Pole No. 110182185.
35. Addison Way west of 4th Streets, Pole No. #110085313.
36. Gilman at Eastshore Highway off ramp and 2nd Street, two poles in front of Budget Rent-a-Car, Pole number not visible due to large number of music posters.
37. Berkeley, terminus of Virginia Street west of Frontage Road, Pole No. 110248806.
38. In front of 1301 Spruce Street, Pole No. 110248759.
39. Oxford Street at Berryman Path, Pole No. 110378995.
40. Oxford Street north of Berryman Path, Pole No. 110378995.
41. Oxford Street south of Berryman Path, Pole No. 110255550.
42. Cedar Street at Chestnut street, south side of street, Pole No. 110165435.
43. 1300 Rose Street at Chestnut, Pole No. # 110165286.
44. Rose Street at Edith Street, across from King Middle School, Pole No. 110160934.
45. Haste Street, west of Bowditch Street, Pole No. 110314302.
46. Haste Street, west of Bowditch Street, Pole No. 110234079.
47. Haste Street, west of Bowditch Street. Pole No. 110222813.
48. Haste Street, west of Telegraph Avenue, Pole No. 110217964, in front of former Cody's books.
49. Haste Street, west of Telegraph, Pole No. 110217966. stamped McFarland Cascade 11-2004. IMG_4062 to 4064.
50. Corner of Haste Street and Dana Streets, south side of street, Pole No. 110217960.
51. Corner of Haste Street and Dana Streets, north side of street, Pole No. 110217968.

Poles in Martinez

52. A series of Poles located on Pleasant Hill Road between the intersection of Alhambra Avenue, John Muir Road, and Pleasant Hill Road and (northwest to) the intersection of

Alhambra Way, Muir Station Road and Pleasant Hill Road. These Poles include Pole Nos. 110261640, 110261639, 110261638, an unnumbered pole near 11021638, 110261599, 110261598, 110261600, 110265664, 110265665, an unnumbered Pole close to Pole No. 110265665, 110265662, 110265659, 110265660, an unnumbered Pole close to Pole No. 110265663, 110179672, 110179667, 110179662, 110179661, 110261653 and 110261590.

53. Three Poles located on Laurel Court, Pole Nos. 110261645, 110261644, and 110261646.

**EXHIBIT B TO ERF NOTICE LETTER:
Location of the Poles Violating the CWA**

Poles in Corte Madera

1. On Redwood Highway, south of the intersection of Redwood Highway and Wornum, Corte Madera.

Poles in Larkspur

2. On Redwood Highway, north of the intersection of Redwood Hwy and Wornum, just into Larkspur (pole 14/ 126).
3. Within the Corte Madera Marsh, near the boundary between Larkspur and Corte Madera, on the western boundary of the Corte Madera Marsh.
4. In front of 2150 Redwood Highway, near De Bel Roofing Supply.
5. North of Pole No. 4 on Redwood Highway and around the corner on unnamed side street, next to building located around the corner.
6. A series of poles adjacent to “Greenbrae Boardwalk,” a walkway leading to several homes that are raised up on stilts. The poles are installed in a marsh adjoining San Francisco Bay.

Poles in San Rafael

7. At the northeast corner of the intersection of Las Gallinas & Manuel Freitas Parkway, near the Northgate Shopping Mall (pole 1065).
8. At the southeast corner of the intersection of Las Gallinas & Manuel Freitas Parkway, near the Northgate Shopping Mall, San Rafael
9. Near the intersection of Belle and Park Street.
10. ___Near the intersection of Jewell and Broadview in front of 222 Broadview.
11. Near the intersection of Mark Twain & Lowell Avenue, in front of 215 Mark Twain.
12. In front of 11 Mabry Way.
13. A series of poles located in the Santa Venetia Marsh extending from the end of Vendola Avenue well into the marsh.

Poles in Sausalito

14. At the intersection of Bridgeway and Humboldt.
15. On Humboldt, east of the intersection of Bridgeway and Humboldt.

Poles in Berkeley

16. Virginia at Eastshore Highway, Pole No. 110182185.
17. Addison Way west of 4th Streets, Pole No. #110085313.
18. Gilman at Eastshore Highway off ramp and 2nd Street, two poles in front of Budget Rent-a-Car, Pole number not visible due to large number of music posters.
19. Berkeley, terminus of Virginia Street west of Frontage Road, Pole No. 110248806.
20. In front of 1301 Spruce Street, Pole No. 110248759.
21. Oxford Street at Berryman Path, Pole No. 110378995.
22. Oxford Street north of Berryman Path, Pole No. 110378995.
23. Oxford Street south of Berryman Path, Pole No. 110255550.
24. Cedar Street at Chestnut street, south side of street, Pole No. 110165435.
25. Rose Street at Edith Street, across from King Middle School, Pole No. 110160934.
26. Haste Street, west of Bowditch Street, Pole No. 110314302.
27. Haste Street, west of Bowditch Street, Pole No. 110234079.
28. Haste Street, west of Bowditch Street. Pole No. 110222813.
29. Haste Street, west of Telegraph Avenue, Pole No. 110217964, in front of former Cody's books.
30. Haste Street, west of Telegraph, Pole No. 110217966. stamped McFarland Cascade 11-2004. IMG_4062 to 4064.
31. Corner of Haste Street and Dana Streets, south side of street, Pole No. 110217960.
32. Corner of Haste Street and Dana Streets, north side of street, Pole No. 110217968.

Poles in Martinez

33. A series of Poles located on Pleasant Hill Road between the intersection of Alhambra Avenue, John Muir Road, and Pleasant Hill Road and (northwest to) the intersection of Alhambra Way, Muir Station Road and Pleasant Hill Road. These Poles include Pole Nos. 110261640, 110261639, 110261638, an unnumbered pole near 11021638, 110261599, 110261598, 110261600, 110265664, 110265665, an unnumbered Pole close to Pole No. 110265665, 110265662, 110265659, 110265660, an unnumbered Pole close to Pole No. 110265663, 110179672, 110179667, 110179662, 110179661, 110261653 and 110261590.
34. Three Poles located on Laurel Court, Pole Nos. 110261645, 110261644, and 110261646.

Exhibit C
Alleged Dates of Violations 2004 to Present

Days with Precipitation One Tenth of an Inch or Greater, as reported by NOAA's National Climatic Data Center, San Francisco International Airport

2004	2005	2006	2007	2008	2009
10/17/2004	1/2/2005	1/1/2006	1/04/2007	1/3/2008	1/21/2009
10/19/2004	1/7/2005	1/2/2006	1/16/2007	1/4/2008	1/22/2009
10/26/2004	1/8/2005	1/14/2006	1/26/2007	1/5/2008	1/23/2009
11/10/2004	1/10/2005	2/1/2006	2/07/2007	1/10/2008	2/5/2009
11/11/2004	1/11/2005	2/26/2006	2/08/2007	1/21/2008	2/6/2009
11/27/2004	1/27/2005	2/27/2006	2/9/2007	1/22/2008	2/8/2009
12/6/2004	1/28/2005	3/3/2006	2/10/2007	1/24/2008	2/11/2009
12/7/2004	2/14/2005	3/5/2006	2/12/2007	1/25/2008	2/13/2009
12/8/2004	2/15/2005	3/6/2006	2/22/2007	1/26/2008	2/15/2009
12/26/2004	2/17/2005	3/14/2006	2/24/2007	1/27/2008	2/16/2009
12/27/2004	2/18/2005	3/20/2006	2/25/2007	1/28/2008	2/17/2009
12/28/2004	2/19/2005	3/24/2006	2/26/2007	1/30/2008	2/22/2009
12/29/2004	2/27/2005	3/25/2006	2/27/2007	1/31/2008	2/23/2009
12/30/2004	3/1/2005	3/31/2006	3/20/2007	2/2/2008	2/24/2009
12/31/2004	3/3/2005	4/2/2006	3/26/2007	2/3/2008	3/1/2009
	3/18/2005	4/4/2006	4/11/2007	2/19/2008	3/2/2009
	3/21/2005	4/7/2006	4/14/2007	2/21/2008	3/3/2009
	3/22/2005	4/11/2006	4/19/2007	2/22/2008	3/5/2009
	3/23/2005	4/12/2006	4/20/2007	2/23/2008	3/21/2009
	3/27/2005	4/16/2006	4/21/2007	2/24/2008	3/22/2009
	3/29/2005	5/21/2006	4/22/2007	10/3/2008	4/7/2009
	4/3/2005	11/2/2006	9/22/2007	10/31/2008	5/1/2009
	4/8/2005	11/11/2006	10/09/2007	11/1/2008	
	4/28/2005	11/13/2006	10/10/2007	11/3/2008	
	5/4/2005	11/26/2006	10/12/2007	11/26/2008	
	5/5/2005	12/8/2006	11/10/2007	12/14/2008	
	5/8/2005	12/9/2006	11/11/2007	12/15/2008	
	5/9/2005	12/10/2006	12/04/2007	12/16/2008	
	11/7/2005	12/12/2006	12/06/2007	12/19/2008	
	11/28/2005	12/21/2006	12/17/2007	12/21/2008	
	12/1/2005	12/26/2006	12/18/2007	12/22/2008	
	12/17/2005		12/20/2007	12/25/2008	
	12/18/2005		12/27/2007		
	12/19/2005				

2004	2005	2006	2007	2008	2009
	12/21/2005				
	12/22/2005				
	12/25/2005				
	12/26/2005				
	12/28/2005				
	12/30/2005				
	12/31/2005				