

1 Craig A. Brandt (SBN 133905)
2 LAW OFFICE OF CRAIG A. BRANDT
3 5354 James Avenue
4 Oakland, CA 94618
5 Telephone: (510) 601-1309
6 Email: craigabrandt@att.net

7 Attorney for Plaintiff
8 EDEN ENVIRONMENTAL CITIZEN'S GROUP, LLC

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDEN ENVIRONMENTAL CITIZEN'S GROUP, LLC, a California limited liability company,) Case No: _____
Plaintiff,) **COMPLAINT FOR INJUNCTIVE AND
vs.) DECLARATORY RELIEF, CIVIL
DOES 1-10, inclusive,) PENALTIES AND REMEDIATION
Defendant.) **(Federal Water Pollution Control Act, 33
U.S.C. §§1251 et seq.)****

Plaintiff EDEN ENVIRONMENTAL CITIZEN'S GROUP, LLC ("EDEN") hereby brings this civil action pursuant to the Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*

INTRODUCTION

1. This action is a citizen suit for injunctive relief, declaratory relief, civil penalties, and remediation against Defendant for current and ongoing violations of the National Pollutant Discharge Elimination System ("NPDES") permit requirements of the CWA.

2. On or about December 14, 2021, EDEN provided a Notice of Defendant's violations to Defendant Mantrex Inc., dba WIT Sales & Refining ("WIT SALES"), by certified mail, at 538

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF, CIVIL PENALTIES AND REMEDIATION

1 Phelan Avenue, San Jose, California, ("the Facility"), as required by the CWA. 33 U.S.C. §
2 1365(b)(1)(A).

3 3. On or about December 14, 2021, EDEN provided a Notice of Defendant's violations of
4 the CWA to the (1) Administrator of the United States Environmental Protection Agency
5 ("EPA"), (2) EPA's Regional Administrator for Region Nine, and (3) Executive Director of the
6 State Water Resources Control Board ("State Board").

7 4. A copy of EDEN's Notice of Intent to Sue is attached hereto as Exhibit A and
8 incorporated herein by reference. (Exhibit A, "60-Day Notice of Violations and Intent to File
9 Suit Under the Federal Water Pollution Control Act ("Clean Water Act").")

10 5. More than sixty days have passed since EDEN's Notice was properly and lawfully served
11 on Defendant, the State Water Resources Control Board ("State Board"), and the Regional and
12 National EPA Administrators. EDEN is informed and believes, and thereupon alleges, that
13 neither the National EPA, nor the State of California has commenced or is diligently prosecuting
14 a court action to redress the violations alleged in this complaint. This action's claim for civil
15 penalties is not barred by any prior administrative penalty under section 309(g) of the Clean
16 Water Act ("CWA"), 33 U.S.C. § 1319(g).

17 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

18 6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. section
19 1331 (federal question), and 33 U.S.C. section 1365(a) (CWA citizen suit jurisdiction). The relief
20 requested is authorized pursuant to 28 U.S.C. sections 2201-2202 (declaratory relief), 33 U.S.C.
21 sections 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. sections 1319(d), 1365(a) (civil
22 penalties).

23
24 COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF. CIVIL PENALTIES AND REMEDIATION

7. The Permit under which this case arises is a Federally required permit based upon California state substantive law. (*Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9th Cir. 2017), 853 F.3d 1076; *Dept. of Finance v. Commission on State Mandates*, 1 Cal.5th 749 (2016).)

8. By its express language, a violation of the State permit constitutes a per se violation of the Federal Clean Water Act. (California's Industrial General Permit Order 2014-0057 DWQ, NPDES Order No. CAS000001, Section XXI.A)

9. Venue is proper because Defendant reside in and the events or omissions giving rise to EDEN's claims occurred in this District. 28 U.S.C. §1391(b)(1), (2). Venue is also proper because the Facility's CWA violations have occurred and are occurring within the District. 33 U.S.C. § 1365(c)(1).

PARTIES

10. Plaintiff EDEN ENVIRONMENTAL CITIZEN'S GROUP, LLC ("EDEN") is an environmental membership group organized under the laws of the State of California as a limited liability company on June 1, 2018. EDEN previously existed as an unincorporated environmental citizen's association, with members who remain associated with EDEN as of the date of the filing of this Complaint.

11. EDEN's organizational purpose is the protection, preservation and enhancement of California's waterways. Its mission is implemented by enforcing the provisions of the Federal Clean Water Act and California's Industrial General Permit by seeking redress from environmental harms caused by Industrial Dischargers who pollute the Waters of the United States, through community education and citizen suit enforcement when necessary.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF, CIVIL PENALTIES AND REMEDIATION

1 12. EDEN's members donate their time and money resources to protect, enhance, and assist
 2 in the preservation and restoration of rivers, creeks, streams, wetlands, vernal pools, and their
 3 tributaries located in California.

4 13. EDEN has members that reside, work and pursue recreational activities near the affected
 5 Receiving Waters. Defendant WIT SALES discharges storm water into a municipal storm drain
 6 system then to the Guadalupe River-Front San Francisco Bay Estuaries, a tributary of the San
 7 Francisco Bay which is the "Receiving Waters" for the Facility. Eden members use those waters
 8 and their watersheds for surfing, kayaking, camping, cycling, recreation, sports, fishing,
 9 swimming, hiking, photography, nature walks and scientific study. Their use and enjoyment of
 10 these natural resources have been and continue to be adversely impaired by Defendant's failure
 11 to comply with the procedural and substantive requirements of the California Industrial General
 12 Permit and Federal Clean Water Act.

13 14. EDEN has standing as an association to bring this suit against Defendant, as at least one
 14 of EDEN's current members is experiencing ongoing and continuing harm particular to him or
 15 her as a specific result of Defendant's violations of the CWA, and the resulting adverse effects to
 16 the environment and the Receiving Waters downstream from the Facility, and has experienced
 17 such harm since at least the date that EDEN provided to Defendant a 60-day Notice of Intent to
 18 Sue.

19 15. Specifically, the individual member(s) who are experiencing harm from Defendant's
 20 violations of the CWA are reluctant to utilize the Receiving Waters downstream from the
 21 Facility as specified in Paragraph 13, above, due to the pollution caused by Defendant's
 22 environmental violations that EDEN's members believe has entered into the Facility's Receiving

23
 24 COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF. CIVIL PENALTIES AND REMEDIATION

1 Waters; and the aesthetic and recreational interests of these members has been adversely
 2 impacted.

3 16. Defendant's ongoing violations of the California Industrial General Permit and the CWA
 4 have and will continue to cause irreparable harm to EDEN and certain of its current members,
 5 for which they have no plain, speedy, or adequate remedy. The relief requested will redress the
 6 ongoing injury in fact to EDEN and its members. Litigation of the claims asserted and the relief
 7 requested in this Complaint will not require the participation in this lawsuit of individual
 8 members of EDEN.

9 17. EDEN is informed and believes, and on such information and belief alleges, that
 10 Defendant WIT SALES located at 538 Phelan Avenue, San Jose, California, was formed on or
 11 about January 1, 1999, as a California corporation.

12 18. EDEN is informed and believes, and on such information and belief alleges, that,
 13 Defendant WIT SALES, on or about October 21, 1996, submitted a Notice of Intent ("NOI") to
 14 be authorized to discharge storm water from the Facility. EDEN is further informed and believes,
 15 and on such information and belief alleges, that on or about December 22, 2015 Defendant WIT
 16 SALES, submitted an NOT to be authorized to discharge storm water from the Facility under the
 17 California Industrial General Permit ("General Permit") and was assigned Waste Discharger
 18 Identification number ("WDID") 2 431012622, according to the Regional Water Board's
 19 records.

20 **STATUTORY BACKGROUND**

21 19. Congress declared that the Federal Clean Water Act was designed to "restore and
 22 maintain the chemical, physical, and biological integrity of the Nation's waters" through federal
 23
 24

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.