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10 CALIFORNIA COASTKEEPER, INC., dba
11 CALIFORNIA COASTKEEPER ALLIANCE, and
12 THE OTTER PROJECT, INC., for itself and for
MONTEREY COASTKEEPER, a program of
THE OTTER PROJECT, INC.

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA COASTKEEPER, INC., doing
business as CALIFORNIA COASTKEEPER
16 ALLIANCE, a nonprofit corporation, and THE
17 OTTER PROJECT, INC., for itself and for
MONTEREY COASTKEEPER, a program of
18 THE OTTER PROJECT, INC., a nonprofit
corporation,

19 Plaintiffs,

20 vs.

21 HILDEBRAND & SONS TRUCKING, INC.,

22 Defendants.

Case No.:

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

**(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 et seq.)**

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26 CALIFORNIA COASTKEEPER, INC., doing business as CALIFORNIA COASTKEEPER
27 ALLIANCE (“CCKA”), THE OTTER PROJECT, INC., for itself and for MONTEREY

1 COASTKEEPER, a program of THE OTTER PROJECT, INC. (“TOP”) (collectively, “Plaintiffs”),
2 by and through their counsel of record, hereby allege as follows:

3 **I. JURISDICTION AND VENUE.**

4 1. This is a civil suit brought under the citizen suit enforcement provision of the Federal
5 Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”). (*See* 33
6 U.S.C. § 1365.) This Court has subject matter jurisdiction over the parties and this action pursuant
7 to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive
8 relief arising under the Constitution and laws of the United States).

9 2. On August 15, 2020, Plaintiffs issued a 60-day notice letter (“Notice Letter”) to
10 Hildebrand & Sons Trucking, Inc. (“Defendant”), for the industrial facility in Royal Oaks, California,
11 under its control. The Notice Letter informed Defendant of its violations of California’s General
12 Permit for Discharges of Storm Water Associated with Industrial Activities (*National Pollutant*
13 *Discharge Elimination System (NPDES) General Permit No. CAS000001, State Water Resources*
14 *Control Board Water Quality Order No. 97-03-DWQ*), as superseded by Order No. 2014-0057-DWQ
15 and amended by Order No. 2015-0122–DWQ (hereinafter referred to as the “Storm Water Permit”),
16 and the Clean Water Act at Defendant’s commercial trucking facility located 6 Lewis Road Royal
17 Oaks, CA 95076 (“Facility”). The Notice Letter informed Defendant of Plaintiffs’ intent to file suit
18 against Defendant to enforce the Storm Water Permit and the Clean Water Act.

19 3. The Notice Letter was sent to Defendant’s President and registered agent for service
20 of process, Kelvin Hildebrand, as required by 40 C.F.R. § 135.2(a)(2). The Notice Letter was also
21 sent to the Administrator of the United States Environmental Protection Agency (“EPA”), the
22 Administrator of EPA Region IX, the Executive Director of the State Water Resources Control Board
23 (“State Board”), and the Executive Officer of the Central Coast Regional Water Quality Control
24 Board (“Regional Board”) as required by Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A).
25 The Notice Letter is attached hereto as **Exhibit A** and is fully incorporated herein by reference.

26 4. More than sixty (60) days have passed since the Notice Letter was served on the
27 Defendant and the State and Federal agencies. Plaintiffs are informed and believe, and thereon allege,

28 that neither the EPA nor the State of California has commenced any diligent prosecuting or action

1 to redress the violations alleged in the Notice Letter and in this complaint. (*See* 33 U.S.C. §
2 1365(b)(1)(B).) This action is not barred by any prior administrative penalty under Section 309(g) of
3 the CWA, 33 U.S.C. § 1319(g).

4 5. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of
5 the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial
6 district.

7 **II. INTRODUCTION.**

8 6. With every rainfall event, hundreds of millions of gallons of polluted rainwater,
9 originating from industrial operations such as the Facility referenced herein, pour into storm drains
10 and local waterways. The consensus among regulatory agencies and water quality specialists is that
11 storm water pollution accounts for more than half of the total pollution entering marine and river
12 environments each year. These surface waters, known as Receiving Waters, are ecologically sensitive
13 areas. Although pollution and habitat destruction have drastically diminished once abundant and
14 varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as
15 macro-invertebrate and invertebrate species. Storm water and non-storm water contain sediment,
16 heavy metals, such as aluminum, iron, chromium, copper, lead, mercury, nickel, and zinc, as well as,
17 high concentrations of nitrate and nitrite, and other pollutants. Exposure to polluted storm water harms
18 the special aesthetic and recreational significance that the surface waters have for people in the
19 surrounding communities. The public's use of the surface waters exposes many people to toxic metals
20 and other contaminants in storm water and non-storm water discharges. Non-contact recreational and
21 aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the
22 Receiving Waters.

23 7. This Complaint seeks a declaratory judgment, injunctive relief, the imposition of civil
24 penalties, and the award of costs, including attorney and expert witness fees, for Defendant's
25 substantive and procedural violations of the Storm Water Permit and the CWA resulting from
26 Defendant's operations at the Facility.

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1 8. Plaintiffs specifically allege violations regarding Defendant's discharge of pollutants
2 from the Facility into waters of the United States; violations of the filing, monitoring and reporting,
3 and best management practice requirements; and violations of other procedural and substantive
4 requirements of the Storm Water Permit and the Clean Water Act, are ongoing and continuous.

5 **III. PARTIES.**

6 **A. The Plaintiffs.**

7 9. California Coastkeeper Alliance is a non-profit public benefit organization dedicated
8 to protecting California's coasts and oceans. The Otter Project, Inc., is a non-profit public benefit
9 organization working to protect our watersheds and coastal oceans for the benefit of California's
10 Southern Sea Otters and humans through science-based policy and advocacy. Monterey Coastkeeper
11 is a program of the Otter Project, Inc., and a participant in the California Coastkeeper Alliance. These
12 three organizations shall collectively be known as "The Plaintiffs." The members of these
13 organizations reside in the communities adjacent to the Pajaro River (the "Receiving Waters") into
14 which the Defendant indirectly discharges polluted storm water. As explained in detail below, the
15 Defendant continuously discharges pollutants into the Receiving Waters, in violation of the Clean
16 Water Act and the Storm Water Permit. The Plaintiffs' members picnic, fish, hike, bike, and enjoy
17 the wildlife of the Pajaro River and the estuary of the Monterey Bay. Additionally, the members use
18 the Receiving Waters to engage in scientific study through pollution and habitat monitoring to
19 promote restoration activities. The unlawful discharge of pollutants from the Facility into the
20 Receiving Waters impairs the Plaintiffs' members' use and enjoyment of these waters. Thus, the
21 interests of the members have been, are being, and will continue to be adversely affected by the
22 Defendant's failure to comply with the Clean Water Act and the Storm Water Permit.

23 10. Plaintiffs are dedicated to the preservation, protection, and defense of the environment,
24 and the wildlife and the natural resources of all waters of California. To further these goals, Plaintiffs
25 are actively seeking federal and state agency implementation of the Clean Water Act and other laws
26 and, where necessary, directly initiating citizen enforcement. As referenced herein, members of
27 Plaintiffs use and enjoy the Receiving Waters herein into which Defendant has caused, is causing,

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1 or impair each of those uses or contribute to such threats and impairments. Thus, the interests of
2 Plaintiffs' members have been, are being, and will continue to be adversely affected by Defendant's
3 ongoing failure to comply with the Clean Water Act and/or the Storm Water Permit. The relief sought
4 herein will redress the harms to Plaintiffs caused by Defendant's activities.

5 11. Defendant's failure to comply with the procedural and substantive requirements of the
6 Storm Water Permit and/or the Clean Water Act, including but not limited to Defendant's discharge
7 of polluted stormwater and non-stormwater from the Facility, negatively impacts and impairs
8 Plaintiffs' members' use and enjoyment of these waters.

9 12. Continuing commission of the acts and omissions alleged herein will irreparably harm
10 Plaintiffs' members, for which they have no plain, speedy, or adequate remedy at law.

11 **B. The Defendant.**

12 13. Plaintiffs are informed and believe, and thereon allege, that the Defendant is the owner
13 and operator of the Facility located at 6 Lewis Road, Royal Oaks, CA 95076.

14 14. Plaintiffs are informed and believe, and thereon allege, that the Defendant is an active
15 California corporation, registered with the California Secretary of State as File Number C0329309.

16 **IV. STATUTORY BACKGROUND.**

17 **A. The Clean Water Act.**

18 15. Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the
19 United States unless the discharge complies with various enumerated sections of the CWA. Among
20 other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of a
21 National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402
22 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

23 16. Section 402(p) of the CWA establishes a framework for regulating municipal and
24 industrial storm water discharges under the NPDES program. (33 U.S.C. § 1342(p).) States with
25 approved NPDES permit programs are authorized by Section 402(p) to regulate industrial storm water
26 discharges through individual permits issued to dischargers and/or through the issuance of a single,
27 statewide general permit applicable to all industrial storm water dischargers. (33 U.S.C. § 1342.)

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