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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 TWIN HARBORS WATERKEEPER, )  
10 )  
Plaintiff, )  
11 v. ) COMPLAINT  
12 BWC TERMINALS LLC, )  
13 Defendant. )  
14 \_\_\_\_\_ )

15  
16 I. INTRODUCTION

17 1. This action is a citizen suit brought under Section 505 of the Clean Water Act  
18 (“CWA”) as amended, 33 U.S.C. § 1365. Plaintiff, Twin Harbors Waterkeeper (“Twin  
19 Harbors”), seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and  
20 the award of costs, including attorneys’ and expert witnesses’ fees, for Defendant BWC  
21 Terminals LLC’s (“BWC”) repeated and ongoing violations of Sections 301(a) and 402 of the  
22 CWA, 33 U.S.C. §§ 1311(a) and 1342, and the terms and conditions of its National Pollutant  
23 Discharge Elimination System (“NPDES”) permit authorizing certain stormwater discharges of  
24 pollutants from BWC’s Hoquiam, Washington facility to navigable waters.

**II. JURISDICTION AND VENUE**

2. The Court has subject matter jurisdiction over Twin Harbors’ claims under Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Sections 309(d) and 505(a) and (d) of the CWA, 33 U.S.C. §§ 1319(d) and 1365(a) and (d), authorize the relief Twin Harbors requests.

3. Under Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Twin Harbors notified BWC of Defendant’s violations of the CWA and of Twin Harbors’ intent to sue under the CWA by letter dated and postmarked January 18, 2022 (“Notice Letter”). A copy of the Notice Letter is attached to this complaint as Exhibit 1. The allegations in the Notice Letter are incorporated herein by this reference. In accordance with section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.2(a)(1), Twin Harbors notified the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region 10, the Director of the Washington Department of Ecology (“Ecology”), and BWC’s registered agent of its intent to sue BWC by mailing copies of the Notice Letter to these individuals on January 18, 2022.

4. At the time of the filing of this Complaint, more than sixty days have passed since the Notice Letter and copies thereof were issued in the manner described in the preceding paragraph.

5. The violations complained of in the Notice Letter are continuing and/or are reasonably likely to re-occur.

6. At the time of the filing of this Complaint, neither the EPA nor Ecology has commenced any action constituting diligent prosecution to redress the violations alleged in the Notice Letter.

7. The source of the violations complained of is in Grays Harbor County, Washington, within the Western District of Washington, and venue is therefore appropriate in

1 the Western District of Washington under Section 505(c)(1) of the CWA, 33 U.S.C. §  
2 1365(c)(1), and 28 U.S.C. § 1391(b).

### 3 **III. PARTIES**

4 8. Twin Harbors is suing on behalf of itself and its members.

5 9. Twin Harbors is a non-profit corporation organized under the laws of the state of  
6 Washington. Twin Harbors is dedicated to protecting and preserving the environment of  
7 Washington State, especially the quality of its waters. Twin Harbors is a membership  
8 organization and has at least one member who is injured by BWC's violations.

9 10. Twin Harbors has representational standing to bring this action. Twin Harbors'  
10 members are reasonably concerned about the effects of discharges of pollutants, including  
11 stormwater from BWC's facility, on water quality and aquatic species and wildlife that Twin  
12 Harbors' members observe, study, use, and enjoy. Twin Harbors' members are further concerned  
13 about the effects of discharges from BWC's facility on human health. In addition, discharges  
14 from BWC's facility lessen Twin Harbors' members' aesthetic enjoyment of nearby areas. Twin  
15 Harbors has members who live, work, fish, and recreate around or use Grays Harbor which is  
16 affected by BWC's discharges. Twin Harbors' members' concerns about the effects of BWC's  
17 discharges are aggravated by BWC's failure to record and timely report information about its  
18 discharges and pollution controls in a timely manner. The recreational, scientific, economic,  
19 aesthetic, and/or health interest of Twin Harbors and its members have been, are being, and will  
20 be adversely affected by BWC's violations of the CWA. The relief sought in this lawsuit can  
21 redress the injuries to these interests.

22 11. Twin Harbors has organizational standing to bring this action. Twin Harbors has  
23 been actively engaged in a variety of educational and advocacy efforts to improve water quality  
24 and to address sources of water quality degradation in the waters of Western Washington,

1 including Grays Harbor. As detailed herein and in the Notice Letter, BWC has failed to comply  
2 with numerous requirements of its NPDES permit including completing corrective actions,  
3 compliance with water quality standards, monitoring, recordkeeping, and reporting requirements.  
4 As a result, Twin Harbors is deprived of information necessary to properly serve its members by  
5 providing information and taking appropriate action to advance its mission. Twin Harbors'  
6 efforts to educate and advocate for greater environmental protection, and to ensure the success of  
7 environmental restoration projects implemented for the benefit of its members are also  
8 obstructed. Finally, Twin Harbors and the public are deprived of information that influences  
9 members of the public to become members of Twin Harbors, thereby reducing Twin Harbors'  
10 membership numbers. Thus, Twin Harbors' organizational interests have been adversely affected  
11 by BWC's violations. These injuries are fairly traceable to BWC's violations and are redressable  
12 by the Court.

13 12. BWC is a corporation authorized to conduct business under the laws of the state  
14 of Washington.

15 13. BWC owns and operates a bulk liquid storage terminal located at or about 3128  
16 Port Industrial Rd, Hoquiam, WA 98550-4211 (referred to herein as the "facility").

#### 17 **IV. LEGAL BACKGROUND**

18 14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of  
19 pollutants by any person, unless in compliance with the provisions of the CWA. A discharge of a  
20 pollutant from a point source to waters of the United States without authorization by a NPDES  
21 permit, issued under Section 402 of the CWA, 33 U.S.C. § 1342, is prohibited.

22 15. The state of Washington has established a federally approved state NPDES  
23 program administered by Ecology. Wash. Rev. Code § 90.48.260; Wash. Admin. Code ch. 173-  
24

1 220. This program was approved by the Administrator of the EPA pursuant to Section 402(b) of  
2 the CWA, 33 U.S.C. § 1342(b).

3 16. Under Section 402 of the CWA, 33 U.S.C. § 1342, Ecology has repeatedly issued  
4 Industrial Stormwater General Permits, most recently on November 20, 2019, effective January  
5 1, 2020, and set to expire December 31, 2024 (the “2020 Permit”). The previous permit was  
6 issued December 3, 2014, became effective January 2, 2015, and expired December 31, 2019  
7 (the “2015 Permit”). The 2015 Permit and 2020 Permit (collectively, “the Permits”), contain  
8 substantially similar requirements and authorize those that obtain coverage thereunder to  
9 discharge stormwater associated with industrial activity, a pollutant under the CWA, and other  
10 pollutants contained in the stormwater to waters of the United States subject to certain terms and  
11 conditions.

12 17. The Permits impose certain terms and conditions on those covered thereby,  
13 including requirements for monitoring and sampling of discharges, reporting and recordkeeping  
14 requirements, and restrictions on the quality of stormwater discharges. To reduce and eliminate  
15 pollutants in stormwater discharges, the Permits require, among other things, that permittees  
16 develop and implement best management practices (“BMPs”) and a Stormwater Pollution  
17 Prevention Plan (“SWPPP”), and apply all known and reasonable methods of prevention,  
18 control, and treatment (“AKART”) to discharges. The specific terms and conditions of the  
19 Permits are described in detail in the Notice Letter, attached hereto as Exhibit 1 and incorporated  
20 herein by this reference.

## 21 V. FACTS

22 18. Ecology granted BWC coverage for the facility under the 2015 Permit under  
23 Permit Number WAR306512. Ecology granted subsequent coverage under the 2020 Permit  
24 under the same permit number, WAR306512.

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