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8 California, ex rel. California Regional Water
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9

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Superior Court of California,
County of Orange

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Clerk of the Superior Court
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

12
13 **PEOPLE OF THE STATE OF CALIFORNIA, EX**
14 **REL. CALIFORNIA REGIONAL WATER**
15 **QUALITY CONTROL BOARD, SANTA ANA**
REGION

16 Plaintiff,

17 v.

18 **KIRKHILL-TA Co., AND DOES 1 THROUGH 25,**
19 **INCLUSIVE,**

20 Defendants
21

Case No. 30-2011-00463149-CU-TT-CJC

**COMPLAINT FOR CIVIL LIABILITY,
PENALTIES, AND INJUNCTIVE
RELIEF**

Judge Francisco F. Fimat

22 Plaintiff, People of the State of California, *ex rel.* California Regional Water Quality
23 Control Board, Santa Ana Region, alleges, upon information and belief, as follows:

24 **PRELIMINARY STATEMENT**

25 1. This action is for civil liability against defendants Kirkhill-TA Co., ("Kirkhill")
26 and Does 1 through 25 (collectively "Kirkhill" or "Defendants"), inclusive, arising from
27 Kirkhill's repeated discharges of hydrocarbons, oil and petroleum residuary products, grease, lead,
28 copper, zinc, and other pollutants. Kirkhill and Does 1 through 25 discharged the pollutants into

1 or on waters of the United States and waters of the State of California, specifically Fullerton
2 Creek and Craig Lake and related tributaries, at least as early as April 4, 1990 through November
3 4, 2008 and later.

4 2. This action is brought by the Attorney General on behalf of the People of the State
5 of California, *ex rel.* California Regional Water Quality Control Board, Santa Ana Region
6 (“Regional Board”), pursuant to California Water Code 13385, and 13386. Water Code section
7 13385, subdivision (b) authorizes the Attorney General, upon request of the Regional Board, to
8 commence an action in superior court to impose liability of up to \$25,000 per day for each
9 violation of the enumerated provisions of Water Code section 13385 and \$25.00 per gallon for
10 each gallon over 1,000 gallons of waste discharged. Water Code section 13386 authorizes the
11 Attorney General, upon request of the Regional Board, to petition the appropriate court for the
12 issuance of a permanent injunction to restrain any continuing violations of Water Code section
13 13385.

14 3. Pursuant to Code of Civil Procedure section 1021.8, Kirkhill is also liable for all
15 costs of investigating and prosecuting the action by the attorney general, expert fees, and
16 reasonable attorney’s fees and costs.

17 JURISDICTION

18 4. This court has jurisdiction of this matter under Article VI, § 10 of the California
19 Constitution, under the Water Code sections 13385 and 13386 and under the Code of Civil
20 Procedure section 410.10.

21 VENUE

22 5. Venue is proper in the County of Orange pursuant to California Code of Civil
23 Procedure Section 395.5, and California Water Code Section 13361, subdivision (b), because it is
24 the county in which the defendants conduct business and in which the pollution that is the basis of
25 this action occurs.

26 PARTIES

27 6. The Regional Water Board is a state agency, and is part of the California
28 Environmental Protection Agency. (Water Code, §§ 175, 13100.) The Regional Water Board is

1 one of nine such boards created to establish and enforce water quality control plans, policies, and
2 regulations to ensure the protection of beneficial uses of waters of the State within nine
3 designated regions in the State of California. (Water Code, §§ 13200, 13201, 13240 *et seq.*) Its
4 boundaries are described in Water Code section 13200, subdivision (e). Kirkhill's manufacturing
5 and other facilities from which the pollution occurred are located in Orange County, in the Santa
6 Ana Region.

7 7. The Regional Board is charged with obtaining coordinated action in water quality
8 control, including prevention and abatement of water pollution and nuisance, encouraging proper
9 waste disposal, requiring state and local agency investigation and reports of water quality, and
10 requesting enforcement of appropriate laws by other agencies within the Santa Ana Region.
11 (Water Code, § 13225.) To further these goals, the Regional Board has enforcement authority
12 including the power to remedy unlawful discharges, and to achieve cleanup and abatement of
13 water pollution and nuisance. (Water Code, §§ 13300 *et seq.*)

14 8. At all times relevant to this complaint, Defendant, Kirkhill, was organized and
15 existed under the laws of the State of California, was doing business in the State of California,
16 with its principal place of business located in Orange County.

17 9. The true names and capacities of defendants Does 1 through 25, inclusive, whether
18 corporate, individual, or otherwise, are presently unknown to Plaintiff, who therefore sues these
19 defendants by fictitious names. Plaintiff will seek leave of court to amend this complaint to show
20 their true names and capacities when they have been ascertained.

21 10. At all relevant times herein, each of the Defendants was the agent and employee of
22 each of the remaining defendants, and in doing the acts alleged herein, was acting within the
23 scope of such agency.

24 **FACTS**

25 11. Defendants manufacture engineered organic and inorganic elastomer-based
26 products (plastic and rubber) used in the aerospace industry. Kirkhill filed a notice of intent to be
27 covered by State Water Resources Control Board Order 97-03-DWQ, NPDES No CAS000001,
28 on October 3, 2001 (2001 waste discharge requirements), which authorized Kirkhill to discharge

1 storm water runoff from its facility. Prior to October 3, 2001, Kirkhill operated under individual
2 waste discharge requirements that were adopted as Regional Board Order No. 96-84, NPDES No.
3 CAS618002, on November 22, 1996 (1996 waste discharge requirements). Prior to November 22,
4 1996, Kirkhill operated under an individual waste discharge requirements that were adopted as
5 Regional Board Order No. 90-92, NPDES No. CA0105520, on July 13, 1990 (1990 waste
6 discharge requirements). None of the waste discharge requirements permitted the discharge of
7 non-storm water runoff from the facility.

8 12. Over several years, Defendants discharged industrial wastewater containing
9 pollutants generated at Defendants' manufacturing facility to the municipal separate storm sewer
10 system (storm drain system) without authorization, in violation of the General Permit, and in
11 violation of the law. The pollutants from the industrial water discharged from Defendants'
12 property entered Craig Lake and Fullerton Creek, both waters of the United States as defined in
13 40 CFR 230.3. The discharges resulted in findings of pollution at Craig Lake and Fullerton Creek
14 on or about April 4, 1990, October 11, 1991, March 2, 1995, May 10, 1999, June 9, 2004, April
15 12, 2007, April 26, 2007, April 3, 2008, May through September 2008, November 4, 2008, and
16 other dates.

17 13. The Regional Board and other governmental entities were unable to locate the
18 source of the pollution until approximately September 2008 when it performed videotaped
19 underground inspections of the storm drain pipe. The Regional Board ultimately determined that
20 there were at least three sources of contamination from the Kirkhill facility. These included
21 Lateral Drain A, Lateral Drain B (both drains improperly connecting the storm drain and dumping
22 pollutants into the storm drain and ultimately Fullerton Creek and Craig Lake), and a pump added
23 to control a cooling tower leak.

24 14. The Regional Board received a report from Kirkhill admitting that from August 5,
25 2008 to November 5, 2008, Kirkhill discharged 9,779.75 gallons of wastewater into its storm
26 drain system when it installed a temporary pump to control a cooling tower leak.

27 15. The wastewater discharges have caused substantial contamination of and damage
28 to Fullerton Creek and Craig Lake. For example, sampling in September 2008 revealed that 61

1 percent of the water in Fullerton Creek was comprised of oil and grease down stream from
2 Kirkhill, with a concentration of 610,000 mg/l, as well as toxic concentrations of zinc, copper,
3 and lead, far exceeding the acute and chronic criteria in the California Toxics Rule (40 CFR
4 131.38.)

5 16. Moreover, on at least one occasion, hundreds of blue gill fish in Craig Lake died
6 as a result of the pollution.

7 17. The pollutants remain in Fullerton Creek and Craig Lake, adversely affecting those
8 bodies of water and other waters of the United States into which waters from Fullerton Creek and
9 Craig Lake flow.

10 18. Craig Lake is home to hundreds of species of birds, fish, and aquatic life. It is also
11 a source of recreation. It has been closed twice since April 2007 as a direct result of the
12 discharges of pollutants from Kirkhill.

13 **FIRST CAUSE OF ACTION**

14 **(Against All Defendants)**

15 **(Civil Penalties under California Water Code Section 13385)**

16 19. Plaintiff incorporates by reference the allegations contained in paragraphs 1
17 through 17, above.

18 20. Water Code Section 13385 provides, in pertinent part:

19 (a) Any person who violates any of the following shall be liable civilly in
20 accordance with this section:

21 ...

22 (2) Any waste discharge requirements or dredged or fill material permit
23 issued pursuant to this chapter or any water quality certification issued pursuant to
24 Section 13160.

25 ...

26 (5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of
27 the Clean Water Act, as amended. . . .

28 (b) Civil liability may be imposed by the superior court in an amount not to exceed
the sum of both of the following:

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(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, and additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

21. Pursuant to the Water Code sections 13385, subdivision (b), and 13386, the Regional Board requested that the Attorney General commence this action in Superior Court in Orange County.

22. Clean Water Act section 301, subdivision (a) prohibits the discharge of pollutants to waters of the United States except in compliance with a proper permit and water quality certification from the State in which the discharge will occur.

23. The Defendants caused pollutants, including but not limited to, zinc, copper, lead, hydrocarbons, grease, and oil or residuary petroleum products to be deposited in or on a water of the United States not in accordance with a waste discharge requirement or otherwise as authorized pursuant to division 7 of the Water Code.

24. On October 3, 2001, Kirkhill filed a notice of intent to be covered by the 2001 waste discharge requirements, which authorizes Kirkhill to discharge storm water runoff in compliance with those requirements.

25. On or before October 3, 2001, Defendants violated conditions in Kirkhill's 2001 waste discharge requirements, including but not limited to, Nos. A.1, A.2, B.1, B.2, C.2 and C.3.

26. Prior to October 3, 2001, Kirkhill operated under the 1996 waste discharge requirements. On or before November 22, 1996, Defendants violated conditions in Kirkhill's 1996 waste discharge requirements, including but not limited to, Nos. C.1, C.4, C.5, D.2 and D.3.

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Dated: March 30, 2011

Respectfully Submitted,

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