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9 **UNITED STATES DISTRICT COURT**  
 10 **EASTERN DISTRICT OF CALIFORNIA**

11 CALIFORNIA SPORTFISHING  
 PROTECTION ALLIANCE, a non-profit  
 12 corporation,

13 Plaintiff,

14 vs.

15 VALLEJO UNIFIED SCHOOL  
 DISTRICT, a special district; Richard J.  
 16 Damelio, in his official capacity;  
 Reynaldo Santa Cruz, in his official  
 17 capacity; Chris Villanueva, in his official  
 18 capacity; Raymond V. Mommsen, in his  
 19 official capacity; Hazel Wilson, in her  
 20 official capacity; Ward Stewart, in his  
 21 official capacity, and; Theodore Newton,  
 in his official capacity,

22 Defendants.

Case No. \_\_\_\_\_

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

(Federal Water Pollution Control Act,  
 33 U.S.C. §§ 1251 to 1387)

23  
 24 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“Plaintiff” or  
 25 “CSPA”), by and through its counsel, hereby alleges:

26 **I. JURISDICTION AND VENUE**

27 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
 28 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or

1 “the Act”). This Court has subject matter jurisdiction over the parties and the subject matter  
2 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28  
3 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is  
4 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of  
5 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§  
6 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

7 2. On or about January 22, 2010, Plaintiff provided notice of Defendants’  
8 violations of the Act, and of its intention to file suit against Defendants, to the Administrator  
9 of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA  
10 Region IX; the Executive Director of the State Water Resources Control Board (“State  
11 Board”); the Executive Officer of the California Regional Water Quality Control Board, San  
12 Francisco Bay Region (“Regional Board”); and to Defendants, as required by the Act, 33  
13 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as  
14 Exhibit A, and is incorporated by reference.

15 3. More than sixty days have passed since notice was served on Defendants and  
16 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
17 neither the EPA nor the State of California has commenced or is diligently prosecuting a  
18 court action to redress the violations alleged in this complaint. This action’s claim for civil  
19 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,  
20 33 U.S.C. § 1319(g).

21 4. Venue is proper in the Eastern District of California pursuant to Section  
22 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
23 within this judicial district.

24 5. Intradistrict assignment is proper in Sacramento, California, pursuant to Local  
25 Rule 120(d), because the source of the violations is located within Solano County.

26 **II. INTRODUCTION**

27 6. This complaint seeks relief for Defendants’ discharges of polluted storm water  
28 and non-storm water pollutants from Defendants’ school bus storage and maintenance

1 facility located at 501 Oregon Street in Vallejo, California (“the Facility”) in violation of the  
2 Act and National Pollutant Discharge Elimination System (“NPDES”) Permit No.  
3 CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as  
4 amended by Water Quality Order No. 97-03-DWQ (hereinafter “the Order” or “Permit” or  
5 “General Permit”). Defendant’s violations of the discharge, treatment technology,  
6 monitoring, and other procedural and substantive requirements of the Permit and the Act are  
7 ongoing and continuous.

8 7. The failure on the part of persons and facilities such as Defendant and its  
9 industrial facility to comply with storm water requirements is recognized as a significant  
10 cause of the continued decline in water quality of the Napa River, San Pablo Bay, San  
11 Francisco Bay and other area receiving waters. The general consensus among regulatory  
12 agencies and water quality specialists is that storm pollution amounts to more than half of the  
13 total pollution entering the aquatic environment each year. In most areas of Solano County,  
14 storm water flows completely untreated through storm drain systems or other channels  
15 directly to the waters of the United States.

16 **III. PARTIES**

17 8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
18 (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of  
19 California with its main office in Stockton, California. CSPA has approximately 2,000  
20 members who live, recreate, and work in and around waters of the State of California,  
21 including the Napa River, San Pablo Bay, and San Francisco Bay. CSPA is dedicated to the  
22 preservation, protection, and defense of the environment, the wildlife, and the natural  
23 resources of all waters of California. To further these goals, CSPA actively seeks federal and  
24 state agency implementation of the Act and other laws and, where necessary, directly initiates  
25 enforcement actions on behalf of itself and its members.

26 9. Members of CSPA reside in and around the Napa River, San Pablo Bay, and  
27 San Francisco Bay and enjoy using these waters for recreation and other activities. Members  
28 of CSPA use and enjoy the waters into which Defendants have caused, are causing, and will

1 continue to cause, pollutants to be discharged. Members of CSPA use those areas to fish,  
2 sail, boat, kayak, swim, bird watch, view wildlife, and engage in scientific study including  
3 monitoring activities, among other things. Defendants' discharges of pollutants threaten or  
4 impair each of those uses or contribute to such threats and impairments. Thus, the interests  
5 of CSPA's members have been, are being, and will continue to be adversely affected by  
6 Defendants' failure to comply with the Clean Water Act and the Permit. The relief sought  
7 herein will redress the harms to Plaintiff caused by Defendants' activities.

8 10. Continuing commission of the acts and omissions alleged above will irreparably  
9 harm Plaintiff and its members, for which harm they have no plain, speedy or adequate remedy  
10 at law.

11 11. Defendant VALLEJO UNIFIED SCHOOL DISTRICT ("Vallejo USD") is a  
12 special district organized under the laws of California. Vallejo USD operates a school bus  
13 storage and maintenance facility in Vallejo, California.

14 12. Defendant Richard J. Damelio is the State Administrator and Trustee for  
15 Vallejo USD. Defendant Reynaldo Santa Cruz is the Interim Superintendent for the Vallejo  
16 USD. Defendants Chris Villanueva, Raymond V. Mommsen, Hazel Wilson, Ward Stewart,  
17 and Daniel Glaze are each Directors of Vallejo Unified School District. Defendant Theodore  
18 Newton is the Operations Manager of Transportation for Vallejo USD. Defendants Damelio,  
19 Santa Cruz, Villanueva, Mommsen, Wilson, Stewart, Glaze and Newton are the officials  
20 responsible for the operation of Vallejo USD's school bus storage and maintenance facility,  
21 including compliance with federal and state environmental laws, and are each sued in their  
22 official capacities.

23 **IV. STATUTORY BACKGROUND**

24 13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
25 pollutant into waters of the United States, unless such discharge is in compliance with  
26 various enumerated sections of the Act. Among other things, Section 301(a) prohibits  
27 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
28 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

1           14. Section 402(p) of the Act establishes a framework for regulating municipal and  
2 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States  
3 with approved NPDES permit programs are authorized by Section 402(p) to regulate  
4 industrial storm water discharges through individual permits issued to dischargers or through  
5 the issuance of a single, statewide general permit applicable to all industrial storm water  
6 dischargers. 33 U.S.C. § 1342(p).

7           15. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
8 U.S. EPA has authorized California's State Board to issue NPDES permits including general  
9 NPDES permits in California.

10           16. The State Board elected to issue a statewide general permit for industrial storm  
11 water discharges. The State Board issued the General Permit on or about November 19,  
12 1991; modified the General Permit on or about September 17, 1992; and reissued the General  
13 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33  
14 U.S.C. § 1342(p).

15           17. In order to discharge storm water lawfully in California, industrial dischargers  
16 must comply with the terms of the General Permit or have obtained and complied with an  
17 individual NPDES permit. 33 U.S.C. § 1311(a).

18           18. The General Permit contains several prohibitions. Effluent Limitation B(3) of  
19 the General Permit requires dischargers to reduce or prevent pollutants in their storm water  
20 discharges through implementation of the Best Available Technology Economically  
21 Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional  
22 Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include  
23 both nonstructural and structural measures. General Permit, Section A(8). Discharge  
24 Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm  
25 water (defined as non-storm water discharges) that discharge either directly or indirectly to  
26 waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits  
27 storm water discharges and authorized non-storm water discharges that cause or threaten to  
28 cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General

1 Permit prohibits storm water discharges to any surface or ground water that adversely impact  
2 human health or the environment. Receiving Water Limitation C(2) of the General Permit  
3 prohibits storm water discharges that cause or contribute to an exceedance of any applicable  
4 water quality standards contained in any Statewide Water Quality Control Plan or the  
5 applicable Regional Board's Basin Plan.

6 19. In addition to absolute prohibitions, the General Permit contains a variety of  
7 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
8 or having the potential to discharge, storm water associated with industrial activity that have  
9 not obtained an individual NPDES permit must apply for coverage under the State's General  
10 Permit by filing a Notice of Intent to Comply ("NOI"). The General Permit requires existing  
11 dischargers to have filed their NOIs before March 30, 1992.

12 20. EPA has established Parameter Benchmark Values as guidelines for  
13 determining whether a facility discharging industrial storm water has implemented the  
14 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established  
15 Parameter Benchmark Values for the following parameters, among others: total suspended  
16 solids – 100 mg/L; oil & grease – 15 mg/L; pH – 6.0-9.0 s.u.; and total organic carbon  
17 ("TOC") 110 mg/L. The State Board has also proposed a Benchmark Value for electrical  
18 conductance of 200 µmhos/cm.

19 21. Dischargers must develop and implement a Storm Water Pollution Prevention  
20 Plan ("SWPPP"). The SWPPP must describe storm water control facilities and measures that  
21 comply with the BAT and BCT standards. The General Permit requires that an initial  
22 SWPPP have been developed and implemented before October 1, 1992 (Section A and  
23 Provision E(2)). The SWPPP must, among other requirements, identify and evaluate sources  
24 of pollutants associated with industrial activities that may affect the quality of storm and non-  
25 storm water discharges from the facility and identify and implement site-specific best  
26 management practices ("BMPs") to reduce or prevent pollutants associated with industrial  
27 activities in storm water and authorized non-storm water discharges (Section A(2)). The  
28 SWPPP's BMPs must implement BAT and BCT (Section B(3)). The SWPPP must include:

1 a description of individuals and their responsibilities for developing and implementing the  
2 SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage  
3 areas with flow pattern and nearby water bodies, the location of the storm water collection,  
4 conveyance and discharge system, structural control measures, impervious areas, areas of  
5 actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of  
6 significant materials handled and stored at the site (Section A(5)); a description of potential  
7 pollutant sources including industrial processes, material handling and storage areas, dust  
8 and particulate generating activities, and a description of significant spills and leaks, a list of  
9 all non-storm water discharges and their sources, and a description of locations where soil  
10 erosion may occur (Section A(6)). The SWPPP must include an assessment of potential  
11 pollutant sources at the Facility and a description of the BMPs to be implemented at the  
12 Facility that will reduce or prevent pollutants in storm water discharges and authorized non-  
13 storm water discharges, including structural BMPs where non-structural BMPs are not  
14 effective (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and  
15 must be revised where necessary (Section A(9),(10)).

16 22. Section C(3) of the General Permit requires a discharger to prepare and submit  
17 a report to the Regional Board describing changes it will make to its current BMPs in order  
18 to prevent or reduce any pollutant in its storm water discharges that is causing or contributing  
19 to an exceedance of water quality standards. Once approved by the Regional Board, the  
20 additional BMPs must be incorporated into the Facility's SWPPP. The report must be  
21 submitted to the Regional Board no later than 60 days from the date the discharger first  
22 learns that its discharge is causing or contributing to an exceedance of an applicable water  
23 quality standard. Section C(4)(a).

24 23. Section C(11)(d) of the General Permit's Standard Provisions requires  
25 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).  
26 Section A(9) of the General Permit requires an annual evaluation of storm water controls  
27 including the preparation of an evaluation report and implementation of any additional  
28 measures in the SWPPP to respond to the monitoring results and other inspection activities.

1           24. The General Permit requires dischargers commencing industrial activities  
2 before October 1, 1992 to develop and implement an adequate written monitoring and  
3 reporting program no later than October 1, 1992. Existing facilities covered under the  
4 General Permit must implement all necessary revisions to their monitoring programs no later  
5 than August 1, 1997.

6           25. As part of their monitoring program, dischargers must identify all storm water  
7 discharge locations that produce a significant storm water discharge, evaluate the  
8 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
9 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
10 conduct visual observations of these discharge locations for at least one storm per month  
11 during the wet season (October through May) and record their findings in their Annual  
12 Report (Section B(4)). Section B(4)(c) requires visual observation records to note, among  
13 other things, the date of each monthly observation. Dischargers must also collect and  
14 analyze storm water samples from at least two storms per year. Section B(5)(a) of the  
15 General Permit requires that dischargers “shall collect storm water samples during the first  
16 hour of discharge from (1) the first storm event of the wet season, and (2) at least one other  
17 storm event in the wet season. All storm water discharge locations shall be sampled.”  
18 Section B(5)(c)(i) requires dischargers to sample and analyze during the wet season for basic  
19 parameters, such as pH, total suspended solids, electrical conductance, and total organic  
20 carbon or oil & grease, as well as certain industry-specific parameters. Section B(5)(c)(ii)  
21 requires dischargers to sample for toxic chemicals and other pollutants likely to be in the  
22 storm water discharged from the facility. Section B(5)(c)(iii) requires dischargers to sample  
23 for parameters dependent on a facility’s standard industrial classification (“SIC”) code.  
24 Facilities that fall under SIC Code 4151 (“Local and Highway Passenger Transportation:  
25 School Buses”) are required to analyze their storm water discharge samples for the basic  
26 parameters (Table D, Sector P). Dischargers must also conduct dry season visual  
27 observations to identify sources of non-storm water pollution. Section B(7)(a) indicates that  
28 the visual observations and samples must represent the “quality and quantity of the facility’s



1 storm water discharges from the storm event.” Section B(7)(c) requires that “if visual  
2 observation and sample collection locations are difficult to observe or sample...facility  
3 operators shall identify and collect samples from other locations that represent the quality  
4 and quantity of the facility’s storm water discharges from the storm event.”

5 26. Section B(14) of the General Permit requires dischargers to submit an annual  
6 report by July 1 of each year to the executive officer of the relevant Regional Board. The  
7 annual report must be signed and certified by an appropriate corporate officer. Sections  
8 B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in  
9 their annual report an evaluation of their storm water controls, including certifying  
10 compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

11 27. The General Permit does not provide for any mixing zones by dischargers. The  
12 General Permit does not provide for any dilution credits to be applied by dischargers.

13 28. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement  
14 actions against any “person,” including individuals, government instrumentalities, or  
15 government agencies, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)  
16 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §  
17 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up  
18 \$37,500 per day per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§  
19 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

20 29. The Regional Board has established water quality standards for San Francisco  
21 Bay in the Water Quality Control Plan for the San Francisco Bay Basin, generally referred to  
22 as the Basin Plan.

23 30. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
24 waters shall be maintained free of toxic substances in concentrations that are lethal or that  
25 produce other detrimental responses in aquatic organisms.” Basin Plan at 3.3.18.

26 31. The Basin Plan includes a narrative oil and grease standard which states that  
27 “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that  
28 result in a visible film or coating on the surface of the water or on objects in the water, that

1 cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at 3.3.7.

2 32. The Basin Plan provides that “[s]urface waters shall not contain concentrations  
3 of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.*  
4 at 3.3.21.

5 33. The Basin Plan provides that “[w]aters shall not contain suspended material in  
6 concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14.

7 34. The Basin Plan provides that “[t]he suspended sediment load and suspended  
8 sediment discharge rate of surface waters shall not be altered in such a manner as to cause  
9 nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12.

10 35. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor  
11 raised above 8.5.” *Id.* at 3.3.9.

12 **V. STATEMENT OF FACTS**

13 36. Defendants operate a school bus storage and maintenance facility located at  
14 501 Oregon Street in Vallejo, California. The Facility stores, maintains, and cleans school  
15 buses and other vehicles and equipment. The Facility falls within SIC Code 4151. The  
16 Facility covers approximately 119,000 square feet, the majority of which is paved and used  
17 for maintaining and storing school buses and other vehicles and equipment at the Facility.  
18 On information and belief, Plaintiff alleges that there are at least two large buildings located  
19 on the property. On information and belief, Plaintiff alleges that the storing, maintaining,  
20 and cleaning of school buses and other vehicles and equipment occurs both inside and  
21 outside of these buildings. School buses and other vehicles and equipment are moved in and  
22 out of these buildings for storage, maintenance, and cleaning in the paved areas of the  
23 Facility.

24 37. Defendant channels and collects storm water falling on the Facility that flow  
25 out of the Facility from at least two (2) storm water discharge locations. Each discharge  
26 location collects storm water runoff from a particular area of the Facility. The Facility’s  
27 storm water discharges to the City of Vallejo’s storm drain system which flows into Austin  
28 Creek; Austin Creek drains into the Napa River; and the Napa River flows into San Pablo

1 Bay, the northern extension of San Francisco Bay.

2 38. On information and belief, Plaintiff alleges that the industrial activities at the  
3 site include the storage, maintenance, and cleaning of school buses, other vehicles and  
4 equipment. Industrial activities also include the outdoor storage, maintenance, and cleaning  
5 of these vehicles and equipment as well as other materials used to maintain and clean them.

6 39. Significant activities at the site take place outside and are exposed to rainfall.  
7 These activities include the storage, movement, and maintenance of school buses, other  
8 vehicles and equipment; materials used to clean and maintain the school buses, other vehicles  
9 and equipment; and the cleaning of school buses, other vehicles and equipment. School  
10 buses, other vehicles, and equipment enter and exit the Facility directly from and to public  
11 roads. These areas are exposed to storm water and storm flows due to the lack of overhead  
12 coverage, berms, and other storm water controls.

13 40. Industrial equipment, school buses, and vehicles are operated and stored at the  
14 Facility in areas exposed to storm water flows. Plaintiff is informed and believes, and  
15 thereupon alleges, that such equipment, school buses, and vehicles leak contaminants such as  
16 oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows,  
17 and that such equipment and vehicles track sediment and other contaminants throughout the  
18 Facility.

19 41. Plaintiff is informed and believes, and thereupon alleges that the storm water  
20 flows easily over the surface of the Facility, collecting suspended sediment, dirt, oils, grease,  
21 and other pollutants as it flows toward the storm water channels and drains. Storm water and  
22 any pollutants contained in that storm water entering the channels or drains flows directly to  
23 the municipal storm drain system.

24 42. The management practices at the Facility are wholly inadequate to prevent the  
25 sources of contamination described above from causing the discharge of pollutants to waters  
26 of the United States. The Facility lacks sufficient structural controls such as grading,  
27 berming, roofing, containment, or drainage structures to prevent rainfall and storm water  
28 flows from coming into contact with these and other exposed sources of contaminants. The

1 Facility lacks sufficient structural controls to prevent the discharge of water once  
2 contaminated. The Facility lacks adequate storm water pollution treatment technologies to  
3 treat storm water once contaminated.

4 43. Since at least January 22, 2005, Defendants have taken samples or arranged for  
5 samples to be taken of storm water discharges at the Facility. The sample results were  
6 reported by the Facility in its annual reports submitted to the Regional Board. Defendants,  
7 through their Operations Manager of Transportation, certified each of those annual reports  
8 pursuant to Sections A and C of the General Permit.

9 44. Since at least January 22, 2005, the Facility has detected total suspended solids,  
10 pH, oil and grease, and electrical conductance in storm water discharged from the Facility.  
11 Levels of these pollutants detected in the Facility's storm water have been in excess of  
12 EPA's numeric parameter benchmark values and the State Board's proposed value for  
13 electrical conductance. Levels of these pollutants detected in the Facility's storm water have  
14 been in excess of water quality standards established in the Basin Plan.

15 45. Since at least January 22, 2005, the Facility has observed oil and grease in  
16 storm water discharged from the Facility in excess of the narrative water quality standards  
17 established in the Basin Plan.

18 46. The following discharges on the following dates contained concentrations of  
19 pollutants in excess of numeric or narrative water quality standards established in the Basin  
20 Plan:

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
2/11/2009	pH	6.36	6.5 – 8.5	Front Gate
1/22/2008	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area
12/19/2007	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area

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11/30/2007	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area
10/26/2007	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area
5/11/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
4/27/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
3/30/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
2/26/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
1/31/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
12/8/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
11/27/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
10/27/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
5/31/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
4/28/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
3/31/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
2/28/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility

1	1/31/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
2					
3	12/9/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
4					
5	11/30/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
6					
7	10/31/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
8					
9	6/30/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
10					
11	5/31/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
12					
13	4/29/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
14					
15	3/31/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
16					
17	3/4/2005	pH	6.05	6.5 – 8.5	Oregon Street
18	2/28/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
19					
20	1/28/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
21					

22 47. The levels of total suspended solids in storm water detected by the Facility  
23 have exceeded the benchmark value for total suspended solids of 100 mg/L established by  
24 EPA. On information and belief, the levels of total suspended solids in storm water detected  
25 by the Facility have also exceeded the standard for suspended materials articulated in the  
26 Basin Plan. For example, on January 22, 2008, the level of total suspended solids measured  
27 by Defendants in the Facility's discharged storm water was 900 mg/L. That level of total  
28 suspended solids is nine times the benchmark value for total suspended solids established by

1 EPA. The Facility has also measured at both discharge locations levels of total suspended  
2 solids in storm water discharged from the Facility in excess of EPA's benchmark value of  
3 100 mg/L on February 11, 2009; February 26, 2007; and November 27, 2006.

4 48. The electrical conductance levels detected by the Facility in its storm water  
5 have been greater than the benchmark value of 200  $\mu\text{mho/cm}$  proposed by the State Board.  
6 For example, on February 26, 2007, the electrical conductance level measured by Defendants  
7 in the Facility's discharged storm water was 828  $\mu\text{mho/cm}$ . That level of electrical  
8 conductance is more than eight times the State Board's proposed benchmark value. The  
9 Facility has also measured levels of electrical conductance in storm water discharged from  
10 the Facility in excess of the proposed benchmark value of 200  $\mu\text{mho/cm}$  on November 27,  
11 2006.

12 49. On information and belief, Plaintiff alleges that since at least January 22, 2005,  
13 Defendants have failed to implement BAT and BCT at the Facility for its discharges of total  
14 suspended solids, electrical conductance, and other pollutants. Section B(3) of the General  
15 Permit requires that Defendants implement BAT for toxic and nonconventional pollutants  
16 and BCT for conventional pollutants by no later than October 1, 1992. As of the date of this  
17 Complaint, Defendants have failed to implement BAT and BCT.

18 50. On information and belief, Plaintiff alleges that since at least January 22, 2005,  
19 Defendants have failed to implement an adequate Storm Water Pollution Prevention Plan for  
20 the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP  
21 prepared for the Facility does not set forth site-specific best management practices for the  
22 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and  
23 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an  
24 adequate assessment of potential pollutant sources, structural pollutant control measures  
25 employed by Defendants, a list of actual and potential areas of pollutant contact, or an  
26 adequate description of best management practices to be implemented at the Facility to  
27 reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges,  
28 Defendants' SWPPP has not been evaluated to ensure its effectiveness and revised where

1 necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and  
2 thereupon alleges, that the SWPPP does not include each of the mandatory elements required  
3 by Section A of the General Permit.

4 51. Information available to CSPA indicates that as a result of these practices,  
5 storm water containing excessive pollutants is being discharged during rain events from the  
6 Facility to the City of Vallejo's storm drain system, which flows into Austin Creek, then the  
7 Napa River, and ultimately into San Pablo Bay.

8 52. On information and belief, Plaintiff alleges that Defendants have failed to  
9 collect the two required storm samples from each and every storm water discharge location at  
10 the Facility during each wet season since at least January 22, 2005. Plaintiff is informed and  
11 believes, and thereupon alleges that Defendants failed to sample two storm events during  
12 each of the 2005-2006, 2007-2008, and 2008-2009 wet seasons.

13 53. On information and belief, Plaintiff alleges that Defendants failed to analyze its  
14 storm water samples for electrical conductance as required by Section B(5)(c)(i) in samples  
15 taken from each and every storm water discharge location at the Facility on January 22, 2008.

16 54. On information and belief, Plaintiff alleges that Defendants failed to make and  
17 report the monthly visual observations required by Section B(4) of the Permit at the Facility  
18 in February 2008, March 2008, April 2008, May 2008, October 2008, November 2008,  
19 December 2008, January 2009, February 2009, March 2009, April 2009, and May 2009.

20 55. Plaintiff is informed and believes, and thereupon alleges, that, Defendants have  
21 failed and continue to fail to alter the Facility's SWPPP and site-specific BMPs consistent  
22 with Section A(9) of the General Permit.

23 56. Plaintiff is informed and believes that Defendants failed to submit to the  
24 Regional Board a true and complete annual report certifying compliance with the General  
25 Permit since at least July 1, 2005. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the  
26 General Permit, Defendants must submit an annual report, that is signed and certified by the  
27 appropriate corporate officer, outlining the Facility's storm water controls and certifying  
28 compliance with the General Permit. Plaintiff is informed and believes, and thereupon



1 alleges, that Defendants have signed incomplete annual reports that purported to comply with  
2 the General Permit when there was significant noncompliance at the Facility.

3 57. Information available to Plaintiff indicates that Defendants have not fulfilled  
4 the requirements set forth in the General Permit for discharges from the Facility due to the  
5 continued discharge of contaminated storm water. Plaintiff is informed and believes, and  
6 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and  
7 continuing.

8 **VI. CLAIMS FOR RELIEF**

9 **FIRST CAUSE OF ACTION**

10 **Failure to Implement the Best Available and  
11 Best Conventional Treatment Technologies  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

12 58. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully  
13 set forth herein.

14 59. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
15 require dischargers to reduce or prevent pollutants in their storm water discharges through  
16 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
17 pollutants. Defendants have failed to implement BAT and BCT at the Facility for its  
18 discharges of total suspended solids, pH, electrical conductance, and other unmonitored  
19 pollutants in violation of Effluent Limitation B(3) of the General Permit.

20 60. Each day since January 22, 2005, that Defendants have failed to develop and  
21 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
22 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

23 61. Defendants have been in violation of the BAT/BCT requirements every day since  
24 January 22, 2005. Defendants continue to be in violation of the BAT/BCT requirements each  
25 day that they fail to develop and fully implement an adequate BAT/BCT for the Facility.

26 **SECOND CAUSE OF ACTION**

27 **Discharges of Contaminated Storm Water  
28 in Violation of Permit Conditions and the Act  
(Violations of 33 U.S.C. §§ 1311(a), 1342)**

62. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully

1 set forth herein.

2 63. Discharge Prohibition A(2) of the General Permit requires that storm water  
3 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
4 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
5 General Permit require that storm water discharges and authorized non-storm water discharges  
6 shall not adversely impact human health or the environment, and shall not cause or contribute  
7 to a violation of any water quality standards contained in a Statewide Water Quality Control  
8 Plan or the applicable Regional Board's Basin Plan.

9 64. Plaintiff is informed and believes, and thereupon alleges, that since at least  
10 January 22, 2005, Defendants have been discharging polluted storm water from the Facility in  
11 excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of  
12 the General Permit.

13 65. During every rain event, storm water flows freely over exposed materials, waste  
14 products, and other accumulated pollutants at the Facility, becoming contaminated with  
15 suspended solids, pH, oil and grease, and other unmonitored pollutants at levels above  
16 applicable water quality standards. The storm water then flows untreated from the Facility into  
17 the City of Vallejo's storm drain system, which flows into Austin Creek, then the Napa  
18 River, and ultimately into San Pablo Bay.

19 66. Plaintiff is informed and believes, and thereupon alleges, that these discharges of  
20 contaminated storm water are causing or contributing to the violation of the applicable water  
21 quality standards in a Statewide Water Quality Control Plan and/or the applicable Regional  
22 Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

23 67. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
24 of contaminated storm water are adversely affecting human health and the environment in  
25 violation of Receiving Water Limitation C(1) of the General Permit.

26 68. Every day since at least January 22, 2005, that Defendants have discharged and  
27 continue to discharge polluted storm water from the Facility in violation of the General Permit  
28 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These

1 violations are ongoing and continuous.

2 **THIRD CAUSE OF ACTION**

3 **Failure to Prepare, Implement, Review, and Update**  
4 **an Adequate Storm Water Pollution Prevention Plan**  
5 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

6 69. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully  
7 set forth herein.

8 70. Section A and Provision E of the General Permit requires dischargers of storm  
9 water associated with industrial activity to develop and implement an adequate SWPPP no  
10 later than October 1, 1992.

11 71. Defendants have failed to develop and implement an adequate SWPPP for the  
12 Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for the  
13 Facility is evidenced by, *inter alia*, Defendants' outdoor storage, maintenance, and cleaning of  
14 school buses, other vehicles, and equipment without appropriate best management practices;  
15 the continued exposure of the buses, vehicles, and equipment to storm water flows; the  
16 continued exposure and tracking of waste resulting from the operation, maintenance, and  
17 cleaning of school buses, other vehicles, and equipment at the site; the failure to either treat  
18 storm water prior to discharge or to implement effective containment practices; and the  
19 continued discharge of storm water pollutants from the Facility at levels in excess of EPA  
20 benchmark values.

21 72. Defendants have failed to update the Facility's SWPPP in response to the  
22 analytical results of the Facility's storm water monitoring.

23 73. Each day since January 22, 2005, that Defendants have failed to develop,  
24 implement and update an adequate SWPPP for the Facility is a separate and distinct violation  
25 of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

26 74. Defendants have been in violation of the SWPPP requirements every day since  
27 January 22, 2005. Defendants continue to be in violation of the SWPPP requirements each day  
28 that they fail to develop and fully implement an adequate SWPPP for the Facility.

///

**FOURTH CAUSE OF ACTION**

**Failure to Develop and Implement an Adequate Monitoring and Reporting Program  
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

75. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

76. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a monitoring and reporting program (including, *inter alia*, sampling and analysis of discharges) no later than October 1, 1992.

77. Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility. Defendant's ongoing failure to develop and implement an adequate monitoring and reporting program is evidenced by, *inter alia*, its failure to sample two storm events per wet season.

78. Each day since January 22, 2005, that Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous violations of the Act.

**FIFTH CAUSE OF ACTION**

**False Certification of Compliance in Annual Report  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

79. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

80. Defendants have falsely certified compliance with the General Permit in each of the annual reports submitted to the Regional Board since at least July 1, 2005.

81. Each day since at least July 1, 2005 that Defendants have falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the General Permit's certification requirement each day that they maintain their false certification of their compliance with the General Permit.

1 **VII. RELIEF REQUESTED**

2 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- 3 a. Declare Defendants to have violated and to be in violation of the Act as  
4 alleged herein;
- 5 b. Enjoin Defendants from discharging polluted storm water from the Facility  
6 unless authorized by the Permit;
- 7 c. Enjoin Defendants from further violating the substantive and procedural  
8 requirements of the Permit;
- 9 d. Order Defendants to immediately implement storm water pollution control  
10 and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
11 pollutants in the Facility's storm water from contributing to violations of any water quality  
12 standards;
- 13 e. Order Defendants to comply with the Permit's monitoring and reporting  
14 requirements, including ordering supplemental monitoring to compensate for past monitoring  
15 violations;
- 16 f. Order Defendants to prepare a SWPPP consistent with the Permit's  
17 requirements and implement procedures to regularly review and update the SWPPP;
- 18 g. Order Defendants to provide Plaintiff with reports documenting the quality  
19 and quantity of their discharges to waters of the United States and their efforts to comply with  
20 the Act and the Court's orders;
- 21 h. Order Defendants to take appropriate actions to restore the quality of waters  
22 impaired or adversely affected by their activities;
- 23 i. Award Plaintiff's costs (including reasonable investigative, attorney, witness,  
24 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,
- 25 j. Award any such other and further relief as this Court may deem appropriate.

26 ///

27 ///

28

1 Dated: April 19, 2010

Respectfully submitted,

2

LOZEAU DRURY LLP

3

By: /s/ Michael R. Lozeau  
Michael R. Lozeau  
Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

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# EXHIBIT A

**California Sportfishing Protection Alliance**

*“An Advocate for Fisheries, Habitat and Water Quality”*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

January 22, 2010

Richard J. Damelio, Ed.D. State Administrator/Trustee Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592	Theodore Newton Operations Manager of Transportation Vallejo Unified School District Transportation 501 Oregon Street Vallejo, CA 94590
Reynaldo Santa Cruz Interim Superintendent Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592	Melvin Jordan Assistant Superintendent Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592
Chris Villanueva Board of Education – President Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592	Ward Stewart Board of Education – Vice-President Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592
Raymond V. Mommsen Board of Education – Director Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592	Daniel Glaze Board of Education – Director Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592
Hazel Wilson Board of Education – Director Vallejo City Unified School District 665 Walnut Avenue Vallejo, California 94592	

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)**

Dear Messrs Damelio, Glaze, Jordan, Mommsen, Newton, Santa Cruz, Stewart, and Villanueva; and Ms. Wilson:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“Act”) that CSPA believes are occurring at Vallejo Unified School District Transportation, located at 501 Oregon Street in Vallejo, California (“Facility”). CSPA is a non-profit public benefit corporation dedicated to the preservation,



Vallejo Unified School District Transportation

January 22, 2010

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protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay (“Bay”) and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as “Vallejo USDT”).

This letter addresses Vallejo USDT’s unlawful discharge of pollutants from the Facility into channels that flow into local creeks, the Napa River, and the Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”) Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”). The Waste Discharge Identification Number (“WDID”) for the Facility listed on documents submitted to the Regional Board is 248I000895. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Vallejo USDT on formal notice that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Vallejo USDT, including the responsible managers, directors, or operators, under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

On February 23, 1998, Vallejo USDT filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Vallejo USDT certified that the Facility is classified under SIC code 4151 (“Land Transportation Facilities that have Vehicle and Equipment Maintenance Shops and/or Equipment Cleaning Operations”). The Facility collects and discharges storm water from its approximately 119,000 square foot industrial site into at least two storm water discharge locations at the Facility. The storm water discharged by Vallejo USDT is discharged to the City of Vallejo storm drain system which flows into Austin Creek; Austin Creek drains into the Napa River; the Napa River then flows into San Pablo Bay (the northern extension of San Francisco Bay).

The Regional Board has identified beneficial uses of the Bay’s waters and established water quality standards for San Pablo Bay and San Francisco Bay as well their tributaries, including the Napa River and Austin Creek, in the “Water Quality Control Plan for the San

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Francisco Bay Basin,” generally referred to as the Basin Plan. *See* [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/basin\\_plan/docs/basin\\_plan07.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/basin_plan/docs/basin_plan07.pdf). The beneficial uses of these waters include, among others, contact and non-contact recreation, fish migration, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. Water quality considerations relevant to non-contact water recreation, such as hiking, camping, or boating, and those activities related to tide pool or other nature studies require protection of habitats and aesthetic features.” *Id.* at 2.1.16. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs peoples’ use of San Francisco Bay for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms.” *Id.* at 3.3.18. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses.” *Id.* at 3.3.7. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3.3.21. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.14. The Basin Plan provides that “[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* at 3.3.12. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at 3.3.9.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). 65 Fed. Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Vallejo USDT: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L; and oil and grease (“O&G”) – 15 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance of 200 µmho/cm.

## **II. Alleged Violations of the NPDES Permit.**

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**A. Discharges in Violation of the Permit.**

Vallejo USDT has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility’s discharge monitoring locations.

Vallejo USDT has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, oil and grease, pH, and possibly other pollutants in violation of the General Permit. Vallejo USDT’s sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of narrative and numeric water quality standards established in the Basin Plan or promulgated by EPA and thus violated Discharge Prohibitions A(1) and A(2) and

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Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
2/11/2009	pH	6.36	6.5 – 8.5	Front Gate
1/22/2008	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area
12/19/2007	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area
11/30/2007	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area
10/26/2007	Oil & Grease Sheen Observed		Narrative	Shop Ramp Area
5/11/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
4/27/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
3/30/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
2/26/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
1/31/2007	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
12/8/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
11/27/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
10/27/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
5/31/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
4/28/2006	Oil & Grease		Narrative	Gutter and Storm

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	Sheen Observed			Drains, Runoff from Repair Facility
3/31/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
2/28/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
1/31/2006	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
12/9/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
11/30/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
10/31/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Repair Facility
6/30/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
5/31/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
4/29/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
3/31/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
3/4/2005	pH	6.05	6.5 – 8.5	Oregon Street
2/28/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility
1/28/2005	Oil & Grease Sheen Observed		Narrative	Gutter and Storm Drains, Runoff from Maintenance Facility

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit:

Notice of Violation and Intent to File Suit

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<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
2/11/2009	TSS	430 mg/L	100 mg/L	Front Gate
2/11/2009	TSS	572 mg/L	100 mg/L	Back Gate
1/22/2008	TSS	514 mg/L	100 mg/L	Front Gate
1/22/2008	TSS	900 mg/L	100 mg/L	Back Gate
2/26/2007	TSS	392.7 mg/L	100 mg/L	Napa Street
2/26/2007	TSS	108 mg/L	100 mg/L	Oregon Street
2/26/2007	Specific Conductivity	828 µmho/cm	200 µmho/cm (proposed)	Napa Street
2/26/2007	Specific Conductivity	268 µmho/cm	200 µmho/cm (proposed)	Oregon Street
11/27/2006	TSS	212 mg/L	100 mg/L	Napa Street
11/27/2006	TSS	850 mg/L	100 mg/L	Oregon Street
11/27/2006	Specific Conductivity	1850 µmho/cm	200 µmho/cm (proposed)	Napa Street
11/27/2006	Specific Conductivity	1850 µmho/cm	200 µmho/cm (proposed)	Oregon Street

CSPA’s investigation, including its review of Vallejo USDT’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of applicable water quality standards, EPA’s benchmark values, and the State Board’s proposed benchmark for electrical conductivity, indicates that Vallejo USDT has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, specific conductivity, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Vallejo USDT was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Vallejo USDT is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers and observations indicate that the facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA also alleges that such violations have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least January 22, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Vallejo USDT has discharged storm water containing impermissible levels of TSS, pH, and specific conductivity in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

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These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Vallejo USDT is subject to penalties for violations of the General Permit and the Act since January 22, 2005.

**B. Failure to Sample and Analyze Storm Events and Mandatory Parameters**

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). “Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season.” *Id.* “All storm water discharge locations shall be sampled.” *Id.* “Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the Annual Report why the first storm event was not sampled.” *Id.* Vallejo USDT failed to sample a second storm event during each of the 2005-2006<sup>1</sup>, 2007-2008, and 2008-2009 rainy seasons for a total of six violations (three seasons of violations at two storm drains each season) of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Vallejo USDT is subject to penalties for violations of the General Permit and the Act since January 22, 2005.

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). CSPA’s review of Vallejo USDT’s monitoring data indicates that it failed to analyze for specific conductance in the following samples taken on the following dates at the identified storm water discharge locations at the Facility:

<b>Date</b>	<b>Location (as identified by the Facility)</b>
1/22/2008	Front Gate
1/22/2008	Rear Gate

Each of the above listed failures to analyze for specific conductance is a violation of General Permit, Section B(5)(c)(i). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal

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<sup>1</sup> Vallejo USDT’s 2005-2006 Annual Report contains two sets of sampling results; however one of those sets was dated March 4, 2005 – a date not in the 2005-2006 rainy season (October through May of those respective years). Since these results do not report data from the appropriate rainy season, they cannot count as one of the samples for 2005-2006, therefore leaving Vallejo USDT with only one valid report for the 2005-2006 season.

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Clean Water Act, Vallejo USDT is subject to penalties for violations of the General Permit and the Act since January 22, 2005.

***C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.***

Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include 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 (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CSPA’s investigation of the conditions at the Facility as well as Vallejo USDT’s Annual Reports indicate that Vallejo USDT has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Vallejo USDT has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Vallejo USDT has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least January 22, 2005, and will continue to be in violation every day that Vallejo USDT fails to prepare, implement, review, and update



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an effective SWPPP. Vallejo USDT is subject to penalties for violations of the Order and the Act occurring since January 22, 2005.

***D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(4)(c) requires visual observation records to note, among other things, the date of each monthly observation. Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.” Vallejo USDT failed to make and report monthly visual observations as required under Section B(4) of the General Permit in February 2008, March 2008, April 2008, May 2008, October 2008, November 2008, December 2008, January 2009, February 2009, March 2009, April 2009, and May 2009, for a total of twelve violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Vallejo USDT is subject to penalties for violations of the General Permit and the Act since January 22, 2005.

The above referenced data was obtained from the Facility’s monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Vallejo USDT is not representative of the quality of the Facility’s various storm water discharges, and/or Vallejo USDT failed to sample for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities” (Section B(5)(c)(ii)), CSPA, on information and belief, alleges that the Facility’s monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Vallejo USDT is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since January 22, 2005.

***E. Failure to File True and Correct Annual Reports.***

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant

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Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9) & (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) & (10) and B(14).

In addition, since 2004, Vallejo USDT and its agent, Judy Carlson<sup>2</sup>, inaccurately certified in their Annual Reports that the Facility was in compliance with the General Permit. Consequently, Vallejo USDT has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Vallejo USDT failed to submit a complete or correct report and every time Vallejo USDT or its agent falsely purported to comply with the Act. Vallejo USDT is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since January 22, 2005.

#### **IV. Persons Responsible for the Violations.**

CSPA puts Vallejo USDT, Richard J. Damelio, Theodore Newton, Reynaldo Santa Cruz, Melvin Jordan, Raymond Mommsen, Daniel Glaze, Ward Stewart, Chris Villanueva, and Hazel Wilson on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Vallejo USDT, Richard J. Damelio, Theodore Newton, Reynaldo Santa Cruz, Melvin Jordan, Raymond Mommsen, Daniel Glaze, Ward Stewart, Chris Villanueva, and Hazel Wilson on notice that it intends to include those persons in this action.

#### **V. Name and Address of Noticing Party.**

Our name, address, and contact information is as follows:

Bill Jennings, Executive Director;  
California Sportfishing Protection Alliance,  
3536 Rainier Avenue,  
Stockton, CA 95204  
Tel. (209) 464-5067  
Fax (209) 464-1028  
E-Mail: deltakeep@aol.com

#### **VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

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<sup>2</sup> Judy Carlson was the Director of Transportation for Vallejo USDT until recently. In her capacity as Director, she filled out and certified the Facility's Annual Reports from 2004 – 2009.

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David A. Zizmor  
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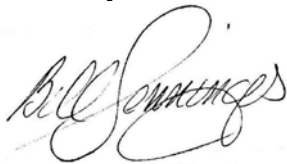
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## **VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4; 73 FR 75340) each separate violation of the Act subjects Vallejo USDT to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Vallejo USDT and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

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

Jared Blumenfeld, Regional Administrator  
U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Bruce H. Wolfe, Executive Officer II  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

## ATTACHMENT A

## Rain Dates, Vallejo USDT, Vallejo, California

January 7, 2005	May 11, 2005	January 10, 2006
January 8, 2005	May 18, 2005	January 11, 2006
January 9, 2005	May 19, 2005	January 12, 2006
January 10, 2005	June 9, 2005	January 13, 2006
January 11, 2005	June 15, 2005	January 14, 2006
January 12, 2005	June 16, 2005	January 15, 2006
January 25, 2005	June 17, 2005	January 16, 2006
January 27, 2005	June 18, 2005	January 17, 2006
January 28, 2005	June 19, 2005	January 18, 2006
February 14, 2005	August 13, 2005	January 19, 2006
February 15, 2005	August 15, 2005	January 20, 2006
February 16, 2005	August 18, 2005	January 21, 2006
February 18, 2005	August 19, 2005	January 22, 2006
February 19, 2005	August 20, 2005	January 23, 2006
February 20, 2005	August 30, 2005	January 24, 2006
February 21, 2005	September 19, 2005	January 25, 2006
February 22, 2005	September 20, 2005	January 26, 2006
February 27, 2005	September 21, 2005	January 27, 2006
February 28, 2005	October 15, 2005	January 28, 2006
March 2, 2005	October 24, 2005	January 29, 2006
March 4, 2005	October 26, 2005	January 30, 2006
March 11, 2005	October 28, 2005	January 31, 2006
March 18, 2005	October 29, 2005	February 1, 2006
March 19, 2005	October 30, 2005	February 2, 2006
March 20, 2005	November 4, 2005	February 3, 2006
March 21, 2005	November 7, 2005	February 4, 2006
March 22, 2005	November 8, 2005	February 17, 2006
March 23, 2005	November 9, 2005	February 18, 2006
March 27, 2005	November 28, 2005	February 19, 2006
March 28, 2005	December 1, 2005	February 26, 2006
March 29, 2005	December 2, 2005	March 2, 2006
April 4, 2005	December 17, 2005	March 3, 2006
April 7, 2005	December 18, 2005	March 4, 2006
April 8, 2005	December 25, 2005	March 5, 2006
April 9, 2005	December 30, 2005	March 6, 2006
April 23, 2005	December 31, 2005	March 7, 2006
April 25, 2005	January 1, 2006	March 8, 2006
April 26, 2005	January 2, 2006	March 10, 2006
April 27, 2005	January 3, 2006	March 11, 2006
April 28, 2005	January 4, 2006	March 12, 2006
May 4, 2005	January 5, 2006	March 13, 2006
May 5, 2005	January 6, 2006	March 14, 2006
May 6, 2005	January 7, 2006	March 15, 2006
May 8, 2005	January 8, 2006	March 16, 2006
May 9, 2005	January 9, 2006	March 17, 2006

**ATTACHMENT A**

## Rain Dates, Tomra Pacific, Inc., Fremont, California

March 20, 2006	December 15, 2006	December 6, 2007
March 21, 2006	December 21, 2006	December 7, 2007
March 24, 2006	December 23, 2006	December 17, 2007
March 25, 2006	December 24, 2006	December 18, 2007
March 27, 2006	December 25, 2006	December 20, 2007
March 28, 2006	December 26, 2006	December 28, 2007
March 29, 2006	December 27, 2006	December 29, 2007
March 31, 2006	January 4, 2007	December 30, 2007
April 1, 2006	January 17, 2007	January 3, 2008
April 2, 2006	January 26, 2007	January 4, 2008
April 3, 2006	January 27, 2007	January 5, 2008
April 4, 2006	February 7, 2007	January 6, 2008
April 5, 2006	February 8, 2007	January 7, 2008
April 7, 2006	February 9, 2007	January 8, 2008
April 8, 2006	February 10, 2007	January 9, 2008
April 9, 2006	February 11, 2007	January 10, 2008
April 10, 2006	February 12, 2007	January 21, 2008
April 11, 2006	February 13, 2007	January 22, 2008
April 12, 2006	February 25, 2007	January 23, 2008
April 13, 2006	February 26, 2007	January 24, 2008
April 14, 2006	February 27, 2007	January 25, 2008
April 15, 2006	February 28, 2007	January 26, 2008
April 16, 2006	March 20, 2007	January 27, 2008
April 17, 2006	March 26, 2007	January 28, 2008
May 19, 2006	April 1, 2007	January 29, 2008
May 20, 2006	April 4, 2007	January 30, 2008
May 21, 2006	April 11, 2007	January 31, 2008
October 5, 2006	April 14, 2007	February 1, 2008
November 2, 2006	April 16, 2007	February 2, 2008
November 3, 2006	April 20, 2007	February 3, 2008
November 9, 2006	April 22, 2007	February 19, 2008
November 10, 2006	May 4, 2007	February 20, 2008
November 11, 2006	September 22, 2007	February 21, 2008
November 13, 2006	October 12, 2007	February 22, 2008
November 14, 2006	October 14, 2007	February 23, 2008
November 26, 2006	October 15, 2007	February 24, 2008
November 27, 2006	October 16, 2007	March 12, 2008
December 9, 2006	October 17, 2007	March 13, 2008
December 10, 2006	November 10, 2007	March 14, 2008
December 12, 2006	November 11, 2007	March 15, 2008
December 13, 2006	November 19, 2007	April 23, 2008
December 14, 2006	December 4, 2007	October 4, 2008

**ATTACHMENT A**

Rain Dates, Tomra Pacific, Inc., Fremont, California

October 31, 2008	March 16, 2009	January 1, 2010
November 1, 2008	March 22, 2009	January 2, 2010
November 2, 2008	April 7, 2009	January 3, 2010
November 3, 2008	April 8, 2009	January 6, 2010
November 4, 2008	May 1, 2009	January 8, 2010
December 14, 2008	May 2, 2009	January 10, 2010
December 19, 2008	May 3, 2009	January 12, 2010
December 21, 2008	May 4, 2009	January 13, 2010
December 22, 2008	May 5, 2009	January 14, 2010
December 23, 2008	June 3, 2009	January 16, 2010
December 24, 2008	June 7, 2009	January 17, 2010
December 25, 2008	August 27, 2009	January 18, 2010
January 2, 2009	September 12, 2009	January 19, 2010
January 19, 2009	September 13, 2009	January 20, 2010
January 20, 2009	September 24, 2009	January 21, 2010
January 21, 2009	October 13, 2009	January 22, 2010
January 22, 2009	October 15, 2009	
January 23, 2009	October 16, 2009	
January 24, 2009	October 18, 2009	
February 5, 2009	October 19, 2009	
February 6, 2009	October 20, 2009	
February 7, 2009	November 6, 2009	
February 8, 2009	November 7, 2009	
February 9, 2009	November 17, 2009	
February 11, 2009	November 18, 2009	
February 12, 2009	November 20, 2009	
February 13, 2009	November 27, 2009	
February 14, 2009	December 4, 2009	
February 15, 2009	December 6, 2009	
February 16, 2009	December 7, 2009	
February 17, 2009	December 10, 2009	
February 22, 2009	December 11, 2009	
February 23, 2009	December 12, 2009	
February 24, 2009	December 13, 2009	
February 25, 2009	December 16, 2009	
February 26, 2009	December 18, 2009	
March 1, 2009	December 20, 2009	
March 2, 2009	December 21, 2009	
March 3, 2009	December 26, 2009	
March 4, 2009	December 27, 2009	
March 5, 2009	December 29, 2009	
March 15, 2009	December 30, 2009	