



T 510.749.9102
F 510.749.9103

1516 Oak Street, Suite 216
Alameda, Ca 94501

www.lozeaudrury.com
michael@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 4, 2010

James Ratto, President
James Salyers, Vice-President
Rick Holiday, Operations Manager
Novato Disposal Service, Inc.
2543 Petaluma Boulevard South
Petaluma, California 94952

James Ratto, President
James Salyers, Vice-President
Rick Holiday, Operations Manager
Novato Disposal Service, Inc.
P.O. Box 1916
Santa Rosa, CA 95402

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

Dear Messrs. Ratto, Salyers, and Holiday:

I am writing on behalf of the California Sportfishing Protection Alliance and the Petaluma River Council (collectively, "CSPA and PRC") regarding violations of the Clean Water Act ("Act") that CSPA and PRC believe are occurring at Novato Disposal Service, located at 2543 Petaluma Boulevard South in Petaluma, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay ("Bay") and other California waters. PRC is an unincorporated organization of concerned citizens, residing in and around Petaluma, committed to protecting and improving the health and character of the Petaluma River and other North Coast watersheds and the surrounding environment. 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 "Novato Disposal").

This letter addresses Novato Disposal's unlawful discharge of pollutants from the Facility into channels that flow into the Petaluma River, and the San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ (hereinafter "General Permit"). The Waste Discharge Identification Number ("WDID") for the Facility listed on documents submitted to the State

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Board is 249I017656¹. 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 and PRC hereby place Novato Disposal on formal notice that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA and PRC intend to file suit in federal court against Novato Disposal, 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 November 25, 2002, Novato Disposal filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Novato Disposal certified that the Facility is classified under SIC code 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”). The Facility collects and discharges storm water from its approximately five (5) acre industrial site into at least two storm water discharge locations at the Facility. The storm water discharged by Novato Disposal is discharged to a privately owned and maintained storm drain system which flows into the Petaluma River; the Petaluma 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 Petaluma River, in the “Water Quality Control Plan for the San 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. 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

¹ Novato Disposal also has a Construction Storm Water WDID of 249C352447).

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 and its tributaries 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.

Both the Regional Board and EPA have established numeric water quality standards for pollutants discharged by Novato Disposal that flow into San Francisco Bay. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); for copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and for lead of 0.0081 mg/L (4-day average) and 0.21 mg/L (1-hour average). *Id.* at Table 3-3. The EPA has adopted saltwater numeric water quality standards for zinc of 0.090 mg/L (Criteria Maximum Concentration – “CMC”) and 0.081 mg/L (Criteria Continuous Concentration – “CCC”); for copper of 0.0031 mg/L (CMC) and 0.0048 mg/L (CCC); and for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC). 65 Fed. Reg. 31712 (May 18, 2000).

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 Novato Disposal: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L; aluminum – 0.75 mg/L, copper – 0.0636 mg/L, iron – 1.0 mg/L, lead – 0.0816 mg/L, zinc – 0.117 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, and biochemical oxygen demand (“BOD”) – 30 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.

A. Discharges in Violation of the Permit.

Novato Disposal has violated and continues to violate the terms and conditions of the General 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.

Novato Disposal has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, aluminum, copper, iron, lead, zinc, COD, BOD, and possibly other pollutants in violation of the General Permit. Novato Disposal’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

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:

Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective	Location (as identified by the Facility)
2/16/2009	Copper	0.058 mg/L	0.0031 mg/L (4-day average) Marine	MP1
2/16/2009	Copper	0.058 mg/L	0.0048 mg/L (1-hour average) Marine	MP1
2/16/2009	Copper	0.04 mg/L	0.0031 mg/L (4-day average) Marine	MP2
2/16/2009	Copper	0.04 mg/L	0.0048 mg/L (1-hour average) Marine	MP2
2/16/2009	Lead	0.078 mg/L	0.0081 mg/L (4-day average) Marine	MP1
2/16/2009	Zinc	1.5 mg/L	0.081 mg/L (4-day average) Marine	MP1
2/16/2009	Zinc	1.5 mg/L	0.09 mg/L (1-hour average) Marine	MP1
2/16/2009	Zinc	0.16 mg/L	0.081 mg/L (4-day average) Marine	MP2
2/16/2009	Zinc	0.16 mg/L	0.09 mg/L (1-hour average) Marine	MP2
11/3/2008	pH	8.58	6.5 – 8.5	MP2
11/3/2008	Copper	0.16 mg/L	0.0031 mg/L (4-day average) Marine	MP1
11/3/2008	Copper	0.16 mg/L	0.0048 mg/L (1-hour average) Marine	MP1
11/3/2008	Copper	0.14 mg/L	0.0031 mg/L (4-day average) Marine	MP2
11/3/2008	Copper	0.14 mg/L	0.0048 mg/L (1-hour average) Marine	MP2
11/3/2008	Lead	0.12 mg/L	0.0081 mg/L (4-day average) Marine	MP1
11/3/2008	Zinc	1.2 mg/L	0.081 mg/L (4-day average) Marine	MP1
11/3/2008	Zinc	1.2 mg/L	0.09 mg/L (1-hour average) Marine	MP1
11/3/2008	Zinc	0.56 mg/L	0.081 mg/L (4-day average) Marine	MP2
11/3/2008	Zinc	0.56 mg/L	0.09 mg/L (1-hour average) Marine	MP2

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10/12/2007	Copper	0.15 mg/L	0.0031 mg/L (4-day average) Marine	MP1
10/12/2007	Copper	0.15 mg/L	0.0048 mg/L (1-hour average) Marine	MP1
10/12/2007	Copper	0.11 mg/L	0.0031 mg/L (4-day average) Marine	MP2
10/12/2007	Copper	0.11 mg/L	0.0048 mg/L (1-hour average) Marine	MP2
10/12/2007	Lead	0.4 mg/L	0.0081 mg/L (4-day average) Marine	MP1
10/12/2007	Lead	0.4 mg/L	0.21 mg/L (1-hour average) Marine	MP1
10/12/2007	Zinc	1.7 mg/L	0.081 mg/L (4-day average) Marine	MP1
10/12/2007	Zinc	1.7 mg/L	0.09 mg/L (1-hour average) Marine	MP1
10/12/2007	Zinc	0.35 mg/L	0.081 mg/L (4-day average) Marine	MP2
10/12/2007	Zinc	0.35 mg/L	0.09 mg/L (1-hour average) Marine	MP2
3/26/2007	Copper	0.15 mg/L	0.0031 mg/L (4-day average) Marine	MP1
3/26/2007	Copper	0.15 mg/L	0.0048 mg/L (1-hour average) Marine	MP1
3/26/2007	Copper	0.091 mg/L	0.0031 mg/L (4-day average) Marine	MP2
3/26/2007	Copper	0.091 mg/L	0.0048 mg/L (1-hour average) Marine	MP2
3/26/2007	Lead	0.13 mg/L	0.0081 mg/L (4-day average) Marine	MP1
3/26/2007	Zinc	0.95 mg/L	0.081 mg/L (4-day average) Marine	MP1
3/26/2007	Zinc	0.95 mg/L	0.09 mg/L (1-hour average) Marine	MP1
3/26/2007	Zinc	0.15 mg/L	0.081 mg/L (4-day average) Marine	MP2
3/26/2007	Zinc	0.15 mg/L	0.09 mg/L (1-hour average) Marine	MP2
11/2/2006	Copper	0.22 mg/L	0.0031 mg/L (4-day average) Marine	MP1
11/2/2006	Copper	0.22 mg/L	0.0048 mg/L (1-hour average) Marine	MP1
11/2/2006	Copper	0.11 mg/L	0.0031 mg/L (4-day	MP2

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			average) Marine	
11/2/2006	Copper	0.11 mg/L	0.0048 mg/L (1-hour average) Marine	MP2
11/2/2006	Lead	0.26 mg/L	0.0081 mg/L (4-day average) Marine	MP1
11/2/2006	Lead	0.26 mg/L	0.21 mg/L (1-hour average) Marine	MP1
11/2/2006	Zinc	1.8 mg/L	0.081 mg/L (4-day average) Marine	MP1
11/2/2006	Zinc	1.8 mg/L	0.09 mg/L (1-hour average) Marine	MP1
11/2/2006	Zinc	0.38 mg/L	0.081 mg/L (4-day average) Marine	MP2
11/2/2006	Zinc	0.38 mg/L	0.09 mg/L (1-hour average) Marine	MP2
3/16/2006	Oil & Grease Sheen Observed		Narrative	Yard
2/28/2006	Oil & Grease Sheen Observed		Narrative	Yard
2/27/2006	Copper	0.07 mg/L	0.0031 mg/L (4-day average) Marine	MP2
2/27/2006	Copper	0.07 mg/L	0.0048 mg/L (1-hour average) Marine	MP2
2/27/2006	Zinc	0.23 mg/L	0.081 mg/L (4-day average) Marine	MP2
2/27/2006	Zinc	0.23 mg/L	0.09 mg/L (1-hour average) Marine	MP2
11/7/2005	Copper	0.12 mg/L	0.0031 mg/L (4-day average) Marine	MP2
11/7/2005	Copper	0.12 mg/L	0.0048 mg/L (1-hour average) Marine	MP2
11/7/2005	Zinc	0.55 mg/L	0.081 mg/L (4-day average) Marine	MP2
11/7/2005	Zinc	0.55 mg/L	0.09 mg/L (1-hour average) Marine	MP2

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:

Date	Parameter	Observed	Benchmark	Location (as
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		Concentration	Value	identified by the Facility)
2/16/2009	TSS	740 mg/L	100 mg/L	MP1
2/16/2009	TSS	220 mg/L	100 mg/L	MP2
2/16/2009	Specific Conductivity	350 µmho/cm	200 µmho/cm (proposed)	MP1
2/16/2009	Specific Conductivity	410 µmho/cm	200 µmho/cm (proposed)	MP2
2/16/2009	Aluminum	7.4 mg/L	0.75 mg/L	MP1
2/16/2009	Aluminum	17 mg/L	0.75 mg/L	MP2
2/16/2009	Iron	15 mg/L	1.0 mg/L	MP1
2/16/2009	Iron	24 mg/L	1.0 mg/L	MP2
2/16/2009	Zinc	1.5 mg/L	0.117 mg/L	MP1
2/16/2009	Zinc	0.16 mg/L	0.117mg/L	MP2
11/3/2008	TSS	620 mg/L	100 mg/L	MP1
11/3/2008	TSS	1300 mg/L	100 mg/L	MP2
11/3/2008	Specific Conductivity	546 µmho/cm	200 µmho/cm (proposed)	MP1
11/3/2008	Specific Conductivity	310 µmho/cm	200 µmho/cm (proposed)	MP2
11/3/2008	Aluminum	28 mg/L	0.75 mg/L	MP1
11/3/2008	Aluminum	60 mg/L	0.75 mg/L	MP2
11/3/2008	Copper	0.16 mg/L	0.0636 mg/L	MP1
11/3/2008	Copper	0.14 mg/L	0.0636 mg/L	MP2
11/3/2008	Iron	43 mg/L	1.0 mg/L	MP1
11/3/2008	Iron	94 mg/L	1.0 mg/L	MP2
11/3/2008	Lead	0.12 mg/L	0.0816 mg/L	MP1
11/3/2008	Zinc	1.2 mg/L	0.117 mg/L	MP1
11/3/2008	Zinc	0.56 mg/L	0.117mg/L	MP2
11/3/2008	COD	140 mg/L	120 mg/L	MP1
11/3/2008	BOD	39 mg/L	30 mg/L	MP1
10/12/2007	TSS	680mg/L	100 mg/L	MP1
10/12/2007	TSS	360 mg/L	100 mg/L	MP2
10/12/2007	Aluminum	16 mg/L	0.75 mg/L	MP1
10/12/2007	Aluminum	20 mg/L	0.75 mg/L	MP2
10/12/2007	Copper	0.15 mg/L	0.0636 mg/L	MP1
10/12/2007	Copper	0.11 mg/L	0.0636 mg/L	MP2
10/12/2007	Iron	36 mg/L	1.0 mg/L	MP1
10/12/2007	Iron	42 mg/L	1.0 mg/L	MP2
10/12/2007	Lead	0.4 mg/L	0.0816 mg/L	MP1
10/12/2007	Zinc	1.7 mg/L	0.117 mg/L	MP1
10/12/2007	Zinc	0.35 mg/L	0.117mg/L	MP2

10/12/2007	COD	290 mg/L	120 mg/L	MP1
10/12/2007	BOD	65 mg/L	30 mg/L	MP1
3/26/2007	TSS	180 mg/L	100 mg/L	MP1
3/26/2007	TSS	250 mg/L	100 mg/L	MP2
3/26/2007	Specific Conductivity	415 µmho/cm	200 µmho/cm (proposed)	MP1
3/26/2007	Specific Conductivity	309 µmho/cm	200 µmho/cm (proposed)	MP2
3/26/2007	Aluminum	7.4 mg/L	0.75 mg/L	MP1
3/26/2007	Aluminum	3.9 mg/L	0.75 mg/L	MP2
3/26/2007	Copper	0.15 mg/L	0.0636 mg/L	MP1
3/26/2007	Copper	0.091 mg/L	0.0636 mg/L	MP2
3/26/2007	Iron	16 mg/L	1.0 mg/L	MP1
3/26/2007	Iron	5.8 mg/L	1.0 mg/L	MP2
3/26/2007	Lead	0.13 mg/L	0.0816 mg/L	MP1
3/26/2007	Zinc	0.95 mg/L	0.117 mg/L	MP1
3/26/2007	Zinc	0.15 mg/L	0.117mg/L	MP2
3/26/2007	COD	320 mg/L	120 mg/L	MP1
3/26/2007	COD	180 mg/L	120 mg/L	MP2
3/26/2007	BOD	88 mg/L	30 mg/L	MP1
3/26/2007	BOD	85 mg/L	30 mg/L	MP2
11/2/2006	TSS	210 mg/L	100 mg/L	MP1
11/2/2006	TSS	480 mg/L	100 mg/L	MP2
11/2/2006	Specific Conductivity	366 µmho/cm	200 µmho/cm (proposed)	MP1
11/2/2006	Specific Conductivity	382 µmho/cm	200 µmho/cm (proposed)	MP2
11/2/2006	Aluminum	12 mg/L	0.75 mg/L	MP1
11/2/2006	Aluminum	26 mg/L	0.75 mg/L	MP2
11/2/2006	Copper	0.22 mg/L	0.0636 mg/L	MP1
11/2/2006	Copper	0.11 mg/L	0.0636 mg/L	MP2
11/2/2006	Iron	25 mg/L	1.0 mg/L	MP1
11/2/2006	Iron	43 mg/L	1.0 mg/L	MP2
11/2/2006	Lead	0.26 mg/L	0.0816 mg/L	MP1
11/2/2006	Zinc	1.8 mg/L	0.117 mg/L	MP1
11/2/2006	Zinc	0.38 mg/L	0.117mg/L	MP2
11/2/2006	COD	240 mg/L	120 mg/L	MP1
11/2/2006	COD	340 mg/L	120 mg/L	MP2
2/27/2006	Specific Conductivity	209 µmho/cm	200 µmho/cm (proposed)	MP1
2/27/2006	Aluminum	1.3 mg/L	0.75 mg/L	MP1
2/27/2006	Aluminum	16 mg/L	0.75 mg/L	MP2

2/27/2006	Copper	0.07 mg/L	0.0636 mg/L	MP2
2/27/2006	Iron	1.5 mg/L	1.0 mg/L	MP1
2/27/2006	Iron	26 mg/L	1.0 mg/L	MP2
2/27/2006	Zinc	0.23 mg/L	0.117mg/L	MP2
2/27/2006	COD	200 mg/L	120 mg/L	MP2
11/7/2005	TSS	130mg/L	100 mg/L	MP1
11/7/2005	Specific Conductivity	2126 µmho/cm	200 µmho/cm (proposed)	MP1
11/7/2005	Specific Conductivity	501 µmho/cm	200 µmho/cm (proposed)	MP2
11/7/2005	Aluminum	4 mg/L	0.75 mg/L	MP1
11/7/2005	Aluminum	2.2 mg/L	0.75 mg/L	MP2
11/7/2005	Copper	0.12 mg/L	0.0636 mg/L	MP2
11/7/2005	Iron	12 mg/L	1.0 mg/L	MP1
11/7/2005	Iron	3.6 mg/L	1.0 mg/L	MP2
11/7/2005	Zinc	0.55 mg/L	0.117mg/L	MP2
11/7/2005	COD	140 mg/L	120 mg/L	MP1
11/7/2005	COD	160 mg/L	120 mg/L	MP2

CSPA's and PRC's investigation, including their review of Novato Disposal'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 Novato Disposal has not implemented BAT and BCT at the Facility for its discharges of TSS, pH, specific conductivity, aluminum, copper, iron, lead, zinc, COD, BOD, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Novato Disposal was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Novato Disposal 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 and PRC also allege that such violations have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least June 4, 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 and PRC allege that Novato Disposal has discharged storm water containing impermissible levels of TSS, pH, specific conductivity, aluminum, copper, iron, lead, zinc, COD, and BOD 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.

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, Novato Disposal is subject to penalties for violations of the General Permit and the Act since June 4, 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.* Novato Disposal failed to sample a second storm event during the 2007-2008 rainy season for a total of two violations (one season of violations at two storm drains) 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, Novato Disposal is subject to penalties for violations of the General Permit and the Act since June 4, 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 and PRC's investigation of the conditions at the Facility as well as Novato Disposal's Annual Reports indicates that Novato Disposal has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Novato Disposal has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Novato Disposal has failed to implement BAT and BCT at the facility. Novato Disposal has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least June 4, 2005, and will continue to be in violation every day that Novato Disposal fails to prepare, implement, review, and update an effective SWPPP. Novato Disposal is subject to penalties for violations of the Order and the Act occurring since June 4, 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." Novato Disposal failed to make and report monthly visual observations as required under Section B(4) of the General Permit in October 2008, December 2008, January 2009, March 2009, April 2009, and May 2009, for a total of six (6) 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, Novato Disposal is subject to penalties for violations of the General Permit and the Act since June 4, 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

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Limitations in the General Permit. To the extent the storm water data collected by Novato Disposal is not representative of the quality of the Facility's various storm water discharges, and/or Novato Disposal 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 and PRC, on information and belief, allege 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, Novato Disposal is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since June 4, 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 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 2005, Novato Disposal and its agents, Rick Holiday and James R. Salyers², inaccurately certified in their Annual Reports that the Facility was in compliance with the General Permit. Consequently, Novato Disposal has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Novato Disposal failed to submit a complete or correct report and every time Novato Disposal or its agents falsely purported to comply with the Act. Novato Disposal is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since June 4, 2005.

² Rick Holiday, Operations Manager, certified the 2008-2009 Annual Report; James R. Salyers, Vice-President, certified the Annual Reports for 2005-2006, 2006-2007, and 2007-2008.

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IV. Persons Responsible for the Violations.

CSPA and PRC put Novato Disposal Service, Inc., James Ratto, James Salyers, and Rick Holiday 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 and PRC put Novato Disposal, James Ratto, James Salyers, and Rick Holiday on notice that they intend to include those persons in this action.

V. Name and Address of Noticing Parties.

Our names, addresses, 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

David Keller
Petaluma River Council
1327 I Street
Petaluma, CA 94952
Tel. (707) 763-9336
E-Mail: dkeller1@sonic.net

VI. Counsel.

CSPA and PRC have retained legal counsel to represent them in this matter. Please direct all communications to:

Michael R. Lozeau
Richard T. Drury
David A. Zizmor
Lozeau Drury LLP
1516 Oak Street, Suite 216
Alameda, California 94501
Tel. (510) 749-9102
michael@lozeaudrury.com
richard@lozeaudrury.com
david@lozeaudrury.com

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 Novato Disposal 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 and PRC will seek

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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 and PRC believe this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA and PRC intend to file a citizen suit under Section 505(a) of the Act against Novato Disposal and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA and PRC 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, CSPA and PRC 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. CSPA and PRC 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 black ink, appearing to read "Michael R. Lozeau". The signature is fluid and cursive, with a large, stylized initial "M" and "L".

Michael R. Lozeau
Attorney for California Sportfishing Protection
Alliance and Petaluma River Council

SERVICE LIST

R. Richard Williams [Registered Agent]
703 2nd Street, Third Floor
Santa Rosa, CA 95404

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, Novato Disposal Services, Inc., Petaluma, California

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

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Rain Dates, Novato Disposal Services, Inc., Petaluma, California

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

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Rain Dates, Novato Disposal Services, Inc., Petaluma, California

March 18, 2008	December 18, 2008	March 16, 2009
March 27, 2008	December 19, 2008	March 21, 2009
March 28, 2008	December 21, 2008	March 22, 2009
March 29, 2008	December 22, 2008	March 26, 2009
March 30, 2008	December 23, 2008	March 30, 2009
March 31, 2008	December 24, 2008	April 6, 2009
April 4, 2008	December 25, 2008	April 7, 2009
April 7, 2008	January 1, 2009	April 8, 2009
April 9, 2008	January 2, 2009	April 9, 2009
October 3, 2008	January 5, 2009	April 22, 2009
October 4, 2008	January 13, 2009	April 23, 2009
October 7, 2008	January 14, 2009	April 24, 2009
October 8, 2008	January 19, 2009	April 25, 2009
October 10, 2008	January 20, 2009	April 26, 2009
October 12, 2008	January 21, 2009	April 29, 2009
October 14, 2008	January 22, 2009	May 1, 2009
October 18, 2008	January 23, 2009	May 2, 2009
October 20, 2008	January 24, 2009	May 3, 2009
October 21, 2008	January 29, 2009	May 4, 2009
October 22, 2008	February 3, 2009	May 5, 2009
October 23, 2008	February 5, 2009	May 6, 2009
October 24, 2008	February 6, 2009	May 10, 2009
October 25, 2008	February 8, 2009	May 13, 2009
October 26, 2008	February 10, 2009	June 5, 2009
October 30, 2008	February 11, 2009	June 6, 2009
October 31, 2008	February 12, 2009	June 7, 2009
November 1, 2008	February 13, 2009	October 13, 2009
November 3, 2008	February 14, 2009	October 15, 2009
November 7, 2008	February 15, 2009	October 19, 2009
November 8, 2008	February 16, 2009	December 11, 2009
November 14, 2008	February 17, 2009	December 12, 2009
November 15, 2008	February 18, 2009	December 13, 2009
November 17, 2008	February 22, 2009	December 16, 2009
November 18, 2008	February 23, 2009	December 18, 2009
November 20, 2008	February 25, 2009	December 20, 2009
November 26, 2008	February 26, 2009	December 21, 2009
December 1, 2008	March 1, 2009	December 26, 2009
December 5, 2008	March 2, 2009	December 27, 2009
December 10, 2008	March 3, 2009	December 29, 2009
December 14, 2008	March 4, 2009	January 1, 2010
December 15, 2008	March 5, 2009	January 2, 2010
December 16, 2008	March 15, 2009	January 3, 2010

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Rain Dates, Novato Disposal Services, Inc., Petaluma, California

January 12, 2010	April 4, 2010
January 17, 2010	April 5, 2010
January 18, 2010	April 9, 2010
January 19, 2010	April 10, 2010
January 20, 2010	April 11, 2010
January 21, 2010	April 12, 2010
January 22, 2010	April 14, 2010
January 23, 2010	April 17, 2010
January 24, 2010	April 18, 2010
January 25, 2010	April 20, 2010
January 26, 2010	April 21, 2010
January 29, 2010	April 23, 2010
January 31, 2010	April 24, 2010
February 1, 2010	April 27, 2010
February 3, 2010	April 28, 2010
February 4, 2010	April 30, 2010
February 6, 2010	May 2, 2010
February 8, 2010	May 3, 2010
February 9, 2010	May 4, 2010
February 11, 2010	May 5, 2010
February 12, 2010	May 6, 2010
February 14, 2010	May 7, 2010
February 17, 2010	May 8, 2010
February 18, 2010	May 9, 2010
February 21, 2010	May 10, 2010
February 23, 2010	May 11, 2010
February 24, 2010	May 12, 2010
February 26, 2010	May 13, 2010
February 27, 2010	May 14, 2010
March 2, 2010	May 15, 2010
March 3, 2010	May 17, 2010
March 8, 2010	May 18, 2010
March 9, 2010	May 19, 2010
March 12, 2010	May 20, 2010
March 22, 2010	May 21, 2010
March 24, 2010	May 22, 2010
March 25, 2010	May 23, 2010
March 29, 2010	May 24, 2010
March 30, 2010	May 25, 2010
March 31, 2010	May 27, 2010
April 1, 2010	May 31, 2010
April 2, 2010	