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19 PROTECTION ALLIANCE

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 CALIFORNIA SPORTFISHING
23 PROTECTION ALLIANCE, a non-profit
24 corporation,

25 Plaintiff,

26 vs.

27 REPUBLIC SERVICES, INC, a
28 corporation.

Defendant.

Case No. _____

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

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

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, by and through its
counsel, hereby alleges:

I. INTRODUCTION

1. This complaint seeks relief for Defendant's discharges of polluted storm water and non-storm water pollutants from two of Defendant's adjacent facilities into the waters of the United States in violation of the Act and the State of California's "Waste Discharge

1 Requirements (WDRs) For Discharges of Storm Water Associated With Industrial Activities
2 Excluding Construction Activities,” State Water Resources Control Board (“State Board”)
3 Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ
4 and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System
5 (“NPDES”) Permit No. CAS000001, (hereinafter the “Permit” or the “General Permit”).
6 Defendant’s violations of the discharge, treatment technology, monitoring requirements, and
7 other procedural and substantive requirements of the Permit and the Federal Water Pollution
8 Control Act are ongoing and continuous.

9 2. The failure on the part of persons and facilities such as Defendant and its
10 industrial facility to comply with storm water requirements is recognized as a significant
11 cause of the continuing decline in water quality of San Pablo Creek, San Pablo Bay, San
12 Francisco Bay (“Bay”), and other area receiving waters. The general consensus among
13 regulatory agencies and water quality specialists is that storm pollution amounts to a
14 substantial portion of the total pollution entering the aquatic environment each year. With
15 every rainfall event, millions of gallons of polluted rainwater originating from industries
16 within the surrounding area pour into the Bay.

17 3. The continuing decline in water quality in the San Francisco Bay is a matter of
18 serious public concern. The entire Bay and all of its major tributaries have been identified
19 by the State Board, the Regional Water Quality Control Board of the San Francisco Bay
20 Region (“Regional Board”), and Environmental Protection Agency (“EPA”) as impaired
21 water bodies under Section 303(d) of the Clean Water Act. 33 U.S.C. § 1313(d).

22 **II. JURISDICTION AND VENUE**

23 4. This is a civil suit brought under the citizen suit enforcement provisions of the
24 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or
25 “the Act”). This Court has subject matter jurisdiction over the parties and the subject matter
26 of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28
27 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is
28 authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of

1 actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§
2 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

3 5. On or about December 12, 2008, Plaintiff provided notice of Defendant's
4 violations of the Act, and of its intention to file suit against Defendant, to the Defendant; the
5 Administrator of the United States EPA; the Administrator of EPA Region IX; the Executive
6 Director of the State Board; and to the Executive Officer of the Regional Board. A true and
7 correct copy of CSPA's notice letter is attached as Exhibit A, and is incorporated by
8 reference.

9 6. More than sixty days have passed since notice was served on Defendant and
10 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that
11 neither the EPA nor the State of California has commenced or is diligently prosecuting a
12 court action to redress the violations alleged in this complaint. This action's claim for civil
13 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,
14 33 U.S.C. § 1319(g).

15 7. Venue is proper in the Northern District of California pursuant to Section
16 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located
17 within this judicial district. Pursuant to Local Rule 3-2(c), intradistrict venue is proper in
18 Oakland, California because the sources of the violations are located within Contra Costa
19 County, California.

20 **III. PARTIES**

21 8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
22 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of
23 California with its main office in Stockton, California. CSPA has approximately 2,000
24 members who live, recreate and work in and around waters of the State of California,
25 including San Pablo Creek, San Pablo Bay, San Francisco Bay and their tributaries. CSPA
26 is dedicated to the preservation, protection, and defense of the environment, the wildlife and
27 the natural resources of all waters of California. To further these goals, CSPA actively seeks
28 federal and state agency implementation of the Act and other laws and, where necessary,

1 directly initiates enforcement actions on behalf of itself and its members.

2 9. Members of CSPA reside in and around the Bay and enjoy using the Bay for
3 recreation and other activities. Members of CSPA use and enjoy the waters into which
4 Defendant has caused, is causing, and will continue to cause, pollutants to be discharged.
5 Members of CSPA use those areas to fish, sail, boat, kayak, swim, bird watch, view wildlife
6 and engage in scientific study including monitoring activities, among other things.
7 Defendant's discharges of pollutants threaten or impair each of those uses or contribute to
8 such threats and impairments. Thus, the interests of CSPA's members have been, are being,
9 and will continue to be adversely affected by Defendant's failure to comply with the Clean
10 Water Act and the Permit. The relief sought herein will redress the harms to Plaintiff caused
11 by Defendant's activities.

12 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant
13 REPUBLIC SERVICES, INC. (hereinafter "Defendant" or "Republic Services") is a
14 corporation organized under the laws of California. Defendant Republic Services operates
15 both a transfer station/recycling center and a landfill in Richmond, California.

16 **IV. STATUTORY BACKGROUND**

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

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

28 13. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the

1 U.S. EPA has authorized California's State Board to issue NPDES permits including general
2 NPDES permits in California.

3 14. The State Board elected to issue a statewide general permit for industrial storm
4 water discharges. The State Board issued the General Permit on or about November 19,
5 1991, modified the General Permit on or about September 17, 1992, and reissued the
6 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water
7 Act, 33 U.S.C. § 1342(p).

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

11 16. The General Permit contains several prohibitions. Effluent Limitation B(3) of
12 the General Permit requires dischargers to reduce or prevent pollutants in their storm water
13 discharges through implementation of the Best Available Technology Economically
14 Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional
15 Pollutant Control Technology ("BCT") for conventional pollutants. BAT and BCT include
16 both nonstructural and structural measures. General Permit, Section A(8). Discharge
17 Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-
18 storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
19 Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to
20 any surface or ground water that adversely impact human health or the environment.
21 Receiving Water Limitation C(2) of the General Permit prohibits storm water discharges that
22 cause or contribute to an exceedance of any applicable water quality standards contained in a
23 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

24 17. EPA has established Parameter Benchmark Values as guidelines for
25 determining whether a facility discharging industrial storm water has implemented the
26 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established
27 Parameter Benchmark Values for the following parameters, among others: total suspended
28 solids – 100 mg/L; pH – 6.0-9.0 s.u.; lead – 0.0816 mg/L; copper – 0.0636 mg/L; chemical

1 oxygen demand – 120 mg/L; oil and grease – 15 mg/L; total organic carbon – 110 mg/L;
2 aluminum – 0.75 mg/L; iron – 1.0 mg/L; ammonia – 19 mg/L; and zinc – 0.117 mg/L. The
3 State Board has proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

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

10 19. Dischargers must develop and implement a Storm Water Pollution Prevention
11 Plan (“SWPPP”). The SWPPP must describe storm water control equipment and measures
12 that comply with the BAT and BCT standards. The General Permit requires that an initial
13 SWPPP have been developed and implemented before October 1, 1992. The SWPPP must,
14 among other requirements, identify and evaluate sources of pollutants associated with
15 industrial activities that may affect the quality of storm and non-storm water discharges from
16 the facility and identify and implement site-specific best management practices (“BMPs”) to
17 reduce or prevent pollutants associated with industrial activities in storm water and
18 authorized non-storm water discharges (Section A(2)). The SWPPP’s BMPs must
19 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of
20 individuals and their responsibilities for developing and implementing the SWPPP (Section
21 A(3)); a site map showing the facility boundaries, storm water drainage areas with flow
22 pattern and nearby water bodies, the location of the storm water collection, conveyance and
23 discharge system, structural control measures, impervious areas, areas of actual and potential
24 pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials
25 handled and stored at the site (Section A(5)); a description of potential pollutant sources
26 including industrial processes, material handling and storage areas, dust and particulate
27 generating activities, and a description of significant spills and leaks, a list of all non-storm
28 water discharges and their sources, and a description of locations where soil erosion may

1 occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources
2 at the facility and a description of the BMPs to be implemented at the facility that will reduce
3 or prevent pollutants in storm water discharges and authorized non-storm water discharges,
4 including structural BMPs where non-structural BMPs are not effective (Section A(7), (8)).
5 The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary
6 (Section A(9),(10)).

7 20. Section C(11)(d) of the General Permit's Standard Provisions requires
8 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).
9 Lastly, Section A(9) of the General Permit requires an annual evaluation of storm water
10 controls including the preparation of an evaluation report and implementation of any
11 additional measures in the SWPPP to respond to the monitoring results and other inspection
12 activities.

13 21. The General Permit requires dischargers commencing industrial activities
14 before October 1, 1992 to develop and implement an adequate written monitoring and
15 reporting program no later than October 1, 1992. Existing facilities covered under the
16 General Permit had to implement all necessary revisions to their monitoring programs no
17 later than August 1, 1997.

18 22. As part of their monitoring program, dischargers must identify all storm water
19 discharge locations that produce a significant storm water discharge, evaluate the
20 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control
21 measures set out in the SWPPP are adequate and properly implemented. Dischargers must
22 conduct visual observations of these discharge locations for at least one storm per month
23 during the wet season (October through May) and record their findings in their Annual
24 Report. Dischargers must also collect and analyze storm water samples from at least two
25 storms per year. Section B(5)(a) of the General Permit requires that dischargers "shall
26 collect storm water samples during the first hour of discharge from (1) the first storm event
27 of the wet season, and (2) at least one other storm event in the wet season. All storm water
28 discharge locations shall be sampled." Section B(5)(c)(i)-(iii) requires dischargers to sample

1 and analyze during the wet season for basic parameters, such as pH, total suspended solids
2 (“TSS”), electrical conductance, and total organic carbon (“TOC”) or oil and grease
3 (“O&G”), certain industry-specific parameters, and toxic chemicals and other pollutants
4 likely to be in the storm water discharged from the facility. Dischargers must also conduct
5 dry season visual observations to identify sources of non-storm water pollution.

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

12 24. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
13 enforcement actions against any “person,” including individuals, corporations, or
14 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1) and (f),
15 § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. §
16 1365(a). Violators of the Act are also subject to an assessment of civil penalties of \$32,500
17 per day pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40
18 C.F.R. §§ 19.1 - 19.4.

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

22 26. The Basin Plan provides that “[w]aters shall not contain suspended material in
23 concentrations that cause nuisance or adversely affect beneficial uses.”

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

27 28. The Basin Plan provides that “[w]aters shall not contain oils, greases, waxes,
28 or other materials in concentrations that result in a visible film or coating on the surface of

1 the water or on objects in the water, that cause nuisance, or that otherwise adversely affect
2 beneficial uses.”

3 29. The Basin Plan establishes Marine Water Quality Objectives for zinc of 0.081
4 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day
5 average) and 0.0048 mg/L (1-hour average); and lead of 0.0081 mg/L (4-day average) and
6 0.21 mg/L (1-hour average).

7 30. The EPA has adopted saltwater numeric water quality standards for copper of
8 0.0031 mg/L (Criteria Maximum Concentration – “CMC”) and .0048 mg/L (Criteria
9 Continuous Concentration – “CCC”), for lead of 0.210 mg/L (CMC) and 0.0081 mg/L
10 (CCC), for zinc of 0.090 mg/L (CMC) and 0.081 mg/L (CCC).

11 **V. STATEMENT OF FACTS**

12 **Violations at Richmond Sanitary Services**

13 31. Defendant Republic Services operates Richmond Sanitary Service (“RSS”), a
14 transfer station/recycling center at 1 Parr Boulevard in Richmond, California. RSS is
15 engaged in storing, processing, and trucking various waste materials as well as recycling
16 operations. RSS falls within the Standard Industrial Classification (“SIC”) Codes 5093 and
17 4212. RSS covers about twelve acres, the majority of which is paved and used for
18 transporting and storing waste materials throughout RSS. On information and belief,
19 Plaintiff alleges that there is at least one large building located on the property. On
20 information and belief, Plaintiff alleges that recycling and processing is conducted both
21 inside and outside of this building. Materials are transported in and out of this building for
22 storage in the paved and unpaved areas of RSS.

23 32. Defendant channels and collects storm water falling on RSS through four
24 storm water outfalls. Each storm drain collects storm water runoff from a particular area of
25 RSS. These outfalls discharge the storm water to San Pablo Creek which flows into San
26 Pablo Bay, a part of the San Francisco Bay.

27 33. The industrial activities at the site include the storage, processing, and transfer
28 of a variety of materials including construction material and debris, hazardous material,

1 metal, organic material, oils, paint, paper, plastic, and other materials. Plaintiff alleges on
2 information and belief that industrial activities at the site include recycling operations for
3 materials such as paper, plastic, glass, wood/yard waste, scrap metal, tires, construction
4 debris and other materials. Industrial activities at the site include the storage and
5 maintenance of trucks, tractors, and other machinery used to transfer and dispose of these
6 materials. Materials handled at RSS include motor oil, hydraulic oil, transmission oil,
7 greases, used oil and oil filters, baled aluminum cans, baled paper, glass, paint, and solvents.

8 34. Significant activities at the site take place outside and are exposed to rainfall.
9 These activities include the storage and processing of the numerous types of materials
10 handled by RSS; the storage and use of vehicles and equipment for materials handling; and
11 the storage, handling, and disposal of waste materials. Loading and delivery of materials
12 occurs both inside and outside. Trucks enter and exit RSS directly from and to a public road.
13 Plaintiff alleges on information and belief that trucks and forklifts are the primary means of
14 moving materials around the unpaved storage areas of RSS. Plaintiff is informed and
15 believes, and thereupon alleges, that recycling and transfer activities also occur in exposed
16 areas at RSS. Plaintiff alleges on information and belief that some of the exposed surfaces at
17 RSS are unpaved and sediment and other materials are disturbed as a result of the recycling,
18 storage, and transfer processes. These areas are exposed to storm water and storm flows due
19 to the lack of overhead coverage, berms and other storm water controls.

20 35. Industrial machinery, heavy equipment and vehicles, including trucks and
21 trailers are operated and stored at RSS in areas exposed to storm water flows. Plaintiff is
22 informed and believes, and thereupon alleges, that such machinery and equipment leak
23 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
24 to storm water flows and that such machinery and equipment track sediment and other
25 contaminants throughout RSS.

26 36. Plaintiff is informed and believes, and thereupon alleges that the storm water
27 flows easily over the surface of RSS, collecting suspended sediment, dirt, oils, grease, and
28 other pollutants as it flows toward the storm water drain. Storm water and any pollutants

1 contained in that storm water entering the drains flows directly to storm drains and channels
2 that flow directly to San Pablo Creek and San Pablo Bay.

3 37. The management practices at RSS are wholly inadequate to prevent the sources
4 of contamination described above from causing the discharge of pollutants to waters of the
5 United States. RSS lacks sufficient structural controls such as grading, berming, roofing,
6 containment, or drainage structures to prevent rainfall and storm water flows from coming
7 into contact with these and other exposed sources of contaminants. RSS lacks sufficient
8 structural controls to prevent the discharge of water once contaminated. RSS lacks adequate
9 storm water pollution treatment technologies to treat contaminated storm water prior to its
10 flowing off of RSS.

11 38. Since at least February 14, 2005, Defendant has taken samples or arranged for
12 samples to be taken of storm water discharges at RSS. The sample results were reported in
13 RSS' annual reports submitted to the Regional Board. Defendant Republic Services certified
14 each of those annual reports pursuant to Sections A and C of the General Permit.

15 39. Since at least February 14, 2005, RSS has detected total suspended solids, oil
16 & grease, and electrical conductance in storm water discharged from RSS. Levels of total
17 suspended solids and oil & grease detected in RSS' storm water have been in excess of
18 EPA's numeric parameter benchmark values. Levels of these pollutants detected in RSS'
19 storm water have been in excess of water quality standards established in the Basin Plan.

20 40. The levels of total suspended solids in storm water detected by RSS have
21 exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA.
22 For example, on December 4, 2007, the level of suspended solids measured by Defendant in
23 RSS' discharged storm water was 1,600 mg/L. That level of total suspended solids is sixteen
24 times the benchmark value for suspended solids established by EPA. RSS also has measured
25 levels of total suspended solids in storm water discharged from RSS in excess of EPA's
26 benchmark value of 100 mg/L on March 26, 2007; December 21, 2006; March 20, 2006; and
27 February 14, 2005.

28 41. The level of oil & grease in storm water detected by RSS has exceeded the

1 benchmark value for oil & grease of 15 mg/L established by EPA. On February 14, 2005,
2 the level of oil & grease measured by Defendant in the RSS' discharged storm water was 25
3 mg/L. That level of oil & grease is nearly twice the benchmark value for oil & grease
4 established by EPA.

5 42. The electrical conductance levels detected by RSS in its storm water have been
6 greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the State Board. For
7 example, on March 20, 2006, the electrical conductance level measured by Defendant in
8 RSS' discharged storm water was 900 $\mu\text{mho/cm}$. That electrical conductance level is four
9 and a half times the State Board's proposed benchmark value. RSS also has measured levels
10 of electrical conductance in storm water discharged from RSS in excess of the State Board's
11 proposed value of 200 $\mu\text{mho/cm}$ on December 4, 2007; March 26, 2007; December 21,
12 2006; and February 14, 2005.

13 43. On information and belief, Plaintiff alleges that Defendant has failed to
14 analyze its storm water samples at RSS for chemical oxygen demand as required by the
15 Table D of the General Permit since at least February 14, 2005.

16 44. On information and belief, Plaintiff alleges that Defendant has failed to
17 analyze its storm water samples at RSS for iron as required by the Table D of the General
18 Permit since at least February 14, 2005.

19 45. On information and belief, Plaintiff alleges that Defendant has failed to
20 analyze its storm water samples at RSS for lead as required by the Table D of the General
21 Permit since at least February 14, 2005.

22 46. On information and belief, Plaintiff alleges that Defendant has failed to
23 analyze its storm water samples at RSS for zinc as required by the Table D of the General
24 Permit since at least February 14, 2005.

25 47. On information and belief, Plaintiff alleges that Defendant has failed to
26 analyze its storm water samples at RSS for copper as required by the Table D of the General
27 Permit since at least February 14, 2005.

28 48. On information and belief, Plaintiff alleges that Defendant has failed to

1 analyze its storm water samples at RSS for aluminum as required by the Table D of the
2 General Permit since at least February 14, 2005.

3 49. On information and belief, Plaintiff alleges that Defendant has failed to collect
4 the two required storm water samples from each storm water discharge location at RSS since
5 at least February 14, 2005. During the 2006-2007 rainy season, RSS only collected two
6 samples from discharge location "RSS-4" and one sample from discharge location "RSS-1."
7 RSS failed to explain in its annual report for that rainy season why it was unable to collect a
8 second sample from RSS-1 and two samples from the third discharge location. During both
9 the 2005-2006 and the 2004-2005 rainy seasons, RSS failed to collect storm water samples
10 for a second event from RSS-1 and RSS-4 and failed to explain to collect two samples from
11 the third discharge location. In its annual reports prepared for those two rainy seasons, RSS
12 failed to explain why it did not collect storm water samples for a second event from RSS-1
13 and RSS-4 and failed to explain why it was unable to collect two samples from the third
14 discharge location. During the 2003-2004 rainy season, RSS did not collect storm water
15 samples for a second event from RSS-2 and did not collect two samples from the third
16 discharge location. In the annual report for the 2003-2004 rainy season, RSS failed to
17 explain why it did not collect storm water samples for a second event from RSS-2 and failed
18 to explain why it was unable to collect two samples from the third discharge location.

19 50. On information and belief, Plaintiff alleges that since at least February 14,
20 2005, Defendant has failed to implement BAT and BCT at RSS for its discharges of total
21 suspended solids, oil & grease, electrical conductance, and other pollutants. The General
22 Permit requires that Defendant implement BAT for toxic and nonconventional pollutants and
23 BCT for conventional pollutants by no later than October 1, 1992. As of the date of this
24 Complaint, Defendant has failed to implement BAT and BCT.

25 51. On information and belief, Plaintiff alleges that since at least April 22, 2004,
26 Defendant has failed to implement an adequate SWPPP for RSS. Plaintiff is informed and
27 believes, and thereupon alleges, that the SWPPP prepared for RSS does not set forth site-
28 specific best management practices for RSS that are consistent with BAT or BCT for RSS.

1 Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for RSS
2 does not include an assessment of potential pollutant sources, structural pollutant control
3 measures employed by the Defendant, a list of actual and potential areas of pollutant contact,
4 or a description of best management practices to be implemented at RSS to reduce pollutant
5 discharges. According to information available to CSPA, Defendant's SWPPP has not been
6 evaluated to ensure effectiveness and revised where necessary to further reduce pollutant
7 discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does
8 not include each of the mandatory elements required by Section A of the General Permit.
9 Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not contain
10 an accurate map that clearly delineates the boundaries of RSS, storm water drainage areas
11 with flow pattern and nearby water bodies, the location of the storm water collection,
12 conveyance and discharge systems, structural control measures, impervious areas, areas of
13 actual and potential pollutant contact, and areas of industrial activity.

14 52. Information available to CSPA indicates that as a result of these practices,
15 storm water containing excessive pollutants is being discharged during rain events from RSS
16 directly to channels that flow into San Pablo Creek and San Pablo Bay.

17 53. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
18 failed and continues to fail to revise RSS' SWPPP and site-specific BMPs consistent with
19 Section A(9) of the General Permit.

20 54. Plaintiff is informed and believes that Defendant failed to submit to the
21 Regional Board a true and complete annual report for RSS certifying compliance with the
22 General Permit since at least April 22, 2004. Pursuant to Sections A(9)(d), B(14), and C(9),
23 (10) of the General Permit, Defendant must submit an annual report, that is signed and
24 certified by the appropriate corporate officer, outlining RSS' storm water controls and
25 certifying compliance with the General Permit. Plaintiff is informed and believes, and
26 thereupon alleges, that Defendant has signed incomplete annual reports that purported to
27 comply with the General Permit when there was significant noncompliance at RSS.

28 55. Information available to Plaintiff indicates that Defendant has not fulfilled the

1 requirements set forth in the General Permit for discharges from RSS due to the continued
2 discharge of polluted storm water. Plaintiff is informed and believes, and thereupon alleges,
3 that all of the violations alleged in this Complaint are ongoing and continuing.

4 **Violations at West Contra Costa Sanitary Landfill**

5 56. Defendant Republic Services operates West Contra Costa Sanitary Landfill
6 (“WCL”), a Class II sanitary landfill located at 1 Parr Boulevard in Richmond, California.
7 WCL is engaged in the disposal of municipal solid waste; wood recycling, composting, and
8 asphalt/concrete crushing; and maintains a Hazardous Waste Management Facility leachate
9 treatment plant. WCL falls within the Standard Industrial Classification (“SIC”) Code 4953.
10 WCL covers about 350 acres, the large majority of which is unpaved. On information and
11 belief, Plaintiff alleges that there are at least three large buildings located on the property.
12 On information and belief, Plaintiff alleges that recycling is conducted both inside and
13 outside of these buildings and that disposal is conducted outside of these buildings.

14 57. Defendant channels and collects storm water falling on WCL through at least
15 eleven storm water outfalls. Each storm drain collects storm water runoff from a particular
16 area of WCL. These outfalls discharge the storm water directly to San Pablo Bay, a part of
17 the San Francisco Bay.

18 58. The industrial activities at the site include the processing, storage, and disposal
19 of a variety of materials including municipal solid waste, dirt, wood scraps, metals, and
20 organic material. It also includes the storage and maintenance of trucks, tractors, and other
21 machinery used to transfer and dispose of these materials.

22 59. Significant activities at the site take place outside and are exposed to rainfall.
23 These activities include the storage and disposal of the numerous types of materials handled
24 by WCL; the storage and use of vehicles and equipment for materials handling; and the
25 storage, handling, and disposal of waste materials. Loading and delivery of materials occurs
26 outside. Trucks enter and exit WCL directly from and to a public road. Trucks, tractors, and
27 other machinery are the primary means of moving materials around the unpaved areas of
28 WCL. WCL’s exposed areas contain large piles of a variety of materials. Plaintiff alleges

1 on information and belief that many of the exposed surfaces at WCL are unpaved and
2 sediment and other materials are disturbed as a result of the storage and disposal processes.
3 These areas are exposed to storm water and storm flows due to the lack of overhead
4 coverage, berms and other storm water controls.

5 60. Industrial machinery, heavy equipment and vehicles, including trucks and
6 tractors are operated and stored at WCL in areas exposed to storm water flows. Plaintiff is
7 informed and believes, and thereupon alleges, that such machinery and equipment leak
8 contaminants such as oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed
9 to storm water flows, and that such machinery and equipment track sediment and other
10 contaminants throughout WCL.

11 61. Plaintiff is informed and believes, and thereupon alleges that the storm water
12 flows easily over the surface of WCL, collecting suspended sediment, dirt, oils, grease, and
13 other pollutants as it flows toward the storm water drain. Storm water and any pollutants
14 contained in that storm water entering the drains flows directly to storm drains and channels
15 that flow directly to San Pablo Bay.

16 62. The management practices at WCL are wholly inadequate to prevent the
17 sources of contamination described above from causing the discharge of pollutants to waters
18 of the United States. WCL lacks sufficient structural controls such as grading, berming,
19 roofing, containment, or drainage structures to prevent rainfall and storm water flows from
20 coming into contact with these and other exposed sources of contaminants. WCL lacks
21 sufficient structural controls to prevent the discharge of water once contaminated. WCL
22 lacks adequate storm water pollution treatment technologies to treat storm water once
23 contaminated.

24 63. Since at least January 4, 2005, Defendant has taken samples or arranged for
25 samples to be taken of storm water discharges at WCL. The sample results were reported in
26 WCL's annual reports submitted to the Regional Board. Defendant Republic Services
27 certified each of those annual reports pursuant to Sections A and C of the General Permit.

28 64. Since at least January 4, 2005, WCL has detected electrical conductance in

1 storm water discharged from WCL. Since at least February 14, 2005, WCL has detected
2 total suspended solids, iron, and total organic carbon in storm water discharged from WCL.
3 Levels of these pollutants detected in WCL's storm water have been in excess of EPA's
4 numeric parameter benchmark values. Levels of these pollutants detected in WCL's storm
5 water have been in excess of water quality standards established in the Basin Plan.

6 65. The levels of total suspended solids in storm water detected by WCL have
7 exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA.
8 For example, on January 3, 2008, the level of total suspended solids measured by Defendant
9 in WCL's discharged storm water was 2,100 mg/L. That level of total suspended solids is
10 twenty-one times the benchmark value for total suspended solids established by EPA. WCL
11 also has measured levels of total suspended solids in storm water discharged from WCL in
12 excess of EPA's benchmark value of 100 mg/L on February 19, 2008; December 21, 2006;
13 March 23, 2006; March 20, 2006; and February 14, 2005.

14 66. The levels of iron in storm water detected by WCL have exceeded the
15 benchmark value for iron of 1.0 mg/L established by EPA. For example, on January 3,
16 2008, the level of iron measured by Defendant in the WCL's discharged storm water was
17 110 mg/L. That level of iron is one hundred ten times the benchmark value for iron
18 established by EPA.

19 67. The level of total organic carbon in storm water detected by WCL has
20 exceeded the benchmark value for total organic carbon of 110 mg/L established by EPA. On
21 February 14, 2005, the level of total organic carbon measured by Defendant in the WCL's
22 discharged storm water was 270 mg/L. That level of total organic carbon is nearly two and a
23 half times the benchmark value for total organic carbon established by EPA.

24 68. The electrical conductance levels detected by WCL in its storm water have
25 been greater than the benchmark value of 200 $\mu\text{mho/cm}$ proposed by the State Board. For
26 example, on February 19, 2008, the electrical conductance level measured by Defendant in
27 WCL's discharged storm water was 3300 $\mu\text{mho/cm}$. That electrical conductance level is
28 sixteen and a half times the State Board's proposed benchmark value. WCL also has

1 measured levels of electrical conductance in storm water discharged from WCL in excess of
2 the State Board's proposed value of 200 $\mu\text{mho/cm}$ on May 2, 2008; January 3, 2008;
3 December 21, 2006; March 30, 2006; March 23, 2006; March 20, 2006; February 14, 2005;
4 and January 4, 2005.

5 69. On information and belief, Plaintiff alleges that Defendant has failed to collect
6 the two required storm water samples from each storm water discharge location at WCL
7 since at least January 4, 2005. In the 2007-2008 Annual Report, WCL indicated that it has
8 eleven storm water discharge locations. In earlier reports, WCL indicated that it has seven
9 discharge locations. WCL has never sampled discharges from seven distinct storm water
10 discharge locations in its Annual Reports from the past five years, nor has it given any
11 explanation for its failure to do so. During the 2003-2004, 2004-2005, 2005-2006, and
12 2006-2007 rainy seasons, WCL failed to reasonably explain in its annual reports why it was
13 unable to collect one or both of the required two storm water samples from each of its
14 outfalls.

15 70. On information and belief, Plaintiff alleges that Defendant has failed to
16 comply with Section B(4) of the General Permit for its failures to conduct monthly wet
17 season visual observations at WCL for October, November, December, January, February,
18 April, and May during the 2005-2006 rainy season; and for October, November, December,
19 January, March, April, and May during the 2004-2005 rainy season.

20 71. On information and belief, Plaintiff alleges that since at least January 4, 2005,
21 Defendant has failed to implement BAT and BCT at WCL for its discharges of total
22 suspended solids, iron, total organic carbon, electrical conductance, and other pollutants.
23 The General Permit requires that Defendant implement BAT for toxic and nonconventional
24 pollutants and BCT for conventional pollutants by no later than October 1, 1992. As of the
25 date of this Complaint, Defendant has failed to implement BAT and BCT.

26 72. On information and belief, Plaintiff alleges that since at least April 22, 2004,
27 Defendant has failed to implement an adequate SWPPP for WCL. Plaintiff is informed and
28 believes, and thereupon alleges, that the SWPPP prepared for WCL does not set forth site-

specific best management practices for WCL that are consistent with BAT or BCT for WCL. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for WCL does not include an assessment of potential pollutant sources, structural pollutant control measures employed by the Defendant, a list of actual and potential areas of pollutant contact, or a description of best management practices to be implemented at WCL to reduce pollutant discharges. According to information available to CSPA, Defendant's SWPPP has not been evaluated to ensure effectiveness and revised where necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not include each of the mandatory elements required by Section A of the General Permit. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP does not contain an accurate map that clearly delineates the boundaries of WCL, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge systems, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity.

15 73. Information available to CSPA indicates that as a result of these practices,
16 storm water containing excessive pollutants is being discharged during rain events from
17 WCL directly into San Pablo Bay.

18 74. Plaintiff is informed and believes, and thereupon alleges, that, Defendant has
19 failed and continues to fail to revise WCL's SWPPP and site-specific BMPs consistent with
20 Section A(9) of the General Permit.

21 75. Plaintiff is informed and believes that Defendant failed to submit to the
22 Regional Board a true and complete annual report for WCL certifying compliance with the
23 General Permit since at least April 22, 2004. Pursuant to Sections A(9)(d), B(14), and C(9),
24 (10) of the General Permit, Defendant must submit an annual report, that is signed and
25 certified by the appropriate corporate officer, outlining WCL's storm water controls and
26 certifying compliance with the General Permit. Plaintiff is informed and believes, and
27 thereupon alleges, that Defendant has signed incomplete annual reports that purported to
28 comply with the General Permit when there was significant noncompliance at WCL.

1 76. Information available to Plaintiff indicates that Defendant has not fulfilled the
2 requirements set forth in the General Permit for discharges from WCL due to the continued
3 discharge of polluted storm water. Plaintiff is informed and believes, and thereupon alleges,
4 that all of the violations alleged in this Complaint are ongoing and continuing.

5 **VI. CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**

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

10 77. Plaintiff re-alleges and incorporate Paragraphs 1-76, as if fully set forth herein.

11 78. The General Permit's SWPPP requirements and Effluent Limitation B(3)
12 require dischargers to reduce or prevent pollutants in their storm water discharges through
13 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional
14 pollutants. Defendant has failed to implement BAT and BCT at RSS and WCL for its
15 discharges of total suspended solids, total organic carbon, iron, oil & grease, electrical
16 conductance, and other un-monitored pollutants in violation of Effluent Limitation B(3) of
17 the General Permit.

18 79. Each day since April 22, 2004 that Defendant has failed to develop and
19 implement BAT and BCT in violation of the General Permit is a separate and distinct violation
20 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

21 80. Defendant has been in violation of the BAT/BCT requirements every day since
22 April 22, 2004. Defendant continues to be in violation of the BAT/BCT requirements each
23 day that it fails to develop and fully implement adequate BAT/BCT for RSS and WCL.

24 **SECOND CAUSE OF ACTION**

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

28 81. Plaintiff re-alleges and incorporate Paragraphs 1-80, as if fully set forth herein.

82. Section A and Provision E of the General Permit requires dischargers of storm
water associated with industrial activity to have developed and be implementing an adequate
SWPPP no later than October 1, 1992.

1 83. Defendant has failed to develop and implement an adequate SWPPP for RSS
2 and WCL. Defendant’s ongoing failure to develop and implement an adequate SWPPP for
3 RSS and WCL is evidenced by, *inter alia*, Defendant’s outdoor storage of various materials,
4 without appropriate best management practices; the continued exposure of significant
5 quantities of various materials to storm water flows; the continued exposure and tracking of
6 waste resulting from the operation or maintenance of vehicles at the site; the failure to either
7 treat storm water prior to discharge or to implement effective containment practices; and the
8 continued discharge of storm water pollutants from RSS and WCL at levels in excess of EPA
9 benchmark values.

10 84. Defendant has failed to update both RSS’ and WCL’s SWPPPs in response to
11 the analytical results of RSS’ and WCL’s storm water monitoring.

12 85. Each day since April 22, 2004, that Defendant has failed to develop, implement
13 and update an adequate SWPPP for RSS and for WCL is a separate and distinct violation of
14 Section 301(a) of the Act, 33 U.S.C. § 1311(a).

15 86. Defendant has been in violation of the SWPPP requirements every day since
16 April 22, 2004. Defendant continues to be in violation of the SWPPP requirements each day
17 that it fails to develop and fully implement an adequate SWPPP for RSS and WCL.

18 **THIRD CAUSE OF ACTION**

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

20 87. Plaintiff re-alleges and incorporates Paragraphs 1-86, inclusive, as if fully set
21 forth herein.

22 88. Section B of the General Permit requires dischargers of storm water associated
23 with industrial activity to have developed and be implementing a monitoring and reporting
24 program (including, *inter alia*, sampling and analysis of discharges) no later than October 1,
25 1992.

26 89. Defendant has failed to develop and implement an adequate monitoring and
27 reporting program for RSS and WCL. Defendant’s ongoing failure to develop and
28 implement an adequate monitoring and reporting program are evidenced by, *inter alia*, their

1 failure to collect two storm water samples at each discharge location at both RSS and WCL.

2 90. Each day since April 22, 2004, that Defendant has failed to develop and
3 implement an adequate monitoring and reporting program for RSS and WCL in violation of
4 the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.
5 § 1311(a). The absence of requisite monitoring and analytical results are ongoing and
6 continuous violations of the Act.

7 **FOURTH CAUSE OF ACTION**
8 **Discharges of Contaminated Storm Water**
9 **in Violation of Permit Conditions and the Act**
10 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

11 91. Plaintiff re-alleges and incorporates Paragraphs 1-90, inclusive, as if fully set
12 forth herein.

13 92. Discharge Prohibition A(2) of the General Permit requires that storm water
14 discharges and authorized non-storm water discharges shall not cause or threaten to cause
15 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the
16 General Permit require that storm water discharges and authorized non-storm water discharges
17 shall not adversely impact human health or the environment, and shall not cause or contribute
18 to a violation of any water quality standards contained in a Statewide Water Quality Control
19 Plan or the applicable Regional Board's Basin Plan.

20 93. Plaintiff is informed and believes, and thereupon alleges, that since at least April
21 22, 2004, Defendant has been discharging polluted storm water from RSS and WCL in excess
22 of applicable water quality standards in violation of the Discharge Prohibition A(2) of the
23 General Permit.

24 94. During every rain event, storm water flows freely over exposed materials, waste
25 products, and other accumulated pollutants at RSS and WCL, becoming contaminated with
26 iron, electrical conductance, and other unmonitored pollutants at levels above applicable water
27 quality standards. The storm water then flows untreated from RSS and WCL into a channels
28 or storm drains that flow directly to San Pablo Bay and San Pablo Creek, which flows into the
San Francisco Bay.

1 95. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
2 contaminated storm water are causing pollution and contamination of the waters of the United
3 States in violation of Discharge Prohibition A(2) of the General Permit.

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

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

11 98. Every day since at least April 22, 2004, that Defendant has discharged and
12 continues to discharge polluted storm water from RSS and WCL in violation of the General
13 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
14 These violations are ongoing and continuous.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Submit Annual Report and**
17 **False Certification of Compliance In Annual Report**
18 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 99. Plaintiff re-alleges and incorporate Paragraphs 1-98, as if fully set forth herein.

20 100. Defendant has falsely certified compliance with the General Permit in each of
21 the annual reports submitted to the Regional Board since at least June 2004.

22 101. Each day since at least June 30, 2004, that Defendant has falsely certified
23 compliance with the General Permit is a separate and distinct violation of the General Permit
24 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of
25 the General Permit's certification requirement each day that it maintains its false certification
26 of its compliance with the General Permit.

27 **VII. RELIEF REQUESTED**

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

a. Declare Defendant to have violated and to be in violation of the Act as

1 alleged herein;

2 b. Enjoin Defendant from discharging polluted storm water from RSS and
3 WCL unless authorized by the Permit;

4 c. Enjoin Defendant from further violating the substantive and procedural
5 requirements of the Permit;

6 d. Order Defendant to immediately implement storm water pollution control
7 and treatment technologies and measures that are equivalent to BAT or BCT and prevent
8 pollutants in RSS' and WCL's storm water from contributing to violations of any water quality
9 standards;

10 e. Order Defendant to comply with the Permit's monitoring and reporting
11 requirements, including ordering supplemental monitoring to compensate for past monitoring
12 violations;

13 f. Order Defendant to prepare SWPPPs consistent with the Permit's
14 requirements and implement procedures to regularly review and update the SWPPPs;

15 g. Order Defendant to provide Plaintiff with reports documenting the quality
16 and quantity of their discharges to waters of the United States and their efforts to comply with
17 the Act and the Court's orders;

18 h. Order Defendant to pay civil penalties of \$32,500 per day per violation for
19 each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§
20 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

21 i. Order Defendant to take appropriate actions to restore the quality of waters
22 impaired or adversely affected by their activities;

23 j. 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,

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k. Award any such other and further relief as this Court may deem appropriate.

Dated: April 22, 2009

Respectfully submitted,
LOZEAU DRURY LLP

By: _____
Douglas J. Chermak
Attorney for Plaintiff
CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

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

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

December 11, 2008

James E. O’Connor, Chief Executive Officer
Michael Cordesman, President
Republic Services, Inc.
110 SE Sixth Street
Suite 2800
Fort Lauderdale, Florida 33301

C. David Zeiger, Area Compliance Manager
Michael Boyle, Environmental Specialist
Richmond Sanitary Service, Inc.
P.O. Box 4100
Richmond, CA 94804-0100

Peter Jenkins, Maintenance Manager
Richmond Sanitary Service
3260 Blume Drive, Suite 200
Richmond, CA 94806

Dennis Carvalho
C. David Zeiger, Area Compliance Manager
West County Landfill, Inc.
3260 Blume Drive, Suite 200
Richmond, CA 94806

Bryce Howard, Operations Manager
C. David Zeiger, Area Compliance Manager
Michael Boyle, Environmental Specialist
West Contra Costa Sanitary Landfill
P.O. Box 4100
Richmond, CA 94804-0100

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

Dear Messrs. O’Connor, Cordesman, Zeiger, Boyle, Jenkins, Carvalho, and Howard:

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 both at Richmond Sanitary Service (“RSS”) and at the West Contra Costa Sanitary Landfill (“WCL”) located at #1 Parr Blvd. in Richmond, California. 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 and other California waters. RSS is owned by Richmond Sanitary Service, Inc., which is owned by Republic Services, Inc. West Contra Costa Sanitary Landfill is owned by West County Landfill, Inc. which is owned by Republic Services, Inc. This letter is being sent to you as the responsible owners, officers, or operators of RSS and WCL (all recipients are hereinafter collectively referred to as “Republic Services”).

This letter addresses Republic Services’ unlawful discharge of pollutants from RSS and WCL into San Pablo Creek and San Pablo Bay. RSS and WCL are 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 WDID identification number for RSS listed on documents submitted to the Regional Board is 207I002523, and the WDID identification number for WCL on documents submitted to the Regional Board is 207I005532. RSS and WCL are 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, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at RSS and WCL. Consequently, Republic Services is hereby placed on formal notice by CSPA 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 Republic Services, Inc., Richmond Sanitary Service, Inc., West County Landfill, Inc., James E. O'Connor, Michael Cordesman, C. David Zeiger, Michael Boyle, and Peter Jenkins under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the Order. These violations are described more extensively below. This letter will first provide background information that pertains to both RSS and WCL, describe the alleged violations of the NPDES permit for RSS, describe the alleged violations of the NPDES permit for WCL, indicate the persons responsible for the violations, indicate the name and address of the noticing party, name the counsel representing CSPA in this matter, and describe the relevant penalty provisions.

I. Background.

On May 15, 1997, RSS filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). RSS certifies that that it is classified under SIC code 5093 (“processing of scrap material”) and under SIC code 4212 (“local trucking without storage”). According to its most recent annual report filed pursuant to the General Permit, RSS collects and discharges storm water from its 12-acre industrial site through four outfalls that discharge into San Pablo Bay and San Pablo Creek, which flows into the San Francisco Bay.

On March 23, 1992, WCL filed its NOI. WCL certifies that it is classified under SIC code 4953 (“landfills and land application site”). According to its most recent annual report filed pursuant to the General Permit, WCL collects and discharges storm water from its 350-acre industrial site through eleven outfalls that discharge into San Pablo Bay, a part of San Francisco Bay.

The Regional Board has identified waters of both San Pablo Bay and San Francisco Bay as failing to meet applicable water quality standards for PCBs, selenium, exotic species, dioxins, pesticides, and mercury. *See* http://www.waterboards.ca.gov/tmdl/docs/303dlists2006/final/r2_final303dlist.pdf.

The Regional Board has identified beneficial uses of the Bay region's waters and established water quality standards for the San Francisco Bay 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 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 people's use of the 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 "[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 establishes Marine Water Quality Objectives for zinc of 0.081 mg/L (4-day average) and 0.090 mg/L (1-hour average); copper of 0.0031 mg/L (4-day average) and 0.0048 mg/L (1-hour average); and lead of 0.0081 mg/L (4-day average) and 0.21 mg/L (1-hour average). *Id.* at Table 3-3. The Basin Plan established Freshwater Water Quality Objectives for zinc of 0.12 mg/L (4-day average and 1-hour average); for copper of 0.009 mg/L (4-day average) and 0.013 mg/L (1-hour average); and lead of 0.0025 mg/L (4-day average) and 0.065 mg/L (1-hour average). *Id.* at Table 3-4. The U.S. Environmental Protection Agency ("EPA") has adopted saltwater numeric water quality standards for copper of 0.0031 mg/L (Criteria Maximum Concentration – "CMC") and .0048 mg/L (Criteria Continuous Concentration – "CCC"), for lead of 0.210 mg/L (CMC) and 0.0081 mg/L (CCC), and for zinc of 0.090 mg/L (CMC) and 0.081 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000). EPA has adopted freshwater numeric water quality standards for copper of 0.013 mg/L (CMC) and 0.009 mg/L (CCC); for lead of 0.065 mg/L (CMC) and 0.0025 mg/L (CCC); and for zinc of 0.12 mg/L (CMC and CCC).

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”). The following benchmarks have been established for pollutants discharged by RSS and WCL: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”) – 15 mg/L, total organic carbon (“TOC”) – 110 mg/L, chemical oxygen demand (“COD”) – 120 mg/L, aluminum – 0.75 mg/L, zinc – 0.117 mg/L, iron – 1.0 mg/L, copper – 0.0636 mg/L, lead – 0.0816 mg/L, ammonia – 19 mg/L. The State Water Resources Control Board (“State Board”) also has proposed adding a benchmark level to the General Permit for specific conductance (200 µmho/cm).

II. RSS’ Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

RSS 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.

RSS has discharged and continues to discharge storm water with unacceptable levels of total suspended solids, specific conductivity, oil & grease, and other pollutants in violation of the General Permit. RSS' 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 RSS¹ 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 Concentration	Benchmark Value	Location (as identified by the Facility)
12/4/2007	Total Suspended Solids	1,600 mg/L	100 mg/L	RSS-1 (entrance)
12/4/2007	Specific Conductivity	320 µmho/cm	200 µmho/cm (proposed)	RSS-1 (entrance)
3/26/2007	Total Suspended Solids	590 mg/L	100 mg/L	RSS-4
3/26/2007	Specific Conductivity	250 µmho/cm	200 µmho/cm (proposed)	RSS-4
12/21/2006	Total Suspended Solids	1,600 mg/L	100 mg/L	RSS-4
12/21/2006	Specific Conductivity	530 µmho/cm	200 µmho/cm (proposed)	RSS-4
12/21/2006	Total Suspended Solids	230 mg/L	100 mg/L	RSS-1
3/20/2006	Total Suspended Solids	2,200 mg/L	100 mg/L	RSS-1 (Drainage from paved vehicle storage area)
3/20/2006	Specific Conductivity	900 µmho/cm	200 µmho/cm (proposed)	RSS-1 (Drainage from paved vehicle storage area)
3/20/2006	Total Suspended Solids	580 mg/L	100 mg/L	RSS-4 (Drainage from southwest)

¹ RSS' annual reports include laboratory sampling results for storm water discharges from outfalls for both RSS and WCL. RSS' reports seem to indicate that the outfalls with "RSS" in the title are particular to RSS. Thus, only the discharges associated with the "RSS" outfalls are reported in this table. Discharges associated with the other outfalls are presumed to apply to WCL and are indicated in the table in Section III(A) of this letter.

				paved storage tank area)
2/14/2005	Total Suspended Solids	1,800 mg/L	100 mg/L	RSS-1 (Drainage from paved vehicle storage area)
2/14/2005	Specific Conductivity	330 μ mho/cm	200 μ mho/cm (proposed)	RSS-1 (Drainage from paved vehicle storage area)
2/14/2005	Oil & Grease	25 mg/L	15 mg/L	RSS-1 (Drainage from paved vehicle storage area)
2/14/2005	Total Suspended Solids	210 mg/L	100 mg/L	RSS-4 (Drainage from southwest paved storage tank area)

CSPA's investigation, including its review of RSS' analytical results documenting pollutant levels in RSS' 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 RSS has not implemented BAT and BCT for its discharges of TSS, specific conductivity, O&G, and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. RSS was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, RSS is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT. In addition, the above numbers 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 alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since December 11, 2003, and that will occur at RSS 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 RSS has discharged storm water containing impermissible levels of TSS, specific conductivity, and O&G 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 RSS are ongoing. Each discharge of each of these pollutants in storm water 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, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 2003.

B. Failure to Sample, Analyze, and Inspect 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.*

RSS has failed to collect the two required storm water samples from each storm water discharge location in each of the last five years despite discharging storm water from its facility. RSS failed to take the requisite samples when storm water discharges from the Facility did not occur within the first hour of a storm event. The General Permit does not excuse a facility from the requisite sampling where discharges from the facility occur more than an hour after the inception of a storm event. During the 2006-2007 rainy season, RSS only collected two samples from RSS-4 and one sample from RSS-1, failing to explain why it was unable to collect a second sample from RSS-1 and two samples from the third discharge location. During both the 2005-2006 and the 2004-2005 rainy seasons, RSS failed to explain why it did not collect storm water samples for a second event from RSS-1 and RSS-4 and failed to explain why it was unable to collect two samples from the third discharge location. During the 2003-2004 rainy season, RSS failed to explain why it did not collect storm water samples for a second event from RSS-2 and failed to explain why it was unable to collect two samples from the third discharge location. Each of these failures to collect requisite storm water samples is a violation of the General Permit, Section B(5).

Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. General Permit, Section B(5)(c)(i). Facilities also must analyze their storm water samples for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities. *Id.* at Section B(5)(c)(ii). Certain SIC Codes also must analyze for additional specified parameters. *Id.* at Section B(5)(c)(iii); *id.*, Table D. Facilities within SIC Code 5093, including RSS, must analyze each of its storm water samples for COD, iron, lead, zinc, copper, and aluminum. *Id.*, Table D (Sector N). CSPA’s review of RSS’ monitoring data indicates that RSS has failed to analyze for COD, iron, lead, zinc, copper, and aluminum in every storm water sample taken at RSS during the past five years and has not provided a sufficient explanation for its failure to do so in each of the past five years. Each failure to analyze for a specific required parameter is a violation of General Permit, Section B(5)(c)(iii). Six samples per annual report (at least three storm drains times two storm events) times five annual reports (2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008) times six parameters adds up to 180 distinct violations of the General Permit.

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(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." RSS failed to conduct any visual observations during the 2006-2007 rainy season, which is a violation of the Section B(3), B(4), and B(7) of the General Permit. RSS did not provide explanations for its failures to conduct monthly wet season visual observations for October, November, December, January, February, April, and May during the 2005-2006 rainy season; for October, November, December, January, March, April, and May during the 2004-2005 rainy season; and for December, January, February, March, April, and May during the 2003-2004 rainy season. Each of these failures to conduct monthly wet season visual observations is a violation of the General Permit, Section B(4).

The above listed violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 2003.

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 RSS as well as RSS' Annual Reports indicate that RSS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. RSS has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. RSS has been in continuous violation of Section A and Provision E(2) of the General Permit every day since December 11, 2003 at the very latest, and will continue to be in violation every day that RSS fails to prepare, implement, review, and update an effective SWPPP. Republic Services is subject to penalties for violations of the Order and the Act occurring since December 11, 2003.

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

The above referenced data was obtained from the RSS' monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that RSS has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by RSS is not representative of the quality of the RSS' various storm water discharges or RSS failed to monitor all qualifying storm water discharges, CSPA, on information and belief, alleges that RSS' monitoring program violates Sections B(3), (4), 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, Republic Services is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 11, 2003.

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) and (10) and B(14).

For the last five years, RSS and its agents, C. David Zeiger and Michael Boyle, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, RSS has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time RSS failed to submit a complete or correct report and every time RSS or its agents falsely purported to comply with the Act. Republic Services is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since December 11, 2003.

III. WCL's Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

WCL has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. The relevant permit requirements are described in this notice of intent letter above in Section II(A).

WCL has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, total organic carbon, iron, and other pollutants in violation of the General Permit. WCL'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.

The following discharges of pollutants from WCL² 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 Concentration	Benchmark Value	Location (as identified by the Facility)
5/2/2008	Specific Conductivity	1,700 µmho/cm	200 µmho/cm (proposed)	Area A (Composite)
5/2/2008	Iron	1.3 mg/L	1.0 mg/L	Area A (Composite)
2/19/2008	Total Suspended Solids	410 mg/L	100 mg/L	WCL-11G
2/19/2008	Specific Conductivity	3,300 µmho/cm	200 µmho/cm (proposed)	WCL-11G

² The source of this data is from both RSS' and WCL's Annual Reports to the Regional Board, which both contain laboratory sampling results that contain data for outfalls from both facilities. The data in this table includes all the troublesome discharges not included in the table above in Section II(A), however, it is unclear whether some of these discharge actually pertain to the RSS facility. In addition, the Regional Board does not have a 2006-2007 Annual Report on file for WCL; the data here is from the 2006-2007 RSS Annual Report. To the extent WCL failed to file an annual report for the 2006-2007 rainy season by July 1, 2007, then WCL is in violation of Section B(14) of the General Permit, requiring the submission of an annual report by July 1st for the previous rainy season.

2/19/2008	Iron	33 mg/L	1.0 mg/L	WCL-11G
2/19/2008	Specific Conductivity	1,500 µmho/cm	200 µmho/cm (proposed)	WCL-C
1/3/2008	Total Suspended Solids	2,100 mg/L	100 mg/L	WCL-8
1/3/2008	Specific Conductivity	1600 µmho/cm	200 µmho/cm (proposed)	WCL-8
1/3/2008	Iron	110 mg/L	1.0 mg/L	WCL-8
3/26/2007	Specific Conductivity	580 µmho/cm	200 µmho/cm (proposed)	WCL-9
3/26/2007	Iron	1.3 mg/L	1.0 mg/L	WCL-9
12/21/2006	Total Suspended Solids	160 mg/L	100 mg/L	IRRF-1
12/21/2006	Specific Conductivity	260 µmho/cm	200 µmho/cm (proposed)	IRRF-1
12/21/2006	Total Suspended Solids	140 mg/L	100 mg/L	IRRF-5
12/21/2006	Total Suspended Solids	48,000 mg/L	100 mg/L	WCL-8
12/21/2006	Specific Conductivity	2,300 µmho/cm	200 µmho/cm (proposed)	WCL-8
12/21/2006	Iron	350 mg/L	1.0 mg/L	WCL-8
12/21/2006	Total Suspended Solids	8,200 mg/L	100 mg/L	WCL-9
12/21/2006	Specific Conductivity	1,200 µmho/cm	200 µmho/cm (proposed)	WCL-9
12/21/2006	Iron	26 mg/L	1.0 mg/L	WCL-9
3/30/2006	Specific Conductivity	1,100 µmho/cm	200 µmho/cm (proposed)	WCL-C (Retention basin – Near new transfer station)
3/30/2006	Iron	1.5 mg/L	1.0 mg/L	WCL-C (Retention basin – Near new transfer station)
3/23/2006	Total Suspended Solids	330 mg/L	100 mg/L	WCL-9
3/23/2006	Specific Conductivity	680 µmho/cm	200 µmho/cm (proposed)	WCL-9
3/23/2006	Iron	14 mg/L	1.0 mg/L	WCL-9
3/20/2006	Total Suspended Solids	4,200 mg/L	100 mg/L	WCL-7 (Public Disposal Pad) – Runoff from paved public disposal area
3/20/2006	Specific Conductivity	1,300 µmho/cm	200 µmho/cm (proposed)	WCL-7 (Public Disposal Pad) – Runoff from paved public

				disposal area
3/20/2006	Iron	40 mg/L	1.0 mg/L	WCL-7 (Public Disposal Pad) – Runoff from paved public disposal area
3/20/2006	Total Suspended Solids	580 mg/L	100 mg/L	WCL-8 (Runoff along side of main road)
3/20/2006	Specific Conductivity	930 µmho/cm	200 µmho/cm (proposed)	WCL-8 (Runoff along side of main road)
3/20/2006	Iron	19 mg/L	1.0 mg/L	WCL-8 (Runoff along side of main road)
3/20/2006	Total Suspended Solids	260 mg/L	100 mg/L	WCL-9 (Runoff from Bay Environmental Power (NOVE))
3/20/2006	Specific Conductivity	730 µmho/cm	200 µmho/cm (proposed)	WCL-9 (Runoff from Bay Environmental Power (NOVE))
3/20/2006	Iron	14 mg/L	1.0 mg/L	WCL-9 (Runoff from Bay Environmental Power (NOVE))
2/14/2005	Total Suspended Solids	3,700 mg/L	100 mg/L	WCL-7 ((New) Runoff from paved public disposal area)
2/14/2005	Specific Conductivity	2,900 µmho/cm	200 µmho/cm (proposed)	WCL-7 ((New) Runoff from paved public disposal area)
2/14/2005	Total Organic Carbon	270 mg/L	110 mg/L	WCL-7 ((New) Runoff from paved public disposal area)
2/14/2005	Iron	57 mg/L	1.0 mg/L	WCL-7 ((New) Runoff from paved public disposal area)

2/14/2005	Total Suspended Solids	1,100 mg/L	100 mg/L	WCL-8 (Runoff from side of main road)
2/14/2005	Specific Conductivity	2,900 µmho/cm	200 µmho/cm (proposed)	WCL-8 (Runoff from side of main road)
2/14/2005	Iron	10 mg/L	1.0 mg/L	WCL-8 (Runoff from side of main road)
2/14/2005	Total Suspended Solids	260 mg/L	100 mg/L	WCL-9 (Runoff from NOVE)
2/14/2005	Specific Conductivity	730 µmho/cm	200 µmho/cm (proposed)	WCL-9 (Runoff from NOVE)
2/14/2005	Iron	7.5 mg/L	1.0 mg/L	WCL-9 (Runoff from NOVE)
2/14/2005	Specific Conductivity	250 µmho/cm	200 µmho/cm (proposed)	INNF-1
1/4/2005	Specific Conductivity	1,200 µmho/cm	200 µmho/cm (proposed)	WCL-3 (Retention Basin)

CSPA's investigation, including its review of WCL's analytical results documenting pollutant levels in WCL'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 WCL has not implemented BAT and BCT for its discharges of TSS, specific conductivity, total organic carbon, iron, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. WCL was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, WCL is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT. In addition, the above numbers 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 alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since December 11, 2003, and that will occur at WCL 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 WCL has discharged storm water containing impermissible levels of TSS, specific conductivity, total organic carbon, and iron 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 WCL 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, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 2003.

B. Failure to Sample, Analyze, and Inspect Storm Events and Mandatory Parameters

WCL has reported different amounts of storm water discharge locations in its Annual Reports. In the 2007-2008 Annual Report, it indicated that it has eleven storm water discharge locations. In earlier reports, it indicated that it has seven. However, WCL has never sampled discharges from seven distinct storm water discharge locations in its Annual Reports from the past five years, nor has it given any explanation for its failure to do so. WCL has failed to collect all of the two required storm water samples from each storm water discharge location in each of the last five years despite discharging storm water from its facility. WCL failed to take the requisite samples when storm water discharges from the Facility did not occur within the first hour of a storm event. For each of the five previous rainy seasons³, with the exception of the 2007-2008 rainy season, WCL failed to reasonably explain in its annual reports why it was unable to collect one or both of the required two storm water samples from each of its outfalls. Each of these failures to collect requisite storm water samples is a violation of the General Permit, Section B(5).

Facilities within SIC Code 4953, including WCL, must analyze each of its storm water samples for iron. General Permit, Table D (Sector N). CSPA's review of WCL's monitoring data indicates that WCL has failed to analyze for iron in every storm water sample taken at WCL during the past five years for the outfalls IRRF-1, IRRF-5, and IRC (TS)-1, and has not provided a sufficient explanation for its failure to do so in each of the past five years. Each failure to analyze for a specific required parameter is a violation of General Permit, Section B(5)(c)(iii). Five years times three outfalls times two samples per year adds up to 30 distinct violations of the General Permit.

WCL failed to provide explanations for its failures to conduct monthly wet season visual observations for October, November, December, January, February, April, and May during the 2005-2006 rainy season; and for October, November, December, January, March, April, and May during the 2004-2005 rainy season. Each of these failures to conduct monthly wet season visual observations is a violation of the General Permit, Section B(4).

The above listed violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Republic Services is subject to penalties for violations of the General Permit and the Act since December 11, 2003.

³ As noted above, CSPA has not reviewed the 2006-2007 Annual Report for WCL because it is not on file with the regional board. Based on its review of WCL's other annual reports and based on information and belief, CSPA alleges that WCL did not sample two storm events from each storm water discharge location during the 2006-2007 rainy season.

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

The SWPPP requirements are described in Section II(C) above. CSPA's investigation of the conditions at WCL as well as WCL's Annual Reports indicate that WCL has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. In addition, CSPA's review of WCL's SWPPP and Storm Water Monitoring Plan ("SWMP") attached to its 2005-2006 Annual Report shows that the SWPPP and SWMP were very inadequate at that time. For example, the SWPPP lacks a sufficient narrative describing potential pollutant sources and an associated narrative describing the storm water best management practices designed to treat those pollutant sources. There is also no site map attached.

Thus, CSPA alleges that WCL has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. WCL has been in continuous violation of Section A and Provision E(2) of the General Permit every day since December 11, 2003 at the very latest, and will continue to be in violation every day that WCL fails to prepare, implement, review, and update an effective SWPPP. Republic Services is subject to penalties for violations of the Order and the Act occurring since December 11, 2003.

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

The above referenced data was obtained from the WCL's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that WCL has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by WCL is not representative of the quality of the WCL's various storm water discharges or WCL failed to monitor all qualifying storm water discharges, CSPA, on information and belief, alleges that WCL's monitoring program violates Sections B(3), (4), 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, Republic Services is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 11, 2003.

E. Failure to File True and Correct Annual Reports.

For the last five years, WCL and its agents, C. David Zeiger and Michael Boyle, inaccurately certified in their Annual Reports that the facility was in compliance with the General Permit. Consequently, WCL has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time WCL failed to submit a complete or correct report and every time WCL or its agents falsely purported to comply with the Act. Republic Services is subject to penalties for violations of Section (C) of the General Industrial

Storm Water Permit and the Act occurring since December 11, 2003.

IV. Persons Responsible for the Violations.

CSPA puts Republic Services, Inc., Richmond Sanitary Service, Inc., West County Landfill, Inc., James E. O'Connor, Michael Cordesman, C. David Zeiger, Michael Boyle, and Peter Jenkins 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 Republic Services, Inc., Richmond Sanitary Service, Inc., West County Landfill, Inc., James E. O'Connor, Michael Cordesman, C. David Zeiger, Michael Boyle, and Peter Jenkins on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Bill Jennings, Executive Director;
California Sportfishing Protection Alliance,
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067

VI. Counsel.

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

Michael R. Lozeau
Douglas J. Chermak
LOZEAU DRURY LLP
1516 Oak Street, Suite 216
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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) each separate violation of the Act subjects Republic Services to a penalty of up to \$32,500 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 Republic Services 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

cc: CT Corporation, Agent of Service of Process for Richmond Sanitary Service, Inc. (C1511627), Republic Services, Inc. (C2267166), and West County Landfill, Inc. (C1511323)

SERVICE LIST

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ATTACHMENT A

Rain Dates, RSS and WCL, Richmond, California

November 30, 2003	May 5, 2004	November 27, 2004
December 1, 2003	May 6, 2004	December 8, 2004
December 2, 2003	May 7, 2004	December 28, 2004
December 4, 2003	May 9, 2004	December 29, 2004
December 5, 2003	May 12, 2004	December 30, 2004
December 6, 2003	May 13, 2004	December 31, 2004
December 7, 2003	May 14, 2004	January 1, 2005
December 9, 2003	May 15, 2004	January 2, 2005
December 11, 2003	May 16, 2004	January 3, 2005
December 11, 2003	May 18, 2004	January 5, 2005
December 13, 2003	May 20, 2004	January 7, 2005
December 14, 2003	May 21, 2004	January 8, 2005
December 19, 2003	May 23, 2004	January 9, 2005
December 20, 2003	May 24, 2004	January 10, 2005
December 21, 2003	May 25, 2004	January 11, 2005
December 23, 2003	May 26, 2004	January 12, 2005
December 24, 2003	May 27, 2004	January 25, 2005
December 25, 2003	May 28, 2004	January 27, 2005
December 29, 2003	May 29, 2004	January 28, 2005
December 30, 2003	May 30, 2004	February 14, 2005
January 1, 2004	May 31, 2004	February 15, 2005
January 2, 2004	October 1, 2004	February 16, 2005
January 7, 2004	October 5, 2004	February 18, 2005
January 9, 2004	October 7, 2004	February 19, 2005
January 24, 2004	October 9, 2004	February 20, 2005
January 27, 2004	October 10, 2004	February 21, 2005
January 30, 2004	October 11, 2004	February 22, 2005
February 1, 2004	October 12, 2004	February 27, 2005
February 2, 2004	October 14, 2004	February 28, 2005
February 3, 2004	October 15, 2004	March 2, 2005
February 7, 2004	October 16, 2004	March 4, 2005
February 13, 2004	October 17, 2004	March 11, 2005
February 16, 2004	October 19, 2004	March 18, 2005
February 17, 2004	October 20, 2004	March 19, 2005
February 18, 2004	October 21, 2004	March 20, 2005
February 22, 2004	October 22, 2004	March 21, 2005
February 25, 2004	October 23, 2004	March 22, 2005
February 26, 2004	October 24, 2004	March 23, 2005
February 27, 2004	October 25, 2004	March 27, 2005
March 1, 2004	October 26, 2004	March 28, 2005
March 25, 2004	October 27, 2004	March 29, 2005
March 26, 2004	October 28, 2004	April 4, 2005
March 27, 2004	October 29, 2004	April 7, 2005
April 18, 2004	October 30, 2004	April 8, 2005
April 19, 2004	October 31, 2004	April 9, 2005
April 20, 2004	November 3, 2004	April 23, 2005
May 1, 2004	November 10, 2004	April 25, 2005
May 3, 2004	November 11, 2004	April 26, 2005
May 4, 2004	November 13, 2004	April 27, 2005

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Rain Dates, RSS and WCL, Richmond, California

April 28, 2005	January 9, 2006	March 27, 2006
May 4, 2005	January 10, 2006	March 28, 2006
May 5, 2005	January 11, 2006	March 29, 2006
May 6, 2005	January 12, 2006	March 31, 2006
May 8, 2005	January 13, 2006	April 1, 2006
May 9, 2005	January 14, 2006	April 2, 2006
May 11, 2005	January 15, 2006	April 3, 2006
May 18, 2005	January 16, 2006	April 4, 2006
May 19, 2005	January 17, 2006	April 5, 2006
June 9, 2005	January 18, 2006	April 7, 2006
June 15, 2005	January 19, 2006	April 8, 2006
June 16, 2005	January 20, 2006	April 9, 2006
June 17, 2005	January 21, 2006	April 10, 2006
June 18, 2005	January 22, 2006	April 11, 2006
June 19, 2005	January 23, 2006	April 12, 2006
August 13, 2005	January 24, 2006	April 13, 2006
August 15, 2005	January 25, 2006	April 14, 2006
August 18, 2005	January 26, 2006	April 15, 2006
August 19, 2005	January 27, 2006	April 16, 2006
August 20, 2005	January 28, 2006	April 17, 2006
August 30, 2005	January 29, 2006	May 19, 2006
September 19, 2005	January 30, 2006	May 20, 2006
September 20, 2005	January 31, 2006	May 21, 2006
September 21, 2005	February 1, 2006	October 5, 2006
October 15, 2005	February 2, 2006	November 2, 2006
October 24, 2005	February 3, 2006	November 3, 2006
October 26, 2005	February 4, 2006	November 9, 2006
October 28, 2005	February 17, 2006	November 10, 2006
October 29, 2005	February 18, 2006	November 11, 2006
October 30, 2005	February 19, 2006	November 13, 2006
November 4, 2005	February 26, 2006	November 14, 2006
November 7, 2005	March 2, 2006	November 26, 2006
November 8, 2005	March 3, 2006	November 27, 2006
November 9, 2005	March 4, 2006	December 9, 2006
November 28, 2005	March 5, 2006	December 11, 2006
December 1, 2005	March 6, 2006	December 12, 2006
December 2, 2005	March 7, 2006	December 13, 2006
December 17, 2005	March 8, 2006	December 14, 2006
December 18, 2005	March 10, 2006	December 15, 2006
December 25, 2005	March 11, 2006	December 21, 2006
December 30, 2005	March 12, 2006	December 23, 2006
December 31, 2005	March 13, 2006	December 24, 2006
January 1, 2006	March 14, 2006	December 25, 2006
January 2, 2006	March 15, 2006	December 26, 2006
January 3, 2006	March 16, 2006	December 27, 2006
January 4, 2006	March 17, 2006	January 4, 2007
January 5, 2006	March 20, 2006	January 17, 2007
January 6, 2006	March 21, 2006	January 26, 2007
January 7, 2006	March 24, 2006	January 27, 2007
January 8, 2006	March 25, 2006	February 7, 2007

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Rain Dates, RSS and WCL, Richmond, California

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