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13 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

14 **UNITED STATES DISTRICT COURT**  
15 **EASTERN DISTRICT OF CALIFORNIA**

16 CALIFORNIA SPORTFISHING  
17 PROTECTION ALLIANCE, a non-profit  
18 corporation,  
19 Plaintiff,  
20 vs.  
21 DAVIS WASTE REMOVAL CO., INC.,  
22 a corporation,  
23 Defendant.

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

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

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

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

26 **I. JURISDICTION AND VENUE**

27 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
28 Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or  
“the Act”). This Court has subject matter jurisdiction over the parties and the subject matter  
of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28  
U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is  
authorized pursuant to 28 U.S.C. §§ 2201-02 (power to issue declaratory relief in case of  
actual controversy and further necessary relief based on such a declaration); 33 U.S.C. §§  
1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

1           2.       On or about June 1, 2010, Plaintiff provided notice of Defendant’s violations  
2 of the Act, and of its intention to file suit against Defendant, to the Administrator of the  
3 United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region  
4 IX; the Executive Director of the State Water Resources Control Board (“State Board”); the  
5 Executive Officer of the California Regional Water Quality Control Board, Central Valley  
6 Region (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. §  
7 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as Exhibit A, and  
8 is incorporated by reference.

9           3.       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           4.       Venue is proper in the Eastern 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.

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

20 **II.    INTRODUCTION**

21           6.       This complaint seeks relief for Defendant’s discharges of polluted storm water  
22 and non-storm water pollutants from Defendant’s recycling facility located at 2727 Second  
23 Street in Davis, California (“the Facility”) in violation of the Act and National Pollutant  
24 Discharge Elimination System (“NPDES”) Permit No. CAS000001, State Water Resources  
25 Control Board Water Quality Order No. 92-12-DWQ, as amended by Water Quality Order  
26 No. 97-03-DWQ (hereinafter “the Order” or “Permit” or “General Permit”). Defendant’s  
27 violations of the discharge, treatment technology, monitoring, and other procedural and  
28 substantive requirements of the Permit and the Act are ongoing and continuous.

1           7.       The failure on the part of persons and facilities such as Defendant and its  
2 industrial facility to comply with storm water requirements is recognized as a significant  
3 cause of the continued decline in water quality of the Yolo Bypass, Sacramento River,  
4 Sacramento-San Joaquin River Delta (the “Delta”), and other area receiving waters. The  
5 general consensus among regulatory agencies and water quality specialists is that storm  
6 pollution amounts to more than half of the total pollution entering the aquatic environment  
7 each year. In most areas of Yolo County, storm water flows completely untreated through  
8 storm drain systems or other channels directly to the waters of the United States.

9       **III. PARTIES**

10           8.       Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
11 (“CSPA”) is a non-profit public benefit corporation organized under the laws of the State of  
12 California with its main office in Stockton, California. CSPA has approximately 2,000  
13 members who live, recreate, and work in and around waters of the State of California,  
14 including the Yolo Bypass, Sacramento River, and the Delta. CSPA is dedicated to the  
15 preservation, protection, and defense of the environment, the wildlife, and the natural  
16 resources of all waters of California. To further these goals, CSPA actively seeks federal  
17 and state agency implementation of the Act and other laws and, where necessary, directly  
18 initiates enforcement actions on behalf of itself and its members.

19           9.       Members of CSPA reside in and around the Yolo Bypass, Sacramento River,  
20 and the Delta and enjoy using these waters for recreation and other activities. Members of  
21 CSPA use and enjoy the waters into which Defendant has caused, is causing, and will  
22 continue to cause, pollutants to be discharged. Members of CSPA use those areas to fish,  
23 sail, boat, kayak, swim, bird watch, view wildlife, and engage in scientific study including  
24 monitoring activities, among other things. Defendant’s discharges of pollutants threaten or  
25 impair each of those uses or contribute to such threats and impairments. Thus, the interests  
26 of CSPA’s members have been, are being, and will continue to be adversely affected by  
27 Defendant’s failure to comply with the Clean Water Act and the Permit. The relief sought  
28 herein will redress the harms to Plaintiff caused by Defendant’s activities.

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

4           11. Defendant DAVIS WASTE REMOVAL CO., INC. (“Davis Waste”) is a  
5 corporation organized under the laws of California. Davis Waste operates a recycling  
6 facility in Davis, California.

7 **IV. STATUTORY BACKGROUND**

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

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

19           14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
20 U.S. EPA has authorized California’s State Board to issue NPDES permits including general  
21 NPDES permits in California.

22           15. The State Board elected to issue a statewide general permit for industrial storm  
23 water discharges. The State Board issued the General Permit on or about November 19,  
24 1991; modified the General Permit on or about September 17, 1992; and reissued the  
25 General Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water  
26 Act, 33 U.S.C. § 1342(p).

27           16. In order to discharge storm water lawfully in California, industrial dischargers  
28 must comply with the terms of the General Permit or have obtained and complied with an

1 individual NPDES permit. 33 U.S.C. § 1311(a).

2 17. The General Permit contains several prohibitions. Effluent Limitation B(3) of  
3 the General Permit requires dischargers to reduce or prevent pollutants in their storm water  
4 discharges through implementation of the Best Available Technology Economically  
5 Achievable (“BAT”) for toxic and nonconventional pollutants and the Best Conventional  
6 Pollutant Control Technology (“BCT”) for conventional pollutants. BAT and BCT include  
7 both nonstructural and structural measures. General Permit, Section A(8). Discharge  
8 Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm  
9 water (defined as non-storm water discharges) that discharge either directly or indirectly to  
10 waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits  
11 storm water discharges and authorized non-storm water discharges that cause or threaten to  
12 cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the  
13 General Permit prohibits storm water discharges to any surface or ground water that  
14 adversely impact human health or the environment. Receiving Water Limitation C(2) of the  
15 General Permit prohibits storm water discharges that cause or contribute to an exceedance of  
16 any applicable water quality standards contained in any Statewide Water Quality Control  
17 Plan or the applicable Regional Board’s Basin Plan.

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

24 19. Dischargers must develop and implement a Storm Water Pollution Prevention  
25 Plan (“SWPPP”). The SWPPP must describe storm water control facilities and measures  
26 that comply with the BAT and BCT standards. The General Permit requires that an initial  
27 SWPPP have been developed and implemented before October 1, 1992 (Section A and  
28 Provision E(2)). The SWPPP must, among other requirements, identify and evaluate sources

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

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

1           21.     Section C(11)(d) of the General Permit’s Standard Provisions requires  
2 dischargers to report any noncompliance to the Regional Board. *See also* Section E(6).  
3 Section A(9) of the General Permit requires an annual evaluation of storm water controls  
4 including the preparation of an evaluation report and implementation of any additional  
5 measures in the SWPPP to respond to the monitoring results and other inspection activities.

6           22.     The General Permit requires dischargers commencing industrial activities  
7 before October 1, 1992 to develop and implement an adequate written monitoring and  
8 reporting program no later than October 1, 1992. Existing facilities covered under the  
9 General Permit must implement all necessary revisions to their monitoring programs no later  
10 than August 1, 1997.

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

1 Facilities that fall under SIC Code 5093 (“Processing, Reclaiming, and Wholesale  
2 Distribution of Scrap and Waste Materials”) are required to analyze their storm water  
3 discharge samples for TSS, iron, lead, aluminum, copper, zinc, and COD (Table D, Sector  
4 N). Dischargers must also conduct dry season visual observations to identify sources of  
5 non-storm water pollution. Section B(7)(a) indicates that the visual observations and  
6 samples must represent the “quality and quantity of the facility’s storm water discharges  
7 from the storm event.” Section B(7)(c) requires that “if visual observation and sample  
8 collection locations are difficult to observe or sample...facility operators shall identify and  
9 collect samples from other locations that represent the quality and quantity of the facility’s  
10 storm water discharges from the storm event.”

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

17 25. The General Permit does not provide for any mixing zones by dischargers.  
18 The General Permit does not provide for any dilution credits to be applied by dischargers.

19 26. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
20 enforcement actions against any “person,” including individuals, government  
21 instrumentalities, or government agencies, for violations of NPDES permit requirements. 33  
22 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is  
23 authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of  
24 civil penalties of up to \$32,500 per day per violation for all violations occurring through  
25 January 12, 2009, and up to \$37,500 per day per violation for all violations occurring after  
26 January 12, 2009, for each violation of the Act pursuant to Sections 309(d) and 505(a) of the  
27 Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4.

28 27. The Regional Board has established water quality standards for the Delta in the



1 Water Quality Control Plan for the California Regional Water Quality Control Board Central  
2 Valley Region, generally referred to as the Basin Plan.

3 28. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
4 waters shall be maintained free of toxic substances in concentrations that produce  
5 detrimental physiological responses in human, plant, animal, or aquatic life.” Basin Plan at  
6 III-8.01.

7 29. The Basin Plan includes a narrative oil and grease standard which states that  
8 “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that  
9 cause nuisance, result in a visible film or coating on the surface of the water or on objects in  
10 the water, or otherwise adversely affect beneficial uses.” *Id.* at III-6.00.

11 30. The Basin Plan provides that “[w]aters shall not contain chemical constituents  
12 in concentrations that adversely affect beneficial uses.” *Id.* at III-3.00.

13 31. The Basin Plan provides that “[w]aters shall not contain suspended material in  
14 concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at III-7.00.

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

18 33. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor  
19 raised above 8.5.” *Id.* at III-6.00.

20 34. The Basin Plan establishes trace element water quality objectives for several  
21 metals, including 0.01 mg/L for copper, 0.3 mg/L for iron, and 0.1 mg/L for zinc. *Id.* at III-  
22 4.00, Table III-1.

23 35. The Basin Plan incorporates maximum contaminant levels (“MCLs”) as the  
24 applicable water quality objectives for waters designated for use as domestic or municipal  
25 supply, including 1.0 mg/ L for aluminum. *Id.* at III-3.00; 22 CCR § 64431, Table 64431-  
26 A.

27 36. The Basin Plan sets a water quality objective of 0.015 mg/L for lead where  
28 discharges are to domestic or municipal drinking waters. *Id.* at III-3.00.

1           37. EPA has established Parameter Benchmark Values as guidelines for  
2 determining whether a facility discharging industrial storm water has implemented the  
3 requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). EPA has established  
4 Parameter Benchmark Values for the following parameters, among others: total suspended  
5 solids (“TSS”) – 100 mg/L; oil & grease – 15 mg/L; pH – 6.0-9.0 s.u.; total organic carbon  
6 (“TOC”) – 110 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; copper – 0.0636 mg/L; zinc  
7 – 0.117 mg/L; and chemical oxygen demand (“COD”) – 120 mg/L. The State Board has  
8 also proposed a Benchmark Value for electrical conductance of 200 µmhos/cm.

9 **V. STATEMENT OF FACTS**

10           38. Defendant operates a recycling facility located at 2727 Second Street in Davis,  
11 California. The Facility receives, sorts, and processes a variety of materials for recycling.  
12 The Facility falls within SIC Code 5093. The Facility covers approximately seven (7) acres,  
13 the majority of which is paved and used for transporting, processing, and storing recyclable  
14 materials throughout the Facility. On information and belief, Plaintiff alleges that there are  
15 at least three large buildings located on the property. On information and belief, Plaintiff  
16 alleges that the receiving, sorting, and processing of recyclable materials occurs both inside  
17 and outside of these buildings. Recyclable materials are transported in and out of these  
18 buildings for storage in the paved areas of the Facility.

19           39. Defendant channels and collects storm water falling on the Facility to at least  
20 one (1) storm water discharge location. The Facility discharges storm water to the City of  
21 Davis’ storm drain system which empties into the Yolo Bypass which is part of the Delta.

22           40. Significant activities at the site take place outside and are exposed to rainfall.  
23 These activities include the storage and movement of raw materials and finished products,  
24 equipment used to clean and process the recyclable materials, the storage and use of vehicles  
25 and equipment for handling the materials; and the storage, handling, and disposal of waste  
26 materials. Loading and delivery of raw materials and finished products occurs outside.  
27 Vehicles enter and exit the Facility directly from and to public roads. These areas are  
28 exposed to storm water and storm flows due to the lack of overhead coverage, berms, and

1 other storm water controls.

2 41. Industrial machinery, equipment, and vehicles are operated and stored at the  
3 Facility in areas exposed to storm water flows. Plaintiff is informed and believes, and  
4 thereupon alleges, that such machinery, equipment, and vehicles leak contaminants such as  
5 oil, grease, diesel fuel, anti-freeze and hydraulic fluids that are exposed to storm water flows,  
6 and that such machinery, equipment, and vehicles track sediment and other contaminants  
7 throughout the Facility.

8 42. Plaintiff is informed and believes, and thereupon alleges that the storm water  
9 flows easily over the surface of the Facility and stored materials, collecting suspended  
10 sediment, dirt, oils, grease, and other pollutants as it flows toward the storm water channels  
11 and drains. Storm water and any pollutants contained in that storm water entering the  
12 channels or drains flows directly to the municipal storm drain system.

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

21 44. Since at least November 28, 2005, Defendant has taken samples or arranged  
22 for samples to be taken of storm water discharges at the Facility. The sample results were  
23 reported by the Facility in its annual reports submitted to the Regional Board. Defendant  
24 Davis Waste, through its agent, Operations Manager John Geisler, certified each of those  
25 annual reports pursuant to Sections A and C of the General Permit.

26 45. Since at least November 28, 2005, the Facility has detected TSS, iron,  
27 aluminum, and COD in storm water discharged from the Facility. Since at least January 30,  
28 2006, the Facility has detected zinc, copper, oil & grease, and TOC in storm water

1 discharged from the Facility. Since at least November 2, 2006, the Facility has detected  
 2 electrical conductance in storm water discharged from the Facility. Since at least October 1,  
 3 2007, the Facility has detected lead in storm water discharged from the Facility. Since at  
 4 least January 3, 2008, the Facility has detected pH in storm water discharged from the  
 5 Facility. Levels of these pollutants detected in the Facility's storm water have been in excess  
 6 of EPA's numeric parameter benchmark values and the State Board's proposed value for  
 7 electrical conductance. Levels of these pollutants detected in the Facility's storm water have  
 8 been in excess of water quality standards established in the Basin Plan.

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

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
1/3/2008	pH	6.44	6.5 – 8.5	South Outfall
4/7/2009	Aluminum	1.9 mg/L	1.0 mg/L	South Outfall
1/22/2009	Aluminum	2.16 mg/L	1.0 mg/L	South Outfall
1/3/2008	Aluminum	2.41 mg/L	1.0 mg/L	South Outfall
10/1/2007	Aluminum	1.09 mg/L	1.0 mg/L	South Outfall
11/2/2006	Aluminum	5.1 mg/L	1.0 mg/L	South Outfall
1/30/2006	Aluminum	5.6 mg/L	1.0 mg/L	South Outfall
4/7/2009	Iron	2.3 mg/L	0.3 mg/L	South Outfall
1/22/2009	Iron	4.04 mg/L	0.3 mg/L	South Outfall
1/3/2008	Iron	4.65 mg/L	0.3 mg/L	South Outfall
10/1/2007	Iron	5.73 mg/L	0.3 mg/L	South Outfall
2/22/2007	Iron	1.5 mg/L	0.3 mg/L	South Outfall
11/2/2006	Iron	7.9 mg/L	0.3 mg/L	South Outfall
1/30/2006	Iron	8.4 mg/L	0.3 mg/L	South Outfall
11/28/2005	Iron	1.5 mg/L	0.3 mg/L	South Outfall
4/7/2009	Zinc	0.33 mg/L	0.1 mg/L	South Outfall
1/22/2009	Zinc	0.865 mg/L	0.1 mg/L	South Outfall
1/3/2008	Zinc	0.253 mg/L	0.1 mg/L	South Outfall
10/1/2007	Zinc	0.662 mg/L	0.1 mg/L	South Outfall
2/22/2007	Zinc	0.15 mg/L	0.1 mg/L	South Outfall
11/2/2006	Zinc	0.74 mg/L	0.1 mg/L	South Outfall
1/30/2006	Zinc	0.4 mg/L	0.1 mg/L	South Outfall

10/1/2007	Lead	0.053 mg/L	0.015 mg/L	South Outfall
4/7/2009	Copper	0.38 mg/L	0.01 mg/L	South Outfall
1/3/2008	Copper	0.022 mg/L	0.01 mg/L	South Outfall
10/1/2007	Copper	0.022 mg/L	0.01 mg/L	South Outfall
11/2/2006	Copper	0.042 mg/L	0.01 mg/L	South Outfall
1/30/2006	Copper	0.026 mg/L	0.01 mg/L	South Outfall

47. The levels of total suspended solids in storm water detected by the Facility have exceeded the benchmark value for total suspended solids of 100 mg/L established by EPA. On information and belief, the levels of total suspended solids in storm water detected by the Facility have also exceeded the standard for suspended materials articulated in the Basin Plan. For example, on January 3, 2008, the level of total suspended solids measured by Defendant in the Facility's discharged storm water was 360 mg/L. That level of total suspended solids is more than three times the benchmark value for total suspended solids established by EPA. The Facility has also measured levels of total suspended solids in storm water discharged from the Facility in excess of EPA's benchmark value of 100 mg/L on October 1, 2007; November 2, 2006; January 30, 2006; and November 28, 2005.

48. The levels of oil & grease in storm water detected by the Facility have exceeded the benchmark value for oil & grease of 15 mg/L established by EPA as well as the standard for oil & grease articulated in the Basin Plan. For example, on January 3, 2008, the level of oil & grease measured by Defendant in the Facility's discharged storm water was 24.1 mg/L. That level of oil & grease is more than one and a half times the benchmark value for oil & grease established by EPA. The Facility also has measured levels of oil & grease in storm water discharged from the Facility in excess of EPA's benchmark value of 15 mg/L on January 30, 2006.

49. The levels of total organic carbon in storm water detected by the Facility have exceeded the benchmark value for total organic carbon of 110 mg/L established by EPA. The Facility measured levels of total organic carbon in excess of EPA's benchmark value of 110 mg/L on October 1, 2007; November 2, 2006; and January 30, 2006.

50. The levels of iron in storm water detected by the Facility have exceeded the benchmark value for iron of 1.0 mg/L established by EPA. For example, on November 2,

1 2006, the level of iron measured by Defendant in the Facility's discharged storm water was  
2 7.9 mg/L. That level of iron is nearly eight times the benchmark value for iron established  
3 by EPA. The Facility has also measure levels of iron in storm water discharged from the  
4 Facility in excess of EPA's benchmark value of 1.0 mg/L on April 7, 2009; January 22,  
5 2009; January 3, 2008; October 1, 2007; February 22, 2007; January 30, 2006; and  
6 November 28, 2005.

7 51. The levels of iron in storm water detected by the Facility also have exceeded  
8 the numeric standards for iron established in the Basin Plan. For example, on October 1,  
9 2007, the level of iron measured by Defendant in the Facility's discharged storm water was  
10 5.73 mg/L. That level of iron is nearly nineteen (19) times the trace water quality objective  
11 of 0.3 mg/L for iron established by the Regional Board in the Basin Plan. The Facility has  
12 also measured levels of iron in storm water discharged from the facility in excess of the trace  
13 water quality objective for iron established in the Basin Plan on April 7, 2009; January 22,  
14 2009; January 3, 2008; February 22, 2007; November 2, 2006; January 30, 2006; and  
15 November 28, 2005.

16 52. The levels of aluminum in storm water detected by the Facility have exceeded  
17 the benchmark value for aluminum of 0.75 mg/L established by EPA. For example, on  
18 January 30, 2006, the level of aluminum measured by Defendant in the Facility's discharged  
19 storm water was 5.6 mg/L. That level of aluminum is nearly seven and a half times the  
20 benchmark value for aluminum established by EPA. The Facility has also measured levels  
21 of aluminum in storm water discharged from the Facility in excess of EPA's benchmark  
22 value of 0.75 mg/L on April 7, 2009; January 22, 2009; January 3, 2008; October 1, 2007;  
23 February 22, 2007; November 2, 2006; and November 28, 2005.

24 53. The levels of aluminum in storm water detected by the Facility also have  
25 exceeded the numeric standards for aluminum incorporated into the Basin Plan. For  
26 example, on November 2, 2006, the level of aluminum measured by Defendant in the  
27 Facility's discharged storm water was 5.1 mg/L. That level of aluminum is more than five  
28 times the maximum contaminant level of 1.0 mg/L for aluminum incorporated by the

1 Regional Board into the Basin Plan. The Facility has also measured levels of aluminum in  
2 storm water discharged from the facility in excess of the trace water quality objective for  
3 iron established in the Basin Plan on April 7, 2009; January 22, 2009; January 3, 2008;  
4 October 1, 2007; and January 30, 2006.

5 54. The levels of chemical oxygen demand in storm water detected by the Facility  
6 have exceeded the benchmark value for chemical oxygen demand of 120 mg/L established  
7 by EPA. For example, on October 1, 2007, the level of chemical oxygen demand measured  
8 by Defendant in the Facility's discharged storm water was 460 mg/L. That level of chemical  
9 oxygen demand is nearly quadruple the benchmark value for chemical oxygen demand  
10 established by EPA. The Facility has also measure levels of chemical oxygen demand in  
11 storm water discharged from the Facility in excess of EPA's benchmark value of 120 mg/L  
12 on April 7, 2009; November 2, 2006; January 30, 2006; and November 28, 2005.

13 55. The levels of zinc in storm water detected by the Facility have exceeded the  
14 benchmark value for zinc of 0.117 mg/L established by EPA. For example, on January 22,  
15 2009, the level of zinc measured by Defendant in the Facility's discharged storm water was  
16 0.865 mg/L. That level of zinc is more than seven times the benchmark value for zinc  
17 established by EPA. The Facility has also measure levels of zinc in storm water discharged  
18 from the Facility in excess of EPA's benchmark value of 0.117 mg/L on April 7, 2009;  
19 January 3, 2008; October 1, 2007; February 22, 2007; November 2, 2006; and January 30,  
20 2006.

21 56. The levels of zinc in storm water detected by the Facility have exceeded the  
22 numeric standards for zinc established in the Basin Plan. For example, on November 2,  
23 2006, the level of zinc measured by Defendant in the Facility's discharged storm water was  
24 0.74 mg/L. That level of zinc is nearly seven and a half times the trace water quality  
25 objective of 0.1 mg/L for zinc established by the Regional Board in the Basin Plan. The  
26 Facility has also measured levels of zinc in storm water discharged from the facility in  
27 excess of the trace water quality objective for zinc established in the Basin Plan on April 7,  
28 2009; January 22, 2009; January 3, 2008; October 1, 2007; February 22, 2007; and January

1 30, 2006.

2 57. The levels of lead in storm water detected by the Facility have exceeded the  
3 numeric standards for lead established in the Basin Plan. For example, on October 1, 2007,  
4 the level of lead measured by Defendant in the Facility's discharged storm water was 0.053  
5 mg/L. That level of lead is more than three and a half times the water quality objective of  
6 0.015 mg/L for lead where discharges are to domestic or municipal drinking waters  
7 established by the Regional Board in the Basin Plan.

8 58. The levels of copper in storm water detected by the Facility have exceeded the  
9 benchmark value for copper of 0.0636 mg/L established by EPA. For example, on April 7,  
10 2009, the level of copper measured by Defendant in the Facility's discharged storm water  
11 was 0.38 mg/L. That level of copper is nearly six times the benchmark value for copper  
12 established by EPA.

13 59. The levels of copper in storm water detected by the Facility have exceeded the  
14 numeric standards for copper established in the Basin Plan. For example, on April 7, 2009,  
15 the level of copper measured by Defendant in the Facility's discharged storm water was 0.38  
16 mg/L. That level of copper is thirty-eight (38) times the trace water quality objective of 0.01  
17 mg/L for copper established by the Regional Board in the Basin Plan. The Facility has also  
18 measured levels of copper in storm water discharged from the Facility in excess of the trace  
19 water quality objective for copper established in the Basin Plan on January 3, 2008; October  
20 1, 2007; November 2, 2006; and January 30, 2006.

21 60. The electrical conductance levels detected by the Facility in its storm water  
22 have been greater than the benchmark value of 200  $\mu\text{mho/cm}$  proposed by the State Board.  
23 For example, on October 1, 2007, the electrical conductance level measured by Defendant in  
24 the Facility's discharged storm water was 470  $\mu\text{mho/cm}$ . That level of electrical  
25 conductance is more than double the State Board's proposed benchmark value. The Facility  
26 has also measured levels of electrical conductance in storm water discharged from the  
27 Facility in excess of the proposed benchmark value of 200  $\mu\text{mho/cm}$  on April 7, 2009 and  
28 November 2, 2006.



1           61.     On information and belief, Plaintiff alleges that since at least August 4, 2005,  
2 Defendant has failed to implement BAT and BCT at the Facility for its discharges of total  
3 suspended solids, electrical conductance, oil and grease, total organic carbon, iron,  
4 aluminum, chemical oxygen demand, zinc, lead, copper, and other pollutants. Section B(3)  
5 of the General Permit requires that Defendant implement BAT for toxic and  
6 nonconventional pollutants and BCT for conventional pollutants by no later than October 1,  
7 1992. As of the date of this Complaint, Defendant has failed to implement BAT and BCT.

8           62.     On information and belief, Plaintiff alleges that since at least August 4, 2005,  
9 Defendant has failed to implement an adequate Storm Water Pollution Prevention Plan for  
10 the Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP  
11 prepared for the Facility does not set forth site-specific best management practices for the  
12 Facility that are consistent with BAT or BCT for the Facility. Plaintiff is informed and  
13 believes, and thereupon alleges, that the SWPPP prepared for the Facility does not include an  
14 adequate assessment of potential pollutant sources, structural pollutant control measures  
15 employed by Defendant, a list of actual and potential areas of pollutant contact, or an  
16 adequate description of best management practices to be implemented at the Facility to  
17 reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges,  
18 Defendant's SWPPP has not been evaluated to ensure its effectiveness and revised where  
19 necessary to further reduce pollutant discharges. Plaintiff is informed and believes, and  
20 thereupon alleges, that the SWPPP does not include each of the mandatory elements required  
21 by Section A of the General Permit.

22           63.     Information available to CSPA indicates that as a result of these practices,  
23 storm water containing excessive pollutants is being discharged during rain events from the  
24 Facility to the City of Davis' storm drain system, which flows into the Yolo Bypass which is  
25 part of the Delta.

26           64.     On information and belief, Plaintiff alleges that Defendant has failed to collect  
27 storm samples during the first hour of discharge of a storm event as required by Section  
28 B(5)(a) of the General Permit. Plaintiff is informed and believes, and thereupon alleges that

1 Defendant failed to collect storm water samples during the first hour of the storm event that  
2 occurred on January 22, 2009.

3 65. On information and belief, Plaintiff alleges that Defendant failed to include  
4 laboratory reports in its 2007-2008 Annual Report as required by Section B(14) of the  
5 General Permit.

6 66. On information and belief, Plaintiff alleges that when Defendant measured oil  
7 & grease at concentrations greater than the EPA benchmark of 15 mg/L but certified visual  
8 observations at the same drop inlets showing no pollutants, Defendant failed to accurately  
9 make and report the monthly visual observations required by Section B(4) of the Permit.  
10 These failures to accurately make and report monthly visual observations occurred at the  
11 Facility's South Outfall on January 3, 2008 and January 30, 2006.

12 67. Plaintiff is informed and believes, and thereupon alleges, that Defendant has  
13 failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs consistent  
14 with Section A(9) of the General Permit.

15 68. Plaintiff is informed and believes that Defendant failed to submit to the  
16 Regional Board a true and complete annual report certifying compliance with the General  
17 Permit since at least July 1, 2005. Pursuant to Sections A(9)(d), B(14), and C(9), (10) of the  
18 General Permit, Defendant must submit an annual report, that is signed and certified by the  
19 appropriate corporate officer, outlining the Facility's storm water controls and certifying  
20 compliance with the General Permit. Plaintiff is informed and believes, and thereupon  
21 alleges, that Defendant has signed incomplete annual reports that purported to comply with  
22 the General Permit when there was significant noncompliance at the Facility.

23 69. Information available to Plaintiff indicates that Defendant has not fulfilled the  
24 requirements set forth in the General Permit for discharges from the Facility due to the  
25 continued discharge of contaminated storm water. Plaintiff is informed and believes, and  
26 thereupon alleges, that all of the violations alleged in this Complaint are ongoing and  
27 continuing.

28 **VI. CLAIMS FOR RELIEF**

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

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

71. The General Permit’s SWPPP requirements and Effluent Limitation B(3) require 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. Defendant has failed to implement BAT and BCT at the Facility for its discharges of total suspended solids, oil & grease, total organic carbon, electrical conductance, aluminum, iron, chemical oxygen demand, zinc, copper, lead, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

72. Each day since August 4, 2005, that Defendant has failed to develop and implement BAT and BCT in violation of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

73. Defendant has been in violation of the BAT/BCT requirements every day since August 4, 2005. Defendant continues to be in violation of the BAT/BCT requirements each day that it fails to develop and fully implement an adequate BAT/BCT for the Facility.

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

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

75. Discharge Prohibition A(2) of the General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the General Permit require that storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards contained in a Statewide Water Quality Control

1 Plan or the applicable Regional Board's Basin Plan.

2 76. Plaintiff is informed and believes, and thereupon alleges, that since at least  
3 August 4, 2005, Defendant has been discharging polluted storm water from the Facility in  
4 excess of applicable water quality standards in violation of the Discharge Prohibition A(2) of  
5 the General Permit.

6 77. During every rain event, storm water flows freely over exposed materials, waste  
7 products, and other accumulated pollutants at the Facility, becoming contaminated with  
8 suspended solids, oil & grease, total organic carbon, electrical conductance, aluminum, iron,  
9 chemical oxygen demand, zinc, copper, lead, and other unmonitored pollutants at levels  
10 above applicable water quality standards. The storm water then flows untreated from the  
11 Facility into the City of Davis' storm drain system, which flows into the Yolo Bypass which  
12 is part of the Delta.

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

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

20 80. Every day since at least August 4, 2005, that Defendant has discharged and  
21 continues to discharge polluted storm water from the Facility in violation of the General Permit  
22 is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These  
23 violations are ongoing and continuous.

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

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

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

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

13 84. Defendant has failed to update the Facility's SWPPP in response to the  
14 analytical results of the Facility's storm water monitoring.

15 85. Each day since August 4, 2005, that Defendant has failed to develop, implement  
16 and update an adequate SWPPP for the Facility is a separate and distinct violation of the  
17 General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

18 86. Defendant has been in violation of the SWPPP requirements every day since  
19 August 4, 2005. Defendant continues to be in violation of the SWPPP requirements each day  
20 that it fails to develop and fully implement an adequate SWPPP for the Facility.

21 **FOURTH CAUSE OF ACTION**

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

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

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

1 89. Defendant has failed to develop and implement an adequate monitoring and  
2 reporting program for the Facility. Defendant's ongoing failure to develop and implement  
3 an adequate monitoring and reporting program is evidenced by, *inter alia*, its failure to  
4 include laboratory reports with its annual reports.

5 90. Each day since August 4, 2005, that Defendant has failed to develop and  
6 implement an adequate monitoring and reporting program for the Facility in violation of the  
7 General Permit is a separate and distinct violation of the General Permit and Section 301(a)  
8 of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results  
9 are ongoing and continuous violations of the Act.

10 **FIFTH CAUSE OF ACTION**

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

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

15 92. Defendant has falsely certified compliance with the General Permit in each of  
16 the annual reports submitted to the Regional Board since at least August 4, 2005.

17 93. Each day since at least August 4, 2005 that Defendant has falsely certified  
18 compliance with the General Permit is a separate and distinct violation of the General Permit  
19 and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be in violation of  
20 the General Permit's certification requirement each day that it maintains its false certification  
21 of its compliance with the General Permit.

22 **VII. RELIEF REQUESTED**

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

- 24 a. Declare Defendant to have violated and to be in violation of the Act as  
25 alleged herein;
- 26 b. Enjoin Defendant from discharging polluted storm water from the Facility  
27 unless authorized by the Permit;
- 28 c. Enjoin Defendant from further violating the substantive and procedural  
requirements of the Permit;

1 d. Order Defendant to immediately implement storm water pollution control  
2 and treatment technologies and measures that are equivalent to BAT or BCT and prevent  
3 pollutants in the Facility's storm water from contributing to violations of any water quality  
4 standards;

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

8 f. Order Defendant to prepare a SWPPP consistent with the Permit's  
9 requirements and implement procedures to regularly review and update the SWPPP;

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

13 h. Order Defendant to pay civil penalties of up to \$32,500 per day per  
14 violation for all violations occurring through January 12, 2009, and up to \$37,500 per day per  
15 violation for all violations occurring after January 12, 2009, for each violation of the Act  
16 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40  
17 C.F.R. §§ 19.1 - 19.4.

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

20 j. Award Plaintiff's costs (including reasonable investigative, attorney, witness,  
21 compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

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

23 Dated: August 4, 2010

Respectfully submitted,

24 LOZEAU DRURY LLP

25

26 By: /s/ Michael R. Lozeau  
27 Michael R. Lozeau  
28 Attorneys 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](mailto:deltakeep@aol.com)

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

June 1, 2010

Paul Hart – President  
John Geisler – Operations Manager  
Davis Waste Removal Co., Inc.  
2727 2nd Street  
Davis, CA 95616

Paul Hart – President  
John Geisler – Operations Manager  
Davis Waste Removal Co., Inc.  
P.O. Box 1170  
Davis, CA 95617-1170

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

Dear Messrs Hart and Geisler:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“Act”) that CSPA believes are occurring at Davis Waste Removal Co., Inc., located at 2727 2nd Street in Davis, California (“Facility”). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Sacramento-San Joaquin River Delta (the “Delta”), and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as “Davis Waste”).

This letter addresses Davis Waste’s unlawful discharge of pollutants from the Facility into the City of Davis storm drain system, the Yolo Bypass, and the Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, State Water Resources Control Board (“State Board”), Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”). The Waste Discharge Identification Number (“WDID”) for the Facility listed on documents submitted to the State Board is 5S57I013120. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

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

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

## **I. Background.**

On April 17, 1997, Davis Waste filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Davis Waste certified that the Facility is classified under SIC code 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”). The Facility collects and discharges storm water from its approximately seven (7) acre industrial site into at least one (1) storm water discharge location at the Facility. The storm water discharged by Davis Waste is discharged to the City of Davis storm drain system which empties into the Yolo Bypass which is part of the Delta.<sup>1</sup>

The Regional Board has identified beneficial uses of the Central Valley Region’s waters and established water quality standards for the Delta in “The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin,” generally referred to as the Basin Plan. *See* [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf). The beneficial uses of these waters include, among others, water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. Basin Plan at II-1.00 – II-2.00. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking,... camping, boating,..., hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs peoples’ use of the Delta for contact and non-contact water recreation.

For the Delta, the Basin Plan establishes trace element water quality objectives for several metals, including 0.1 mg/L for zinc, 0.3 mg/L for iron, and 0.01 mg/L for copper. *Id.* at III-4.00.

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<sup>1</sup> *See* The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin, Figure III-1. The Yolo Bypass is adjacent to the Sacramento River Deep Water Channel on its northwest side. *See also* map at [http://ca.water.usgs.gov/user\\_projects/toxics/images/YoloBypassSidePic\\_Full.jpg](http://ca.water.usgs.gov/user_projects/toxics/images/YoloBypassSidePic_Full.jpg)

For waters like the delta that are designated for use as domestic or municipal supply (MUN), the Basin Plan incorporates maximum contaminant levels (MCLs) as the applicable water quality objectives, including 1.0 mg/L for Aluminum. 22 CCR § 64431. The Basin Plan also sets a water quality objective of 0.015 mg/L for lead where discharges are to domestic or municipal drinking waters. Basin Plan at III-3.00. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” *Id.* at III-8.01. The Basin Plan also includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-6.00. The Basin Plan provides that “[w]aters shall not contain chemical constituents in concentrations that adversely affect beneficial uses.” *Id.* at III-3.00. The Basin Plan states that “[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses. *Id.* at III-5.00. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at III-7.00. The Basin Plan provides that “[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* The Basin Plan strictly limits increases in turbidity in Central Valley waters. *Id.* at III-9.00. The Basin Plan states that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan provides that “[w]ater shall not contain...odor-producing substances in concentrations that impart undesirable...odors to domestic or municipal water supplies..., or that cause nuisance, or otherwise affect beneficial uses.” *Id.* at III-7.00. The Basin Plan establishes a standard for electrical conductivity in the Sacramento River and Delta of 450 µmhos/cm from April 1 through August 15, as well as less stringent standards for various low flow conditions. Table III-5, p. 2.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). 65 Fed. Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Davis Waste: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L; total organic carbon (“TOC”) – 110 mg/L; oil and grease (“O&G”) – 15 mg/L; aluminum – 0.75 mg/L; iron – 1 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L, and chemical oxygen demand (“COD”) – 120 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance of 200 µmho/cm.

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

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

Davis Waste has violated and continues to violate the terms and conditions of the General Industrial Storm Water Permit. Section 402(p) of the Act prohibits the discharge of storm water

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

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

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

Davis Waste has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, oil and grease, TOC, aluminum, iron, COD, zinc, copper, and possibly other pollutants in violation of the General Permit. Davis Waste’s sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988). *See also Inland Empire Waterkeeper v. Uniweb, Inc.*, 2008 U.S. Dist. LEXIS 75585, 26 (C.D. Cal., Aug. 6, 2008).

The following discharges of pollutants from the Facility include discharges of materials other than storm water and contained concentrations of pollutants in excess of narrative and numeric water quality standards established in the Basin Plan or promulgated by EPA and thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
1/3/2008	pH	6.44	6.5 – 8.5	South Outfall
4/7/2009	Aluminum	1.9 mg/L	1.0 mg/L	South Outfall
1/22/2009	Aluminum	2.16 mg/L	1.0 mg/L	South Outfall
1/3/2008	Aluminum	2.41 mg/L	1.0 mg/L	South Outfall
10/1/2007	Aluminum	1.09 mg/L	1.0 mg/L	South Outfall
11/2/2006	Aluminum	5.1 mg/L	1.0 mg/L	South Outfall
1/30/2006	Aluminum	5.6 mg/L	1.0 mg/L	South Outfall
4/7/2009	Iron	2.3 mg/L	0.3 mg/L	South Outfall
1/22/2009	Iron	4.04 mg/L	0.3 mg/L	South Outfall
1/3/2008	Iron	4.65 mg/L	0.3 mg/L	South Outfall
10/1/2007	Iron	5.73 mg/L	0.3 mg/L	South Outfall
2/22/2007	Iron	1.5 mg/L	0.3 mg/L	South Outfall
11/2/2006	Iron	7.9 mg/L	0.3 mg/L	South Outfall
1/30/2006	Iron	8.4 mg/L	0.3 mg/L	South Outfall
11/28/2005	Iron	1.5 mg/L	0.3 mg/L	South Outfall
4/7/2009	Zinc	0.33 mg/L	0.1 mg/L	South Outfall
1/22/2009	Zinc	0.865 mg/L	0.1 mg/L	South Outfall
1/3/2008	Zinc	0.253 mg/L	0.1 mg/L	South Outfall
10/1/2007	Zinc	0.662 mg/L	0.1 mg/L	South Outfall
2/22/2007	Zinc	0.15 mg/L	0.1 mg/L	South Outfall
11/2/2006	Zinc	0.74 mg/L	0.1 mg/L	South Outfall
1/30/2006	Zinc	0.4 mg/L	0.1 mg/L	South Outfall
10/1/2007	Lead	0.053 mg/L	0.015 mg/L	South Outfall
4/7/2009	Copper	0.38 mg/L	0.01 mg/L	South Outfall
1/3/2008	Copper	0.022 mg/L	0.01 mg/L	South Outfall
10/1/2007	Copper	0.022 mg/L	0.01 mg/L	South Outfall
11/2/2006	Copper	0.042 mg/L	0.01 mg/L	South Outfall
1/30/2006	Copper	0.026 mg/L	0.01 mg/L	South Outfall

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

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
4/7/2009	Specific Conductivity	350 µmho/cm	200 µmho/cm	South Outfall

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
4/7/2009	Aluminum	1.9 mg/L	0.75 mg/L	South Outfall
4/7/2009	Iron	2.3 mg/L	1.0 mg/L	South Outfall
4/7/2009	COD	230 mg/L	120 mg/L	South Outfall
4/7/2009	Zinc	0.33 mg/L	0.117 mg/L	South Outfall
4/7/2009	Copper	0.38 mg/L	0.0636 mg/L	South Outfall
1/22/2009	Aluminum	2.16 mg/L	0.75 mg/L	South Outfall
1/22/2009	Iron	4.04 mg/L	1.0 mg/L	South Outfall
1/22/2009	Zinc	0.865 mg/L	0.117 mg/L	South Outfall
1/3/2008	TSS	360 mg/L	100 mg/L	South Outfall
1/3/2008	Oil & Grease	24.1 mg/L	15 mg/L	South Outfall
1/3/2008	Aluminum	2.41 mg/L	0.75 mg/L	South Outfall
1/3/2008	Iron	4.65 mg/L	1.0 mg/L	South Outfall
1/3/2008	Zinc	0.253 mg/L	0.117 mg/L	South Outfall
10/1/2007	TSS	170 mg/L	100 mg/L	South Outfall
10/1/2007	Specific Conductivity	470 µmho/cm	200 µmho/cm	South Outfall
10/1/2007	TOC	130 mg/L	110 mg/L	South Outfall
10/1/2007	Aluminum	1.09 mg/L	0.75 mg/L	South Outfall
10/1/2007	Iron	5.73 mg/L	1.0 mg/L	South Outfall
10/1/2007	COD	460 mg/L	230 mg/L	South Outfall
10/1/2007	Zinc	0.662 mg/L	0.117 mg/L	South Outfall
2/22/2007	Aluminum	0.88 mg/L	0.75 mg/L	South Outfall
2/22/2007	Iron	1.5 mg/L	1.0 mg/L	South Outfall
2/22/2007	Zinc	0.15 mg/L	0.117 mg/L	South Outfall
11/2/2006	TSS	120 mg/L	100 mg/L	South Outfall
11/2/2006	Specific Conductivity	220 µmho/cm	200 µmho/cm	South Outfall
11/2/2006	TOC	150 mg/L	110 mg/L	South Outfall
11/2/2006	Aluminum	5.1 mg/L	0.75 mg/L	South Outfall
11/2/2006	Iron	7.9 mg/L	1.0 mg/L	South Outfall
11/2/2006	COD	340 mg/L	120 mg/L	South Outfall
11/2/2006	Zinc	0.74 mg/L	0.117 mg/L	South Outfall
1/30/2006	TSS	180 mg/L	100 mg/L	South Outfall
1/30/2006	Oil & Grease	15 mg/L	15 mg/L	South Outfall
1/30/2006	TOC	120 mg/L	110 mg/L	South Outfall
1/30/2006	Aluminum	5.6 mg/L	0.75 mg/L	South Outfall
1/30/2006	Iron	8.4 mg/L	1.0 mg/L	South Outfall
1/30/2006	COD	130 mg/L	120 mg/L	South Outfall
1/30/2006	Zinc	0.4 mg/L	0.117 mg/L	South Outfall
11/28/2005	TSS	120 mg/L	100 mg/L	South Outfall

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
11/28/2005	Aluminum	0.84 mg/L	0.75 mg/L	South Outfall
11/28/2005	Iron	1.5 mg/L	1.0 mg/L	South Outfall
11/28/2005	COD	120 mg/L	120 mg/L	South Outfall

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

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

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

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

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *Id.* "All storm water discharge locations shall be sampled." *Id.* "Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the

Annual Report why the first storm event was not sampled.” *Id.* Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). CSPA’s review of Davis Waste’s monitoring data indicates that it failed to collect a storm water sample during the first hour of discharge during the storm water event sampled on January 22, 2009. This failure to sample storm water in the first hour of discharge is a violation of General Permit, Section B(5)(a). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

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

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

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

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



CSPA's investigation of the conditions at the Facility and review of Davis Waste's Annual Reports indicate that Davis Waste has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Davis Waste has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Davis Waste has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least June 2, 2005, and will continue to be in violation every day that Davis Waste fails to prepare, implement, review, and update an effective SWPPP. Davis Waste is subject to penalties for violations of the Order and the Act occurring since June 2, 2005.

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

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event." Section B(14) requires all facility operators to submit a yearly Annual Report. The Annual Report "shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, [and] laboratory reports...." (Section B(14)). CSPA's review of Davis Waste's Annual Reports indicates that it failed to include laboratory reports in its 2007-2008 Annual Report. This failure to include the laboratory reports is a violation of General Permit, Section B(14). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

Additionally, Davis Waste's storm water data indicates high concentrations of oil and grease in its storm water on specific dates. At the same time, Davis Waste's annual reports certify that visual observations of storm water discharges at the same drop inlets showed no pollutants. Oil and grease at concentrations of 15 mg/L or greater will always be accompanied by a sheen on the water. Accordingly, CSPA believes that each day that Davis Waste certified through its staff that it did not observe any pollutants at times and locations where the Facility measured levels of oil & grease at 15 mg/L or greater, the claimed visual observations are inconsistent and inaccurate. Davis Waste misreported its visual observations on the following dates at the following discharge locations:

<b>Date</b>	<b>Discharge Location</b>	<b>Observer</b>
1/3/2008	South Outfall	John Geisler
1/30/2006	South Outfall	John Geisler

These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Davis Waste is not representative of the quality of the Facility's various storm water discharges, and/or Davis Waste failed to sample for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities" (Section B(5)(c)(ii)), CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since June 2, 2005.

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

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

In addition, in every Annual Report submitted since 2005, Davis Waste and its agent, John Geisler, inaccurately certified that the Facility was in compliance with the General Permit. Consequently, Davis Waste has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Davis Waste failed to submit a complete or correct report and every time Davis Waste or its agents falsely purported to comply with the Act. Davis Waste is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since June 2, 2005.

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

CSPA puts Davis Waste, Paul Hart, and John Geisler on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified

Paul Hart, John Geisler  
Davis Waste Removal Co., Inc.  
June 1, 2010  
Page 11 of 16

as also being responsible for the violations set forth above, CSPA puts Davis Waste, Paul Hart, and John Geisler on notice that it intends to include those persons in this action.

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

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

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

**VI. Counsel.**

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

Michael R. Lozeau  
Lozeau Drury LLP  
1516 Oak Street, Suite 216  
Alameda, California 94501  
Tel. (510) 749-9102  
michael@lozeaudrury.com

**VII. Penalties.**

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

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Davis Waste 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

Paul Hart, John Geisler  
Davis Waste Removal Co., Inc.  
June 1, 2010  
Page 12 of 16

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 black ink, appearing to read "Bill Jennings". The signature is written in a cursive style with a large, looping initial "B".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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

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

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

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

Pamela C. Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

## ATTACHMENT A

### Rain Dates, Davis Waste Removal Co., Inc., Davis, California

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

## ATTACHMENT A

### Rain Dates, Davis Waste Removal Co., Inc., Davis, California

December 6, 2007	February 23, 2008	February 10, 2009
December 7, 2007	February 24, 2008	February 11, 2009
December 17, 2007	March 27, 2008	February 13, 2009
December 18, 2007	March 29, 2008	February 14, 2009
December 19, 2007	October 3, 2008	February 15, 2009
December 20, 2007	October 4, 2008	February 16, 2009
December 27, 2007	October 30, 2008	February 17, 2009
December 28, 2007	October 31, 2008	February 22, 2009
December 29, 2007	November 1, 2008	February 23, 2009
January 3, 2008	November 3, 2008	March 1, 2009
January 4, 2008	November 26, 2008	March 2, 2009
January 5, 2008	November 28, 2008	March 3, 2009
January 6, 2008	November 29, 2008	March 4, 2009
January 7, 2008	November 30, 2008	April 7, 2009
January 8, 2008	December 1, 2008	April 8, 2009
January 9, 2008	December 2, 2008	April 9, 2009
January 10, 2008	December 5, 2008	May 1, 2009
January 11, 2008	December 6, 2008	May 2, 2009
January 12, 2008	December 8, 2008	May 3, 2009
January 13, 2008	December 9, 2008	May 4, 2009
January 14, 2008	December 14, 2008	May 5, 2009
January 15, 2008	December 15, 2008	June 2, 2009
January 16, 2008	December 16, 2008	June 4, 2009
January 17, 2008	December 18, 2008	June 5, 2009
January 18, 2008	December 19, 2008	October 13, 2009
January 19, 2008	December 20, 2008	October 14, 2009
January 21, 2008	December 21, 2008	October 15, 2009
January 22, 2008	December 22, 2008	October 19, 2009
January 23, 2008	December 24, 2008	November 17, 2009
January 24, 2008	December 25, 2008	November 20, 2009
January 25, 2008	December 26, 2008	November 27, 2009
January 26, 2008	December 31, 2008	December 6, 2009
January 27, 2008	January 5, 2009	December 7, 2009
January 29, 2008	January 21, 2009	December 10, 2009
January 31, 2008	January 22, 2009	December 11, 2009
February 2, 2008	January 23, 2009	December 12, 2009
February 3, 2008	January 24, 2009	December 13, 2009
February 19, 2008	January 30, 2009	December 16, 2009
February 20, 2008	February 5, 2009	December 18, 2009
February 21, 2008	February 6, 2009	December 20, 2009
February 22, 2008	February 8, 2009	December 21, 2009

## ATTACHMENT A

### Rain Dates, Davis Waste Removal Co., Inc., Davis, California

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