



**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)

May 11, 2009

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ray Tetreault, Director, President  
Virgil Koehne, General Manager  
Town of Discovery Bay  
1800 Willow Lake Road  
Discovery Bay, CA 94505

Randy D. Johnson, Facility Manager  
Southwest Water Company  
P.O. Box 1456  
17501 Highway 4  
Discovery Bay, CA 94505

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

Dear Sirs:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to ongoing violations of the Clean Water Act ("the Act") occurring at the Town of Discovery Bay Wastewater Treatment Facility #1 located at 2500 Channel Road, in Discovery Bay, California (the "Facility"). The WDID number for the Facility is 5S07I06506. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to the Town of Discovery Bay and the Southwest Water Company, Inc.<sup>1</sup>, as the responsible owners, officers, or operators of the Facility, hereinafter collectively referred to as "Town of Discovery Bay."

This letter addresses the Town of Discovery Bay's unlawful discharges of pollutants from the Facility to Older River, which ultimately discharges to the Sacramento - San Joaquin Delta.

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<sup>1</sup> At least until approximately July 2005, the Town of Discovery Bay contracted with Eco Resources, Inc. to manage the wastewater plant. CSPA is informed and believes that Eco Resources, Inc. was a subsidiary of Southwest Water Company, Inc., and that at some time in 2005 or 2006 the parent-subsidary relationship was dissolved and operations formerly conducted by Eco Resources were continued under the Southwest Water Company name.

This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit”).

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“the EPA”), 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 the Facility. Consequently, the Town of Discovery Bay is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the Town of Discovery Bay 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 Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background**

The Town of Discovery Bay Wastewater Treatment Facility is a 10-acre water treatment plant owned by the Town of Discovery Bay and co-operated by the Town of Discovery Bay and the Southwest Water Company, Inc. The Wastewater Treatment Plant discharges storm water into an unnamed drainage creek which discharges into Old River, which ultimately empties into the Sacramento-San Joaquin Delta. All receiving waters of discharge from the Facility are waters of the State and of the United States within the meaning of the Clean Water Act.

The Town of Discovery Bay submitted its application to be covered by the General Storm Water Permit on April 16, 2001 and identified the Facility as falling within Standard Industrial Classification code 4952 (“Sewage Treatment Facility”). The Town of Discovery Bay contracts with the Southwest Water Company to manage operations at the Facility, including compliance with the General Industrial Storm Water Permit.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento-San Joaquin Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. 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.” The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating 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-5.00

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters for pollutants likely to be found in storm water discharges from the Facility, including copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration).

The Regional Board has identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA 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 from the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and total organic carbon – 110 mg/L. The State Water Quality Control Board has also recently proposed adding a benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes are discharged from the Facility include aluminum (0.75 mg/L), copper (0.0636 mg/L), and zinc (0.117 mg/L).

## **II. Pollutant Discharges in Violation of the NPDES Permit**

The Town of Discovery Bay Wastewater Treatment Plant #1 has violated and continues to violate the terms and conditions of the General Permit by discharging storm water containing pollutants in violation of the terms of the 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 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.

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 Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedence of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

The Facility has been operating without adequate Best Management Practices ("BMPs") that meet the BAT/BCT requirement since at least April 16, 2001. The Regional Board has notified Facility personnel of its non-compliance on several occasions and has even ordered the Town of Discovery Bay to implement adequate BMPs and update the SWPPP. Despite these notifications and orders, the Facility continues to operate in violation of the General Permit.

On March 30, 2007, the Regional Board sent the Town of Discovery Bay a letter stating that the Board had reviewed the Facility's 2005-2006 Annual Report and found that the high levels of pollutants in storm water discharged from the Facility indicated that the BMPs at the site were inadequate. The Board ordered the Town of Discovery Bay to (1) identify sources of pollutants at the Facility; (2) review its BMPs; and (3) modify or implement BMPs to reduce or eliminate the discharge of pollutants to comply with the Permit. The Board also ordered the Town of Discovery Bay to modify its SWPPP and Monitoring Plan to reflect the improved BMPs. Based on the continuing discharge of high levels of pollutants in the Facility's storm water, CSPA is informed and believes that the Town of Discovery Bay failed to comply with the Board's directive.

On May 1, 2008, the Regional Board sent the Town of Discovery Bay another letter stating that the Board had reviewed the Facility's 2006-2007 Annual Report and found that site continued to discharge high levels of pollutants in excess of the EPA Parameter Benchmark Values and that the BMPs at the Facility "are not sufficient to reduce pollutant concentrations below benchmark values." Again, the Board ordered the Town of Discovery Bay to (1) review its previous Annual Reports to identify the consecutive years that the Facility exceeded benchmark values, (2) identify sources of pollutants at the Facility, (3) review current BMPs, and (4) modify BMPs or implement new BMPs to reduce or eliminate the excessive pollutant discharges. The Board again ordered the Town of Discovery Bay to modify its SWPPP and Monitoring Plan. Finally, the Board ordered the Town of Discovery Bay to submit a report addressing these issues by June 1, 2008. Based on the continuing discharge of high levels of pollutants in the Facility's storm water, CSPA is informed and believes that the Town of Discovery Bay again failed to comply with the Regional Board's order.

**A. Wastewater Treatment Plant #1 Has Discharged And Continues To Discharge, Storm Water Containing Pollutants in Violation of the Permit.**

The Town of Discovery Bay Wastewater Treatment Plant #1 has discharged and continues to discharge storm water with unacceptable levels of total suspended solids (TSS), specific conductivity, and total organic carbon (TOC) in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment

A. The Facility's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. *Discharges of Storm Water with Total Suspended Solids in Excess of Applicable Water Quality Criteria***

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
10/19/2004	#1	TSS	800 mg/L	100 mg/L
12/8/2004	#1	TSS	700 mg/L	100 mg/L
12/19/2005	#2	TSS	870 mg/L	100 mg/L
12/21/2005	#2	TSS	900 mg/L	100 mg/L
10/12/2007	#2	TSS	190 mg/L	100 mg/L

**2. *Discharges of Storm Water Containing Specific Conductivity at Levels in Excess of Applicable Water Quality Criteria***

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
10/19/2004	#1	Spec. Con.	800 µmho/cm	200 µmhos/cm
10/19/2004	#2	Spec. Con.	237 µmho/cm	200 µmhos/cm
12/8/2004	#1	Spec. Con.	1010 µmho/cm	200 µmhos/cm
12/8/2004	#2	Spec. Con.	496 µmho/cm	200 µmhos/cm
12/19/2005	#1	Spec. Con.	375 µmho/cm	200 µmhos/cm
12/19/2005	#2	Spec. Con.	1600 µmho/cm	200 µmhos/cm
2/13/2006	#1	Spec. Con.	2490 µmho/cm	200 µmhos/cm
2/26/2006	#1	Spec. Con.	452 µmho/cm	200 µmhos/cm
1/4/2008	#2	Spec. Con.	295 µmho/cm	200 µmhos/cm

**3. *Discharges of Storm Water Containing Total Organic Carbon at Concentrations in Excess of Applicable Water Quality Criteria***

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
12/19/2005	#2	TOC	334 mg/L	110 mg/L

**4. *A Review of Publicly-Available Documents Indicates that the Facility Has Discharged and Continues to Discharge Storm Water Containing Pollutants in Excess of the EPA Benchmark Values.***

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

CSPA is informed and believes that the Town of Discovery Bay has known that storm water discharged from the Facility contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least May 11, 2004. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since May 11, 2004, 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 Facility has discharged storm water containing impermissible levels of TSS, specific conductivity, TOC, and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT 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, the Town of Discovery Bay and Southwest Water Company are subject to penalties for violations of the General Industrial Storm Water Permit and the Act since May 11, 2004.

**B. *The Town of Discovery Bay and Southwest Water Company Have Failed to Implement an Adequate Monitoring & Reporting Plan.***

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan ("MRP") by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers "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. All storm water discharge locations shall be sampled."

Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that the Town of Discovery Bay has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Town of Discovery Bay has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, Town of Discovery Bay has failed to analyze its storm water samples for all pollutants required by the General Permit during each sampling event over the past five years. Third, Town of Discovery Bay has failed to conduct all required visual observations of non-storm water and storm water discharges at the Facility.

Each of these failures constitutes a separate and ongoing violation of the General 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, the Town of Discovery Bay is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since May 11, 2004. These violations are set forth in greater detail below:

***1. The Town of Discovery Bay has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.***

Based on its review of publicly available documents, CSPA is informed and believes that Town of Discovery Bay has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. In fact, during the 2003-2004 wet season, the Town of Discovery Bay did not collect *any* storm water samples from *any* of its discharge points. Despite the requirement that dischargers explain why less than two samples were collected from each discharge point, the Town of Discovery Bay did not offer any written explanation with its Annual Report. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act.

***2. Town of Discovery Bay Has Failed to Analyze Its Storm Water Discharges for All Pollutants Required by the General Permit.***

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires the Facility to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. The General Permit requires the Town of Discovery Bay to analyze its storm water for all pollutants likely to be present in significant concentrations. General Permit, § B(5)(c)(ii).

CSPA is informed and believes that Town of Discovery Bay has failed to monitor for aluminum, copper and zinc, which are likely to be present in the Facility’s storm water

discharges in significant quantities. The failure of the Town of Discovery Bay to monitor these pollutants extends back at least to May 11, 2004. The failure of the Town of Discovery Bay to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. *The Town of Discovery Bay Has Failed to Conduct All Necessary Visual Observations of All Discharge Points at the Facility.***

CSPA is informed and believes that the Town of Discovery Bay has failed to conduct visual observations at each of its discharge points at least once per month during each of the wet seasons during the last five years. In its 2003-2004 Annual Report, the Town of Discovery claimed to have conducted the visual observations, but it failed to include any of the data forms with its annual report; a lack of written confirmation that the visual observations were conducted constitutes a failure to complete the visual observations. In its 2004-2005 Annual Report, the Town of Discovery Bay again failed to conduct visual observations and blamed this failure on its contractor, Eco Resources, Inc. (which was part of Southwest Water Company). In its 2007-2008 Annual Report, the Town of Discovery Bay admitted that it failed to conduct visual observations in 6 of 8 months during the wet season. The failure of the Town of Discovery Bay to conduct all necessary visual observations extends back at least until May 11, 2004. The failure of the Town of Discovery Bay to conduct visual observations constitutes multiple separate and ongoing violations of the Permit and the Act.

**4. *The Town of Discovery Bay Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since May 11, 2004.***

CSPA is informed and believes that available documents demonstrate the consistent and ongoing failure to implement an adequate Monitoring Reporting Plan for the Facility in violation of Section B of the General Industrial Storm Water Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the Town of Discovery Bay is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since May 11, 2004.

**C. *The Town of Discovery Bay Has Failed to Implement BAT and BCT.***

Effluent Limitation B(3) of the General Industrial Storm Water 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). CSPA's investigation indicates that the Town of Discovery Bay has not implemented BAT and BCT at the Facility for the discharges of TSS, specific conductivity, and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.



To meet the BAT/BCT requirement of the General Permit, Town of Discovery Bay must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Town of Discovery Bay must evaluate improved BMPs including, but not limited to, the potential to retain and reuse all storm water collected at the Facility and to cease storm water discharges altogether. Short of ceasing all storm water discharges at the Facility, the Town of Discovery must improve housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, reduce erosion at the site, and treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes). The Town of Discovery Bay has failed to implement such measures adequately.

The Town of Discovery Bay was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the Facility has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that Facility fails to implement BAT and BCT. The Town of Discovery Bay is subject to penalties for violations of the Order and the Act occurring since May 11, 2004.

**D. The Town of Discovery Bay Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop and implement 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 Order 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 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 also 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 waterbodies, 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)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate it has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. On several occasions, the Regional Board has informed the Town of Discovery Bay that the BMPs and SWPPP are inadequate. Yet, the Town of Discovery Bay has failed to evaluate the effectiveness of the BMPs and to revise the SWPPP as necessary.

The Town of Discovery Bay has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that they fail to develop and implement an effective SWPPP. The Town of Discovery Bay is subject to penalties for violations of the Order and the Act occurring since May 11, 2004.

**E. The Town of Discovery Bay Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, the Facility is discharging elevated levels of total suspended solids, specific conductivity, TOC, and other pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, the Town of Discovery Bay is required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of

becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the Town of Discovery Bay was aware of high levels of these pollutants prior to May 11, 2004. Likewise, the Town of Discovery Bay has never filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9).

The Town of Discovery Bay has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since May 11, 2004, and will continue to be in violation every day that they fail to prepare and submit the requisite reports, receives approval from the Regional Board and amends the SWPPP to include approved BMPs. The Town of Discovery Bay is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since May 11, 2004.

**F. The Town of Discovery Bay Failed to File Timely, True and Correct 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).

CSPA's investigation indicates that the Town of Discovery Bay has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. As indicated above, the Town of Discovery Bay has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, the Town of Discovery Bay has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time they submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. For example, Board has issued the Town of Discovery Bay at least three Notices of Non-Compliance in the last five years (on August 11, 2005, August 17, 2006 and on August 1, 2008) because the Town of Discovery Bay had failed to submit its Annual Reports by July 1st each year.

The failure to submit true, complete and timely reports constitutes continuous and ongoing violations of the Permit and the Act. The Town of Discovery Bay is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since May 11, 2004.

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

CSPA puts the Town of Discovery Bay and Southwest Water Company 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 the Town of Discovery Bay and Southwest Water Company on notice that it intends to include those persons in this action.

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

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

### **V. Counsel**

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

Andrew L. Packard  
Law Offices of Andrew L. Packard  
319 Pleasant Street  
Petaluma, California 94952  
(707) 763-7227

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

### **VI. 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 the Town of Discovery Bay and Southwest Water Company 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.

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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 the Town of Discovery Bay and Southwest Water Company and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies 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 black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style with a prominent loop at the end.

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

Laura Yoshii  
Acting Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

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

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

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

William K. Dix, Agent For Service Of Process  
Southwest Water Company  
624 S. Grand Avenue, Suite 2900  
Los Angeles, CA 90017

**ATTACHMENT A**  
**Notice of Intent to File Suit, Town of Discovery Bay Wastewater Treatment Plant**  
**Significant Rain Events,\* May 11, 2004-May 11, 2009**

May	28	2004	March	29	2005	March	20	2006
Sep.	19	2004	April	03	2005	March	25	2006
Oct.	17	2004	April	08	2005	March	27	2006
Oct.	19	2004	April	23	2005	March	28	2006
Oct.	20	2004	April	27	2005	March	29	2006
Oct.	23	2004	April	28	2005	March	31	2006
Oct.	26	2004	May	04	2005	April	02	2006
Nov.	03	2004	May	05	2005	April	03	2006
Nov.	10	2004	May	08	2005	April	04	2006
Nov.	11	2004	May	09	2005	April	07	2006
Nov.	12	2004	June	08	2005	April	09	2006
Nov.	13	2004	June	09	2005	April	10	2006
Nov.	27	2004	June	16	2005	April	11	2006
Dec.	06	2004	Nov.	27	2005	April	12	2006
Dec.	07	2004	Nov.	28	2005	April	16	2006
Dec.	08	2004	Dec.	01	2005	May	21	2006
Dec.	27	2004	Dec.	17	2005	May	22	2006
Dec.	28	2004	Dec.	18	2005	Oct.	05	2006
Dec.	29	2004	Dec.	19	2005	Nov.	01	2006
Dec.	30	2004	Dec.	21	2005	Nov.	02	2006
Dec.	31	2004	Dec.	22	2005	Nov.	03	2006
Jan.	01	2005	Dec.	25	2005	Nov.	11	2006
Jan.	02	2005	Dec.	26	2005	Nov.	13	2006
Jan.	03	2005	Dec.	28	2005	Nov.	26	2006
Jan.	07	2005	Dec.	30	2005	Dec.	08	2006
Jan.	08	2005	Dec.	31	2005	Dec.	09	2006
Jan.	10	2005	Jan.	01	2006	Dec.	10	2006
Jan.	11	2005	Jan.	02	2006	Dec.	12	2006
Jan.	25	2005	Jan.	07	2006	Dec.	18	2006
Jan.	26	2005	Jan.	14	2006	Dec.	19	2006
Jan.	28	2005	Jan.	17	2006	Dec.	20	2006
Feb.	14	2005	Jan.	18	2006	Dec.	21	2006
Feb.	15	2005	Jan.	28	2006	Dec.	26	2006
Feb.	16	2005	Jan.	30	2006	Jan.	28	2007
Feb.	18	2005	Feb.	17	2006	Feb.	08	2007
Feb.	19	2005	Feb.	18	2006	Feb.	09	2007
Feb.	21	2005	Feb.	26	2006	Feb.	10	2007
Feb.	27	2005	Feb.	27	2006	Feb.	12	2007
March	01	2005	Feb.	28	2006	Feb.	22	2007
March	02	2005	March	02	2006	Feb.	25	2007
March	03	2005	March	03	2006	Feb.	26	2007
March	04	2005	March	05	2006	Feb.	27	2007
March	19	2005	March	06	2006	March	20	2007
March	20	2005	March	07	2006	March	26	2007
March	21	2005	March	10	2006	April	11	2007
March	22	2005	March	12	2006	April	14	2007
March	23	2005	March	14	2006	April	21	2007
March	27	2005	March	17	2006	April	22	2007

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

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Sep.	22	2007	Feb.	23	2008	Feb.	10	2009
Oct.	10	2007	Feb.	24	2008	Feb.	11	2009
Oct.	12	2007	Oct.	04	2008	Feb.	12	2009
Nov.	10	2007	Oct.	30	2008	Feb.	13	2009
Nov.	11	2007	Oct.	31	2008	Feb.	14	2009
Dec.	06	2007	Nov.	01	2008	Feb.	15	2009
Dec.	07	2007	Nov.	03	2008	Feb.	16	2009
Dec.	17	2007	Nov.	26	2008	Feb.	17	2009
Dec.	18	2007	Dec.	14	2008	Feb.	18	2009
Dec.	20	2007	Dec.	15	2008	Feb.	19	2009
Jan.	03	2008	Dec.	16	2008	Feb.	21	2009
Jan.	04	2008	Dec.	21	2008	Feb.	22	2009
Jan.	05	2008	Dec.	24	2008	Feb.	23	2009
Jan.	08	2008	Jan.	02	2009	March	01	2009
Jan.	10	2008	Jan.	15	2009	March	02	2009
Jan.	21	2008	Jan.	21	2009	March	03	2009
Jan.	22	2008	Jan.	22	2009	March	04	2009
Jan.	23	2008	Jan.	23	2009	March	05	2009
Jan.	24	2008	Jan.	24	2009	March	10	2009
Jan.	26	2008	Jan.	29	2009	March	12	2009
Jan.	27	2008	Jan.	31	2009	March	21	2009
Jan.	29	2008	Feb.	02	2009	March	24	2009
Jan.	31	2008	Feb.	03	2009	April	07	2009
Feb.	02	2008	Feb.	04	2009	April	09	2009
Feb.	03	2008	Feb.	05	2009	April	10	2009
Feb.	19	2008	Feb.	06	2009	May	1	2009
Feb.	21	2008	Feb.	07	2009			
Feb.	22	2008	Feb.	08	2009			

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.