



**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

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September 29, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Neal Road Recycling & Waste Facility  
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Paradise, CA 95969

Neal Road Landfill  
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1023 Neal Road  
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**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

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Dear Sir and Madam:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the Neal Road Landfill facility located at 1023 Neal Road, Chico, CA 95927 ("the Facility"). The Facility is owned by Butte County and operated by the Department of Public Works collectively referred to herein as "DPW". The WDID identification number for the Facility is 5R04I000249. 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 River, its tributaries, and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Neal Road Landfill facility.

This letter addresses DPW's unlawful discharges of pollutants from the Facility directly and indirectly through unnamed streams into Butte Creek, all of which ultimately drain to the Sacramento River and the Sacramento-San Joaquin Delta. 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” or “General 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, DPW 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 DPW 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 Neal Road Landfill is classified as a landfill facility under Standard Industrial Classification (“SIC”) code 4953. The Facility is a Class III landfill primarily used to dispose of municipal solid waste and inert industrial waste; other current activities at the Facility include recycling, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility. The Facility is not a member of any monitoring group. The Facility collects and discharges storm water from its roughly 189-acre industrial site through at least four discharge points to storm water drains which drain to Butte Creek and, ultimately, to the Delta. On March 6, 1992, and again on June 4, 1997, DPW submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit.

CSPA is informed and believes that DPW has failed to comply the terms of the General Permit by discharging storm water containing pollutants, failing to implement an adequate monitoring and reporting plan, failing to implement best management practices (“BMPs”) using best available technology (“BAT”) and best conventional technology (“BCT”), failing to develop and implement an adequate Storm Water Pollution Prevention Plan, failing to address discharges contributing to exceedances of Water Quality Standards, and failing to file timely, true and correct annual reports with the Regional Water Quality Control Board.

CSPA is particularly concerned about these ongoing unlawful discharges because DPW has been repeatedly warned by the Regional Water Quality Control Board that storm water runoff from the facility exceeds US EPA benchmark values for common

storm water pollutants, and that the General Permit requires discharges to implement best management practices using best available pollutant control technology and best available pollutant control technology to reduce or eliminate the discharge of pollutants.<sup>1</sup> It is CSPA's intention, through this letter, to bring these violations to DWP's attention so that they may be resolved in a comprehensive and efficient manner.

The Central Valley Regional Water Quality Control Board (the "Regional Board" or "Board") has established water quality standards for the Sacramento River and the 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." For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L) 0.01 mg/L for arsenic, 0.1 mg/L for copper, 0.3 mg/L for iron, and 0.1 mg/L for zinc. *Id.* at III-4.00. The Basin Plan states that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L." *Id.* at III-3.00. 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

The Basin Plan also provides that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs)." *Id.*, at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for the following: zinc – 5.0 mg/L; copper – 1.0 mg/L; and iron – 0.3 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1.0 mg/L (primary) and 0.2 mg/L (secondary); arsenic – 0.01 mg/L (primary); cadmium – 0.005 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; mercury 0.002 mg/L (primary); selenium – 0.05 mg/L (primary); and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

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<sup>1</sup> CSPA is aware of at least three letters from the California Regional Water Quality Control Board, Central Valley Region, that were sent to the DPW on September 24, 2004, May 23, 2007, and December 15, 2009, warning Neal Road of benchmark exceedances in its storm water discharges and the need for the employment of BMPs, BATs, and BCTs.

The 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: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 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) (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 also 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 by DPW: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; magnesium – 0.0636 mg/L; and nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board also proposed adding a benchmark level for specific conductance of 200 µmho/cm.

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

DPW 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 Industrial Storm Water Permit. Discharge Prohibition A(1) of the General Industrial Storm Water 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 Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

The General Permit further 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 exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

Based on its review of available public documents, CSPA is informed and believes that DPW failed to comply with the requirements of the General Permit and has continued to operate in violation of the General Permit despite the Regional Board’s repeated warnings and notices of violation issued to DPW. DPW’s ongoing violations are discussed further below.

**A. DPW Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

DPW has discharged and continues to discharge stormwater with unacceptable levels of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, and magnesium 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. DPW’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater 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 Neal Road 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 Containing pH levels in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	pH	9.52	6.0-9.0

**2. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	TSS	180 mg/L	100 mg/L
12/22/2005	SW-1	West Discharge	TSS	140 mg/L	100 mg/L
02/10/2007	SW-1	West Discharge	TSS	850 mg/L	100 mg/L
03/26/2007	SW-4	North Discharge	TSS	430 mg/L	100 mg/L
03/26/2007	MD4-S	Unknown	TSS	880 mg/L	100 mg/L
01/04/2008	SW-1	West Discharge	TSS	360 mg/L	100 mg/L
01/04/2008	SW-3A	North Discharge	TSS	550 mg/L	100 mg/L
01/12/2010	SW-5	Stockpile Discharge	TSS	560 mg/L	100 mg/L
01/12/2010	NR-SW05	Unknown	TSS	120 mg/L	100 mg/L

**3. Discharges of Storm Water Containing Specific Conductivity (SC) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
01/04/2008	SW-3	South Discharge	SC	560 µmho/cm	200 µmho/cm
02/09/2010	SW-5	Stockpile Discharge	SC	212 µmho/cm	200 µmho/cm

**4. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
03/26/2007	MD4-S	Unknown	O&G	21 mg/L	15 mg/L

**5. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	Fe	2.2 mg/L	1.0 mg/L
12/22/2005	SW-1	West Discharge	Fe	9.1 mg/L	1.0 mg/L
02/10/2007	SW-1	West Discharge	Fe	54 mg/L	1.0 mg/L
03/26/2007	SW-4	North Discharge	Fe	47 mg/L	1.0 mg/L
01/04/2008	SW-1	West Discharge	Fe	39 mg/L	1.0 mg/L
01/04/2008	SW-3	South Discharge	Fe	3.5 mg/L	1.0 mg/L
01/04/2008	SW-3A	North Discharge	Fe	36 mg/L	1.0 mg/L
02/17/2009	SW-1	West Discharge	Fe	5.2 mg/L	1.0 mg/L
01/12/2010	SW-5	Stockpile Discharge	Fe	51 mg/L	1.0 mg/L
01/12/2010	NR-SW01	Unknown	Fe	1.2 mg/L	1.0 mg/L
01/12/2010	NR-SW02	Unknown	Fe	2.9 mg/L	1.0 mg/L
01/12/2010	NR-SW03	Unknown	Fe	2.2 mg/L	1.0 mg/L
01/12/2010	NR-SW04	Unknown	Fe	2.5 mg/L	1.0 mg/L
01/12/2010	NR-SW05	Unknown	Fe	11 mg/L	1.0 mg/L
02/09/2010	SW-1	West Discharge	Fe	1.1 mg/L	1.0 mg/L
02/09/2010	SW-5	Stockpile Discharge	Fe	4.0 mg/L	1.0 mg/L
03/03/2010	SW-5	Stockpile Discharge	Fe	1.1 mg/L	1.0 mg/L

**6. Discharges of Storm Water Containing Nitrate + Nitrite Nitrogen (N+N) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
12/22/2005	SW-1	West Discharge	N+N	1.5 mg/L	0.68 mg/L
02/10/2007	SW-1	West Discharge	N+N	0.74 mg/L	0.68 mg/L

**7. Discharges of Storm Water Containing Magnesium (Mg) at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

Date	Outfall Name	Outfall Location	Parameter	Concentration in Discharge	EPA Benchmark Value
11/08/2005	SW-3	South Discharge	Mg	7.1 mg/L	0.0636 mg/L
12/22/2005	SW-1	West Discharge	Mg	5.8 mg/L	0.0636 mg/L
02/17/2009	SW-1	West Discharge	Mg	5.5 mg/L	0.0636 mg/L
02/17/2009	MD4-S	Unknown	Mg	7.6 mg/L	0.0636 mg/L
01/12/2010	SW-5	Stockpile Discharge	Mg	27 mg/L	0.0636 mg/L
02/09/2010	SW-1	West Discharge	Mg	6.5 mg/L	0.0636 mg/L
02/09/2010	SW-5	Stockpile Discharge	Mg	20 mg/L	0.0636 mg/L

CSPA's investigation, including its review of DPW's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the Basin Plan's benchmark for pH, indicates that DPW has not implemented BAT and BCT at the Facility for its discharges of pH, total suspended solids (TSS), specific conductivity (SC), oil and grease (O&G), iron (Fe), nitrate + nitrite nitrogen (N+N), and magnesium (Mg), and other pollutants. DPW was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. DPW is discharging polluted storm water associated with its industrial operations in violation of the General Permit without having implemented BAT and BCT.

CSPA is informed and believes that DPW has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least September 29, 2005. 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 September 29, 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 DWP has discharged storm water containing impermissible levels of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, and magnesium 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 stormwater 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, DWP is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 29, 2005.

**B. DPW Has 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 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 “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. 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. Facilities, such as DPW, designated under SIC 4953 are also required to sample for iron. 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 DPW has failed to develop and implement an adequate Monitoring & Reporting Plan. First, DPW 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, DPW has failed to analyze its storm water for all pollutants likely to be present in significant quantities in its storm water discharge. 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, DPW is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 29, 2005. These violations are set forth in greater detail below.

**1. DPW Has Failed to Collect at Least Two Storm Water Samples From Each Facility Discharge Point During Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that DPW has failed to collect storm water samples from all discharge points at the Facility for at least two storm events during each Wet Season as required by Section B(5)(a). Based on the annual reports, and attached laboratory testing documents filed by DWP over the past five years, the facility has made a practice of reporting the existence of fewer discharge points than actually exist at the facility. For example, in its 2009 and 2008 annual reports, DWP reported that there is only one storm water discharge location at the facility, and attached laboratory reports showing that samples were collected and analyzed from at least four locations (SW-1, SW-2, SW-3, and MD4-s in 2009 and SW-1, SW-2, SW-3, and SW-3A in 2008). Likewise DWP reported having only 3 discharge locations at the Neal Road facility in its 2007 annual report, and 2 in the 2006 report, while the attached laboratory reports show samples were collected and analyzed from four and two locations respectively. Moreover, DWP has routinely failed to collect and analyze more than one sample from any given discharge location in the past five years. For example, the 2006 annual report shows that for the “first storm event” on November 11, 2005 samples were collected and analyzed from SW-2 and SW-3, but not from SW-1, whereas a sample was collected and analyzed for SW-1, but not SW-2 and SW-3 for the second event on December 22, 2005. Notably, no samples were ever collected or analyzed for discharge location SW-4 during the 2005-2006 wet season, but samples were collected from that location for the second event of the 2006-2007 wet season (March 26, 2007). Similar omissions are found in DWP’s 2007, 2008, 2009 and 2010 annual reports. Based on CSPA’s review of publicly available rainfall data from this region and a review of the historic rainfall monitoring station data, any assertion that there were less than two qualifying storm producing a discharge from each of the facility’s discharge locations during any of the wet seasons over the past five years is quite simply very difficult to believe, particularly considering that in DPW admits in the 2010 annual report that even though only one sample was collected and analyzed, “a second storm water discharge did follow the initial discharge... [but] a sample was not collected”. DWP’s failure to comply with the sampling requirements of the Act and the Permit constitute separate and ongoing violations of the Permit and the Act.

**2. DWP Has Failed to Analyze Its Storm Water for All Pollutants Likely to Be Present in Significant Quantities in Its Storm Water Discharge.**

Section B(5)(c)(i) 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. Facilities, such as DPW, designated under SIC 4953 are also required to sample for iron. Based on a review of DWP's Annual Reports submitted to the Regional Board, DWP has failed to test storm water samples for all of the required constituents. For example, the storm water sample collected from discharge location SW-4 during the 2006-2007 Wet Season was not tested for pH and specific conductivity.

In addition to the constituents that Section B(5)(c)(i) requires dischargers to test for, Section B(5)(c)(ii) of the General Permit also requires dischargers to analyze storm water samples for all "[t]oxic chemicals and other pollutants that are *likely to be present* in storm water discharges in significant quantities." Based on a review of DWP's Annual Reports submitted to the Regional Board over the past five years, CSPA believes that DWP has failed to monitor for at least nine pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, lead, manganese, mercury, nickel, nitrate+nitrite and zinc. This belief is supported by the fact that in 2005, 2007, 2009, and 2010 magnesium and nitrate+nitrite were found in the Facility's storm water at levels in excess of applicable EPA benchmarks.

Each failure to monitor for each separate parameter constitutes a separate violation of the General Industrial Storm Water Permit and the Act. The Facility's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and Act.

**3. DWP Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 29, 2005.**

CSPA is informed and believes that available documents demonstrate DWP's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan 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, DWP is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since September 29, 2005.

**C. DWP 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 DWP has not implemented BAT and BCT at the Facility for its discharges of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, magnesium and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

On September 24, 2004, May 23, 2007, and December 15, 2009, the Storm Water and Water Certification Unit of the Regional Board sent letters to DWP warning it that U.S. EPA benchmarks had been exceeded at the facility. The Regional Board noted that the "storm water samples indicate that the current BMPs implemented at the site are not sufficient to reduce pollutant concentrations below benchmark levels." The Regional Board ordered that additional BMPs must be implemented to reduce or eliminate the discharge of pollutants from the site. The Board further ordered DWP to modify its existing Storm Water Pollution Prevention Plan ("SWPPP"). Based on available documents, CSPA is informed and believes that DWP failed to implement any additional BMPs and/or to inform the Regional Board of any such improvements or revisions to the SWPPP.

To meet the BAT/BCT requirement of the General Permit, DWP 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 DWP must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. DWP has failed to implement such measures adequately.

DWP was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, DWP 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 DWP fails to implement BAT and BCT. DWP is subject to penalties for violations of the Order and the Act occurring since September 29, 2005.

**D. DWP 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, implement, and update an adequate 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 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 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 that DWP has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. DWP has failed to

evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. DWP 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 DWP fails to develop and implement an effective SWPPP. DWP is subject to penalties for violations of the Order and the Act occurring since September 29, 2005.

**E. DWP 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, DWP is discharging elevated levels of pH, total suspended solids, specific conductivity, oil and grease, iron, nitrate + nitrite nitrogen, and magnesium that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, DWP was 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. DWP has failed to do so.

Based on CSPA's review of available documents, DWP was aware of high levels of these pollutants prior to September 29, 2005. Nevertheless, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). DWP 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 September 29, 2005, and will continue to be in violation every day that DWP fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. DWP is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since September 29, 2005.

**F. DWP Has 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 DWP 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, DWP has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, DWP has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time DWP submitted an incomplete, untimely, or incorrect annual report, that falsely certified compliance with the Act in the past years. DWP's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. DWP is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since September 29, 2005.

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

CSPA puts Mr. Mike Crump, Shawn H. O'Brien, Eric Dugger, and the Department of Public Works on notice that they are the persons or parties responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts DWP 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:

Notice of Violation and Intent To File Suit  
September 29, 2010  
Page 16 of 16

Robert J. Tuerck (Counsel for Service)  
Jackson & Tuerck  
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P.O. Box 148  
Quincy, CA 95971  
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E-mail: Andrew@PackardLawOffices.com

## **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 Mr. Joe Matz, and DWP to civil penalties of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. 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 DWP and its 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,



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

Neal Road Landfill  
Butte County Public Works  
7 County Center Drive  
Oroville, CA 95965

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

Mike Crump, Director  
Neal Road Landfill  
P.O. Box 5026  
Chico, CA 95927

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

Shawn H. O'Brien, Facility Operator  
Neal Road Recycling & Waste Facility  
7 County Center Drive  
Oroville, CA 95965

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

Eric Dugger, Facility Contact  
Neal Road Recycling & Waste Facility  
1023 Neal Road  
Paradise, CA 95969

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

Neal Road Landfill  
1023 Neal Road  
Paradise, CA 95969

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**Butte County Department of Public Works, Neal Road Landfill**  
**Significant Rain Events, September 29, 2005 – September 29, 2010**

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

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**Butte County Department of Public Works, Neal Road Landfill**  
**Significant Rain Events, September 29, 2005 – September 29, 2010**

February 24, 2007	January 24, 2008	February 15, 2009
February 26, 2007	January 25, 2008	February 16, 2009
March 26, 2007	January 26, 2008	February 17, 2009
April 11, 2007	January 27, 2008	February 18, 2009
April 14, 2007	January 31, 2008	February 22, 2009
April 21, 2007	February 2, 2008	February 23, 2009
April 22, 2007	February 20, 2008	February 24, 2009
May 1, 2007	February 21, 2008	February 25, 2009
May 2, 2007	February 22, 2008	February 26, 2009
May 4, 2007	February 23, 2008	March 1, 2009
June 5, 2007	February 24, 2008	March 2, 2009
July 18, 2007	March 19, 2008	March 3, 2009
September 22, 2007	March 29, 2008	March 21, 2009
September 23, 2007	April 22, 2008	March 22, 2009
September 28, 2007	April 23, 2008	April 9, 2009
October 5, 2007	October 3, 2008	April 10, 2009
October 10, 2007	October 4, 2008	May 1, 2009
October 16, 2007	October 30, 2008	May 2, 2009
October 19, 2007	October 31, 2008	May 3, 2009
November 10, 2007	November 1, 2008	May 4, 2009
November 11, 2007	November 3, 2008	June 3, 2009
December 3, 2007	December 14, 2008	June 4, 2009
December 4, 2007	December 15, 2008	September 14, 2009
December 6, 2007	December 18, 2008	October 13, 2009
December 7, 2007	December 21, 2008	October 19, 2009
December 16, 2007	December 24, 2008	November 17, 2009
December 17, 2007	December 25, 2008	November 20, 2009
December 19, 2007	January 2, 2009	November 27, 2009
December 20, 2007	January 22, 2009	December 11, 2009
December 28, 2007	January 23, 2009	December 12, 2009
December 29, 2007	January 24, 2009	December 13, 2009
January 3, 2008	January 25, 2009	December 16, 2009
January 4, 2008	February 6, 2009	December 20, 2009
January 5, 2008	February 8, 2009	December 21, 2009
January 6, 2008	February 9, 2009	December 27, 2009
January 8, 2008	February 10, 2009	December 29, 2009
January 10, 2008	February 11, 2009	December 30, 2009
January 12, 2008	February 12, 2009	January 1, 2010
January 21, 2008	February 13, 2009	January 12, 2010

**ATTACHMENT A**  
**Notice of Intent to File Suit**  
**Butte County Department of Public Works, Neal Road Landfill**  
**Significant Rain Events, September 29, 2005 – September 29, 2010**

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