



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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September 22, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Larry Beigh, Owner
Valley Rock Products
P.O. Box 636
Orland, CA 95963

Mr. Bill Graham, Facility Operator
Valley Rock Stony Creek
7266 Highway 32
Orland, CA 95963

Mr. Bill Graham, Facility Operator
Valley Rock Stony Creek
P.O. Box 636
Orland, CA 95963

**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 violations of the Clean Water Act ("the Act") occurring at the Valley Rock Stony Creek facility located at 7266 Highway 32, Orland, CA 95963 ("the Facility"), which is owned by Valley Rock Products and Mr. Larry Beigh, and is operated by Mr. Bill Graham. The WDID identification number for the Facility is 5R11I003468. For purposes of this Notice of Violations and Intent to File Suit under the Act (hereafter, the "Notice"), unless otherwise noted, CSPA will refer to Valley Rock Products, Mr. Beigh, and Mr. Graham collectively as "Valley Rock" within this Notice. 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 Valley Rock Stony Creek facility.

This letter addresses Valley Rock's unlawful discharges of pollutants from the Facility directly, and indirectly via storm water conveyance systems into Stony Creek, which is a tributary to the Sacramento River and the Sacramento-San Joaquin Delta. This letter places you on notice of 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, Valley Rock 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 Valley Rock 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 Valley Rock Stony Creek facility is classified as a non-metallic mineral products facility under Standard Industrial Classification (“SIC”) code 3299. The Facility is primarily used to produce Concrete Aggregates, Concrete Mix, Delivery Available, Screening Chips, Sand Natural & Manufactured, Septic Tank-Drain Rock, Aggregate Products, Natural & Manufactured, Sand, Septic Tank Drain Rock; 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 industrial site through at least two discharge points to storm water drains which drain to Stony Creek and, ultimately, to the Delta. Valley Rock submitted a notice of intent to comply with the terms of the General Industrial Storm Water Permit on or about May 8, 1997.

CSPA is informed and believes that Valley Rock 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 the ongoing unlawful discharges at the Stony Creek Facility because Valley Rock 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 (BMPs) using best available pollutant control technology (BAT) and best available pollutant control technology (BCT) to reduce or eliminate the discharge of pollutants.¹ CSPA is also informed and believes that because of the continuous presence of pollutants in the Facility's storm water runoff, the Regional Water Quality Control Board conducted an inspection of the Facility in 2006, requesting Valley Rock address the issue and submit a revised Storm Water Pollution Prevention Plan ("SWPPP") to the Regional Board. To our knowledge, the revised SWPPP was never filed. It is CSPA's intention, through this letter, to bring these violations to Valley Rock'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); chromium

¹ CSPA is aware of at least four letters from the California Regional Water Quality Control Board, Central Valley Region, sent to Valley Rock on November 9, 2004; May 18, 2007; May 23, 2007; and December 15, 2009; advising Valley Rock of benchmark exceedances in its storm water discharges and the need for the employment of BMPs and BCTs.

– 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

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 Valley Rock: pH – 6.0-9.0; total suspended solids – 100 mg/L; and oil & grease – 15.0 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.

Valley Rock 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 Valley Rock 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 Valley Rock. Valley Rock’s ongoing violations are discussed further below.

A. Valley Rock Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

Valley Rock has discharged and continues to discharge stormwater with unacceptable levels of pH, total suspended solids, and specific conductivity 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. Valley Rock’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 Valley Rock Stony Creek 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	Parameter	Concentration in Discharge	EPA Benchmark Value
10/19/2004	Outfall 1	pH	10.5	6.0-9.0
10/19/2004	Outfall 2	pH	10.5	6.0-9.0
12/06/2004	Outfall 1	pH	9.5	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	Parameter	Concentration in Discharge	EPA Benchmark Value
10/19/2004	Outfall 1	TSS	1790 mg/L	100 mg/L
10/19/2004	Outfall 2	TSS	630 mg/L	100 mg/L
12/06/2004	Outfall 1	TSS	730 mg/L	100 mg/L
12/06/2004	Outfall 2	TSS	410 mg/L	100 mg/L
12/01/2005	Outfall 1	TSS	170 mg/L	100 mg/L
12/01/2005	Outfall 2	TSS	160 mg/L	100 mg/L
02/27/2006	Outfall 1	TSS	460 mg/L	100 mg/L
02/27/2006	Outfall 2	TSS	340 mg/L	100 mg/L
03/03/2006	Outfall 1	TSS	2140 mg/L	100 mg/L
03/03/2006	Outfall 2	TSS	2220 mg/L	100 mg/L
04/11/2006	Outfall 1	TSS	1170 mg/L	100 mg/L
04/11/2006	Outfall 2	TSS	530 mg/L	100 mg/L
12/04/2007	Outfall 1	TSS	126 mg/L	100 mg/L
12/04/2007	Outfall 2	TSS	204 mg/L	100 mg/L
01/22/2009	Outfall 2	TSS	710 mg/L	100 mg/L
02/17/2009	Outfall 1	TSS	230 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	Parameter	Concentration in Discharge	EPA Benchmark Value
10/19/2004	Outfall 1	SC	220 µmho/cm	200 µmho/cm
10/19/2004	Outfall 2	SC	230 µmho/cm	200 µmho/cm
12/06/2004	Outfall 1	SC	210 µmho/cm	200 µmho/cm
12/06/2004	Outfall 2	SC	300 µmho/cm	200 µmho/cm

12/04/2007	Outfall 1	SC	283 $\mu\text{mho/cm}$	200 $\mu\text{mho/cm}$
01/22/2009	Outfall 1	SC	300 $\mu\text{mho/cm}$	200 $\mu\text{mho/cm}$
05/27/2010	Outfall 1	SC	440 $\mu\text{mho/cm}$	200 $\mu\text{mho/cm}$
05/27/2010	Outfall 2	SC	438 $\mu\text{mho/cm}$	200 $\mu\text{mho/cm}$

CSPA's investigation, including its review of Valley Rock'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 Valley Rock has not implemented BAT and BCT at the Facility for its discharges of unacceptable levels of pH, Total Suspended Solids TSS, Specific Conductivity (SC), and other pollutants. Valley Rock was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Valley Rock 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 Valley Rock has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 19, 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 October 19, 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 Valley Rock has discharged storm water containing impermissible levels of pH, total suspended solids, specific conductivity, and other 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 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, Valley Rock is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 22, 2005.

B. Valley Rock 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. Section B(5)(c)(ii) of the General Permit also 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 Valley Rock has failed to develop and implement an adequate Monitoring & Reporting Plan. First, Valley Rock 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, Valley Rock 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, Valley Rock is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 22, 2005. These violations are set forth in greater detail below.

1. Valley Rock 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 Valley Rock 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). For example, Valley Rock only collected and analyzed samples from one storm event in the 2007-2008 and 2009-2010 Wet Seasons. Valley Rock also failed to collect and analyze two samples from Outfall 2 during the 2008-2009 Wet Season. Moreover, Valley Rock also failed to collect and analyze any samples during the 2006-2007 Wet Season. Valley Rock’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.

Based on CSPA’s review of publicly available rainfall data from this region and a review of the historic rainfall monitoring station data, the assertion that there were no qualifying storm events during any the wet seasons over the past five years strains credulity. Simply put, a review of publicly available rainfall data and the historic rainfall monitoring station data from this region makes any the assertion that there were no qualifying storm events during any wet season over the past five years is very difficult to believe.

2. Valley Rock 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)(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 a review of Valley Rock’s Annual Reports submitted to the Regional Board, CSPA believes that Valley Rock has failed to monitor for at least one pollutants likely to be present in the Facility’s storm water discharges in significant quantities – iron. 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. Valley Rock is Subject to Penalties for its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 22, 2005.

CSPA is informed and believes that available documents demonstrate Valley Rock’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, Valley Rock is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since September 22, 2005.

C. Valley Rock 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 Valley Rock has not implemented BAT and BCT at the Facility for its discharges of pH, total suspended solids, specific conductivity, other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

On November 9, 2004, May 18, 2007, May 23, 2007, and again on December 15, 2009, an agent from the Storm Water and Water Certification Unit of the Regional Board sent letters to Valley Rock 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 Valley Rock to modify its existing Storm Water Pollution Prevention Plan (“SWPPP”). Based on available documents, CSPA is informed and believes that Valley Rock 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, Valley Rock 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 Valley Rock 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. Valley Rock has failed to implement such measures adequately.

Valley Rock was required to have implemented BAT and BCT by no later than October 1, 1992, or the start of its operations. Therefore, Valley Rock 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 Valley Rock fails to implement BAT and BCT. Valley Rock is subject to penalties for violations of the Order and the Act occurring since September 22, 2005.

D. Valley Rock 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 Valley Rock has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Valley Rock has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Valley Rock 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 Valley Rock fails to develop and implement an effective SWPPP. Valley Rock is subject to penalties for violations of the Order and the Act occurring since September 22, 2005.

E. Valley Rock 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, Valley Rock is discharging elevated levels of pH, total suspended solids, and specific conductivity that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, Valley Rock 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. Valley Rock has failed to do so.

Based on CSPA's review of available documents, Valley Rock was aware of high levels of these pollutants prior to October 19, 2004. Likewise, Valley Rock has not 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). Valley Rock 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 22, 2005, and will continue to be in violation every day that Valley Rock fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Valley Rock is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since September 22, 2005.

F. Valley Rock 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 Valley Rock 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, Valley Rock has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Valley Rock has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Valley Rock submitted an incomplete, untimely, or incorrect annual report, that falsely certified compliance with the Act in the past years. Valley Rock's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Valley Rock is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since September 22, 2005.

III. Persons Responsible for the Violations.

CSPA puts Mr. Larry Beigh, Mr. Bill Graham, and Valley Rock 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 Valley Rock 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:

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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. Larry Beigh, Mr. Bill Graham, and Valley Rock 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 Valley Rock 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

Notice of Violation and Intent To File Suit
September 22, 2010
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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

Jared Blumenfeld, 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

Mr. Larry Beigh, Owner
Valley Rock Products
P.O. Box 636
Orland, CA 95963

Mr. Bill Graham, Facility Operator
Valley Rock Stony Creek
P.O. Box 636
Orland, CA 95963

Mr. Bill Graham, Facility Operator
Valley Rock Stony Creek
7266 Highway 32
Orland, CA 95963

ATTACHMENT A
Notice of Intent to File Suit, Valley Rock Products, Inc.
Significant Rain Events, September 22, 2005 – September 22, 2010

September 26, 2005	March 31, 2006	December 17, 2007
October 14, 2005	April 2, 2006	December 18, 2007
October 27, 2005	April 4, 2006	December 19, 2007
November 7, 2005	April 5, 2006	December 27, 2007
November 24, 2005	April 7, 2006	December 28, 2007
November 28, 2005	April 9, 2006	January 3, 2008
November 30, 2005	April 10, 2006	January 4, 2008
December 1, 2005	April 11, 2006	January 8, 2008
December 17, 2005	April 12, 2006	January 9, 2008
December 18, 2005	April 15, 2006	January 11, 2008
December 20, 2005	April 16, 2006	January 21, 2008
December 21, 2005	April 17, 2006	January 22, 2008
December 22, 2005	April 21, 2006	January 23, 2008
December 25, 2005	May 19, 2006	January 24, 2008
December 27, 2005	May 21, 2006	January 25, 2008
December 29, 2005	November 2, 2006	January 26, 2008
December 31, 2005	November 10, 2006	January 31, 2008
January 1, 2006	November 26, 2006	February 2, 2008
January 3, 2006	December 8, 2006	February 22, 2008
January 13, 2006	December 9, 2006	February 23, 2008
January 14, 2006	December 11, 2006	February 24, 2008
January 17, 2006	December 12, 2006	October 3, 2008
January 20, 2006	December 21, 2006	October 30, 2008
January 31, 2006	December 26, 2006	October 31, 2008
February 1, 2006	February 7, 2007	November 1, 2008
February 26, 2006	February 8, 2007	November 3, 2008
February 27, 2006	February 9, 2007	December 14, 2008
March 2, 2006	February 10, 2007	December 15, 2008
March 3, 2006	February 21, 2007	December 23, 2008
March 4, 2006	February 24, 2007	December 24, 2008
March 5, 2006	April 11, 2007	January 21, 2009
March 10, 2006	April 14, 2007	January 22, 2009
March 13, 2006	April 21, 2007	January 25, 2009
March 14, 2006	July 17, 2007	February 5, 2009
March 16, 2006	September 19, 2007	February 10, 2009
March 20, 2006	September 22, 2007	February 14, 2009
March 23, 2006	October 9, 2007	February 15, 2009
March 27, 2006	October 19, 2007	February 16, 2009
March 28, 2006	November 10, 2007	February 17, 2009
March 29, 2006	December 3, 2007	February 21, 2009
March 30, 2006	December 6, 2007	February 22, 2009

ATTACHMENT A
Notice of Intent to File Suit, Valley Rock Products, Inc.
Significant Rain Events, September 22, 2005 – September 22, 2010

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