



**California Sportfishing Protection Alliance**

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

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September 14, 2010

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Diane M. Minor, Agent for Service of Process

Valley Slurry Seal Company

3785 Channel Dr.

West Sacramento, CA 95691

Terry Uhler, Plant Manager

Valley Slurry Seal Company

7200 Pit Road

Redding, CA 96001

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

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Dear Terry Uhler and Diane Minor:

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 Slurry Seal Company ("VSS") asphalt emulsion manufacturing facility located at 7200 Pit Road in Redding, California ("the Facility"). The WDID identification number for the Facility is 5R45I012357. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Clear Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, VSS and Terry Uhler shall hereinafter be collectively referred to as VSS.

This letter addresses VSS's unlawful discharges of pollutants from the Facility to Clear Creek, which ultimately flows into 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. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "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, VSS and Terry Uhler are 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 VSS and Terry Uhler under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

## **I. Background.**

VSS owns and operates an asphalt emulsion manufacturing facility located in Redding, California. The Facility is used to receive, store, handle and transport materials for the manufacture of asphalt emulsions. Other activities at the Facility include the use, storage, and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to and from the Facility.

The Facility is classified as a concrete manufacturing facility under Standard Industrial Classification (“SIC”) Code 2951 (“Asphalt Paving Mixtures & Blocks”). The Facility collects and discharges storm water and unauthorized non-storm water from its approximately 24-acre industrial site through at least three discharge points to Clear Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharge and unauthorized non-storm water discharge from the Facility are waters of the United States within the meaning of the Clean Water Act.

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): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. 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 zinc of 5 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 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

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 also 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 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 by VSS: pH – 6.0-9.0; total suspended solids – 100 mg/L; and, oil & grease – 15.0 mg/L. The State Water Quality Control

Board has also proposed adding a benchmark level for specific conductance of 200  $\mu$ mhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; nickel – 1.417 mg/L; and, zinc – 0.117 mg/L.

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

VSS has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. 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.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

On December 15, 2009, the Regional Water Quality Control Board, Region 5, sent VSS a letter (“the December 2009 letter”) conveying its conclusion that, among other things, VSS’s 2008-2009 Annual Report contained evidence that the BMPs then in effect were “not sufficient to reduce pollutant concentrations below [EPA] benchmark levels.” The December 2009 letter informed VSS that its 2008-2009 Annual Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered VSS to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility

has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedance(s); (3) Review current BMPs; and (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants. The Board also requested that the Facility’s Storm Water Pollution Prevention Plan (“SWPPP”) and Monitoring Plan be updated to reflect these changes.

Based on its review of available public documents, CSPA is informed and believes that VSS continues to discharge these very same pollutants in excess of benchmarks and that VSS has failed to implement BMPs adequate to bring its discharge of these pollutants in compliance with the General Permit. Further, based on its investigation, CSPA is informed and believes that VSS continues to discharge unauthorized non-storm water in violation of the General Permit. VSS’s ongoing violations are discussed further below.

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

VSS has discharged and continues to discharge stormwater with unacceptable levels of Total Suspended Solids (TSS), Specific Conductivity (SC), and Oil and Grease (O&G) in violation of the General 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. VSS’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 Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmarks**

| <b>Date</b> | <b>Sampling Location</b> | <b>Parameter</b> | <b>Concentration in Discharge</b> | <b>EPA Benchmark Value</b> |
|-------------|--------------------------|------------------|-----------------------------------|----------------------------|
| 04/02/2010  | Plant Area DP            | TSS              | 145 mg/L                          | 100 mg/L                   |
| 04/02/2010  | RR Culvert               | TSS              | 164 mg/L                          | 100 mg/L                   |
| 04/02/2010  | SW Corner                | TSS              | 156 mg/L                          | 100 mg/L                   |
| 02/17/2009  | RR Culvert               | TSS              | 187 mg/L                          | 100 mg/L                   |
| 01/22/2009  | Plant Area DP            | TSS              | 139 mg/L                          | 100 mg/L                   |

|            |                  |     |          |          |
|------------|------------------|-----|----------|----------|
| 10/12/2007 | RR Culvert       | TSS | 464 mg/L | 100 mg/L |
| 10/12/2007 | SW Corner        | TSS | 162 mg/L | 100 mg/L |
| 10/12/2007 | Plant Area<br>DP | TSS | 172 mg/L | 100 mg/L |

**2. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed EPA Benchmark**

| <b>Date</b> | <b>Sampling Location</b> | <b>Parameter</b> | <b>Concentration in Discharge</b> | <b>Proposed Benchmark Value</b> |
|-------------|--------------------------|------------------|-----------------------------------|---------------------------------|
| 10/19/2009  | SW Corner                | SC               | 254 µmhos/cm                      | 200 µmhos/cm                    |
| 10/19/2009  | Plant Area<br>DP         | SC               | 656 µmhos/cm                      | 200 µmhos/cm                    |
| 10/19/2009  | RR Culvert               | SC               | 596 µmhos/cm                      | 200 µmhos/cm                    |
| 01/22/2009  | Plant Area<br>DP         | SC               | 1180<br>µmhos/cm                  | 200 µmhos/cm                    |
| 01/22/2009  | SW Corner                | SC               | 381 µmhos/cm                      | 200 µmhos/cm                    |
| 01/22/2009  | RR Culvert               | SC               | 812 µmhos/cm                      | 200 µmhos/cm                    |
| 01/24/2008  | RR Culvert               | SC               | 395 µmhos/cm                      | 200 µmhos/cm                    |
| 01/24/2008  | Plant Area<br>DP         | SC               | 375 µmhos/cm                      | 200 µmhos/cm                    |
| 10/12/2007  | RR Culvert               | SC               | 523 µmhos/cm                      | 200 µmhos/cm                    |
| 10/12/2007  | SW Corner                | SC               | 228 µmhos/cm                      | 200 µmhos/cm                    |
| 10/12/2007  | Plant Area<br>DP         | SC               | 1850<br>µmhos/cm                  | 200 µmhos/cm                    |
| 11/13/2006  | RR Culvert               | SC               | 543 µmhos/cm                      | 200 µmhos/cm                    |
| 11/13/2006  | Plant Area<br>DP         | SC               | 670 µmhos/cm                      | 200 µmhos/cm                    |

**3. Discharges of Storm Water with Oil and Grease (O&G) in Excess of Applicable EPA Benchmark**

| <b>Date</b> | <b>Sampling Location</b> | <b>Parameter</b> | <b>Concentration in Discharge</b> | <b>EPA Benchmark Value</b> |
|-------------|--------------------------|------------------|-----------------------------------|----------------------------|
| 10/12/2007  | SW Corner                | O&G              | 38 mg/L                           | 15 mg/L                    |
| 10/12/2007  | RR Culvert               | O&G              | 27 mg/L                           | 15 mg/L                    |

CSPA's investigation, including its review of VSS'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 specific conductivity, indicates that VSS has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity (SC), and Oil and Grease (O&G), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. VSS was

required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, VSS is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that VSS has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least September 14, 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 14, 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 VSS has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Specific Conductivity (SC) and Oil and Grease (O&G), and other unmonitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate 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, VSS is subject to penalties for violations of the General Permit and the Act since September 14, 2005.

**B. VSS 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 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 further 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 VSS has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that VSS has failed to collect storm water samples during at least two qualifying storm events (as

defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that VSS has failed to analyze its storm water discharges for pH and “[t]oxic chemicals and other pollutants that are likely to be present” therein during each of the past five years. 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, VSS is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since September 14, 2005. These violations are set forth in greater detail below:

**1. VSS 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 VSS 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. Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the three discharge points currently designated by VSS. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. VSS Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Permit.**

Section B(5)(c)(i) of the General Permit requires VSS to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbons. Further, based on its investigation, CSPA is informed and believes that VSS has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. VSS’s failure to monitor these pollutants extends back to at least September 14, 2005. VSS’s failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. VSS Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since September 14, 2005.**

CSPA is informed and believes that available documents demonstrate VSS’s consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, VSS is subject to penalties for these violations of the General Permit and the Act since September 14, 2005.



**C. VSS Has Failed to Implement BAT and 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). CSPA's investigation indicates that VSS has not implemented BAT and BCT at the Facility for its discharges of TSS, Specific Conductivity, Oil and Grease and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, VSS 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 VSS 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. VSS has failed to adequately implement such measures.

VSS was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, VSS 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 VSS fails to implement BAT and BCT. VSS is subject to penalties for violations of the General Permit and the Act occurring since September 14, 2005.

**D. VSS Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ 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 water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). 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 VSS has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. VSS has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Based on its investigation, CSPA is informed and believes that VSS's current SWPPP fails to comply with the General Permit's above-discussed requirements in myriad ways. For example, recall that General Permit, Section A(4) requires an adequate SWPPP to include a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity. By contrast, VSS's SWPPP on file at the Regional Board appears to lack such a site map. Accordingly, VSS has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. VSS is subject to penalties for violations of the Order and the Act occurring since September 14, 2005.

**E. VSS 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, VSS is discharging elevated levels of Total Suspended Solids (TSS), Specific Conductivity (SC), Oil and Grease (O&G) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, VSS 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.

Based on CSPA's review of available documents, VSS was aware of high levels of these pollutants prior to September 14, 2005. Likewise, VSS has generally failed to file reports describing its noncompliance with the General 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). VSS has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since September 14, 2005, and will continue to be in violation every day VSS fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. VSS is subject to penalties for violations of the General Permit and the Act occurring since September 14, 2005.

**F. VSS Has Discharged Unauthorized Non-Storm Water in Violation of the General Permit.**

Based on its investigation, CSPA is informed and believes that VSS has discharged and continues to discharge unauthorized non-storm water from the Facility. For example, CSPA notes that VSS's SWPPP describes the process of unloading asphalt oils being delivered to the Facility into asphalt tanks as requiring the oils to be heated to be so moved within the Facility. Based on its investigation, CSPA is informed and believes that an onsite boiler fired by natural gas generates the steam necessary to heat these asphalt oils. Further, CSPA is informed and believes that VSS periodically discharges non-storm water from this boiler, and that discharged non-storm water eventually discharges from the Facility. Additionally, CSPA is informed and believes that a mill process at the Facility requires the use of cooling water and that VSS

periodically discharges this non-storm water to the grounds of the Facility and that this non-storm water eventually discharges from the Facility. These are only a couple examples of VSS's prohibited discharges of unauthorized non-storm water. Accordingly, VSS has been in continuous violation of Discharge Prohibition A(1) of the General Permit every day since September 14, 2005, and will continue to be in violation every day VSS fails to eliminate its discharges of unauthorized non-storm water or obtains a separate NPDES permit to authorize such discharges of non-storm water. Accordingly, VSS is subject to penalties for violations of the General Permit and the Act occurring since September 14, 2005.

**G. VSS Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General 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 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 VSS has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, there is a glaring discrepancy in the Annual Reports filed by VSS for the 2004-2005 and 2005-2006 Wet Seasons. First, VSS failed to list the dates of the storms corresponding to the sampling and analysis data listed on Form 1 in the 2005-2006 Annual Report. Second, one of the two the lab reports attached to the 2005-2006 Annual Report cannot possibly correspond to any storm event from the 2005-2006 Wet Season as its sampling date is listed as May 9, 2005. As indicated above, VSS has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, VSS has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time VSS submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. VSS's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. VSS is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since September 14, 2005.

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

CSPA puts Valley Slurry Seal Company and Terry Uhler 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 Slurry Seal Company and Terry Uhler 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  
Erik M. Roper  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
E-mail: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.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 Valley Slurry Seal Company and Terry Uhler to a penalty 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, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

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

Notice of Violation and Intent To File Suit

September 14, 2010

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against Valley Slurry Seal Company 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,

A handwritten signature in cursive script, appearing to read "Bill Jennings".

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

**ATTACHMENT A**  
**Notice of Intent to File Suit, VSS (Redding, CA)**  
**Significant Rain Events,\* September 14, 2005-September 14, 2010**

|              |               |               |               |
|--------------|---------------|---------------|---------------|
| Oct. 14 2005 | Mar. 20 2006  | April 11 2007 | Oct. 04 2008  |
| Oct. 26 2005 | Mar. 23 2006  | April 19 2007 | Oct. 30 2008  |
| Nov. 03 2005 | Mar. 24 2006  | April 21 2007 | Oct. 31 2008  |
| Nov. 07 2005 | Mar. 25 2006  | April 22 2007 | Nov. 01 2008  |
| Nov. 25 2005 | Mar. 27 2006  | May 01 2007   | Nov. 02 2008  |
| Nov. 28 2005 | Mar. 28 2006  | May 02 2007   | Nov. 03 2008  |
| Nov. 29 2005 | Mar. 29 2006  | May 03 2007   | Nov. 08 2008  |
| Nov. 30 2005 | Mar. 31 2006  | Oct. 09 2007  | Dec. 14 2008  |
| Dec. 01 2005 | April 01 2006 | Oct. 10 2007  | Dec. 15 2008  |
| Dec. 17 2005 | April 02 2006 | Oct. 12 2007  | Dec. 18 2008  |
| Dec. 18 2005 | April 03 2006 | Oct. 16 2007  | Dec. 21 2008  |
| Dec. 19 2005 | April 05 2006 | Oct. 19 2007  | Dec. 24 2008  |
| Dec. 20 2005 | April 09 2006 | Nov. 10 2007  | Dec. 28 2008  |
| Dec. 21 2005 | April 10 2006 | Nov. 19 2007  | Jan. 02 2009  |
| Dec. 22 2005 | April 11 2006 | Dec. 03 2007  | Jan. 22 2009  |
| Dec. 25 2005 | April 12 2006 | Dec. 04 2007  | Jan. 24 2009  |
| Dec. 26 2005 | April 15 2006 | Dec. 06 2007  | Feb. 06 2009  |
| Dec. 27 2005 | April 16 2006 | Dec. 18 2007  | Feb. 08 2009  |
| Dec. 28 2005 | May 19 2006   | Dec. 19 2007  | Feb. 10 2009  |
| Dec. 29 2005 | May 21 2006   | Dec. 20 2007  | Feb. 11 2009  |
| Dec. 30 2005 | Oct. 04 2006  | Dec. 27 2007  | Feb. 13 2009  |
| Dec. 31 2005 | Nov. 02 2006  | Dec. 28 2007  | Feb. 14 2009  |
| Jan. 01 2006 | Nov. 03 2006  | Dec. 29 2007  | Feb. 15 2009  |
| Jan. 03 2006 | Nov. 11 2006  | Jan. 03 2008  | Feb. 16 2009  |
| Jan. 04 2006 | Nov. 12 2006  | Jan. 04 2008  | Feb. 17 2009  |
| Jan. 10 2006 | Nov. 13 2006  | Jan. 05 2008  | Feb. 18 2009  |
| Jan. 11 2006 | Nov. 16 2006  | Jan. 06 2008  | Feb. 22 2009  |
| Jan. 13 2006 | Nov. 22 2006  | Jan. 08 2008  | Feb. 25 2009  |
| Jan. 14 2006 | Nov. 26 2006  | Jan. 09 2008  | Mar. 01 2009  |
| Jan. 17 2006 | Dec. 08 2006  | Jan. 10 2008  | Mar. 03 2009  |
| Jan. 18 2006 | Dec. 09 2006  | Jan. 12 2008  | April 09 2009 |
| Jan. 20 2006 | Dec. 10 2006  | Jan. 21 2008  | April 24 2009 |
| Jan. 28 2006 | Dec. 11 2006  | Jan. 24 2008  | May 01 2009   |
| Jan. 30 2006 | Dec. 12 2006  | Jan. 25 2008  | May 02 2009   |
| Feb. 01 2006 | Dec. 13 2006  | Jan. 26 2008  | May 03 2009   |
| Feb. 02 2006 | Dec. 14 2006  | Jan. 27 2008  | May 04 2009   |
| Feb. 04 2006 | Dec. 21 2006  | Jan. 29 2008  | May 06 2009   |
| Feb. 26 2006 | Dec. 26 2006  | Jan. 31 2008  | Oct. 13 2009  |
| Feb. 27 2006 | Dec. 27 2006  | Feb. 02 2008  | Oct. 19 2009  |
| Mar. 02 2006 | Jan. 03 2007  | Feb. 21 2008  | Nov. 06 2009  |
| Mar. 03 2006 | Feb. 07 2007  | Feb. 22 2008  | Nov. 17 2009  |
| Mar. 05 2006 | Feb. 08 2007  | Feb. 23 2008  | Nov. 20 2009  |
| Mar. 06 2006 | Feb. 09 2007  | Feb. 24 2008  | Dec. 11 2009  |
| Mar. 07 2006 | Feb. 10 2007  | Mar. 12 2008  | Dec. 12 2009  |
| Mar. 12 2006 | Feb. 22 2007  | Mar. 28 2008  | Dec. 15 2009  |
| Mar. 13 2006 | Feb. 24 2007  | April 22 2008 | Dec. 16 2009  |
| Mar. 14 2006 | Feb. 27 2007  | May 24 2008   | Dec. 20 2009  |
| Mar. 15 2006 | Mar. 26 2007  | Oct. 03 2008  | Dec. 21 2009  |

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



**ATTACHMENT A**  
**Notice of Intent to File Suit, VSS (Redding, CA)**  
**Significant Rain Events,\* September 14, 2005-September 14, 2010**

|       |    |      |
|-------|----|------|
| Dec.  | 27 | 2009 |
| Dec.  | 29 | 2009 |
| Jan.  | 01 | 2010 |
| Jan.  | 12 | 2010 |
| Jan.  | 13 | 2010 |
| Jan.  | 16 | 2010 |
| Jan.  | 17 | 2010 |
| Jan.  | 18 | 2010 |
| Jan.  | 19 | 2010 |
| Jan.  | 20 | 2010 |
| Jan.  | 21 | 2010 |
| Jan.  | 23 | 2010 |
| Jan.  | 24 | 2010 |
| Jan.  | 25 | 2010 |
| Feb.  | 01 | 2010 |
| Feb.  | 04 | 2010 |
| Feb.  | 06 | 2010 |
| Feb.  | 09 | 2010 |
| Feb.  | 21 | 2010 |
| Feb.  | 23 | 2010 |
| Feb.  | 24 | 2010 |
| Feb.  | 26 | 2010 |
| Mar.  | 02 | 2010 |
| Mar.  | 03 | 2010 |
| Mar.  | 08 | 2010 |
| April | 02 | 2010 |
| April | 04 | 2010 |
| April | 11 | 2010 |
| April | 12 | 2010 |
| April | 14 | 2010 |
| April | 20 | 2010 |
| April | 28 | 2010 |
| May   | 10 | 2010 |
| May   | 25 | 2010 |
| May   | 27 | 2010 |

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