



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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October 29, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank Solinsky, President and Agent for Service of Process
Carolyn Strang, Controller
DuBug No. 7, Inc. (a.k.a., Woodply Forest Products)
3711 Morrow Lane
Chico, CA 95928

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

Dear Mr. Solinsky and Ms. Strang:

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 Woodply Forest Products ("WFP") facility, owned and operated by DuBug No. 7, Inc. and located at 3711 Morrow Lane, Chico, California ("the Facility"). The WDID identification number for the Facility is 5R04I017575. 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, the Sacramento-San Joaquin Delta and other California waters. This letter is being sent to you as the responsible officers, owners or operators of WFP and the Facility. For purposes of this Notice of Violations and Intent to File Suit, "WFP" shall refer to DuBug No. 7, Inc., Mr. Frank Solinsky and Ms. Carolyn Strang.

This letter addresses WFP's unlawful discharges of pollutants from the Facility to Comanche Creek, which flows into Butte Creek, which in turn 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, DuBug No. 7, Inc., Mr. Frank Solinsky, and Ms. Carolyn Strang 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 DuBug No. 7, Inc., Mr. Frank Solinsky, and Ms. Carolyn Strang 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.

WFP operates a lumber storage, sawmill and planing mill facility located in Chico, California. The Facility includes a fencing production area for sawing operations, a “re-saw” area, and a production and processing area.

On or about November 3, 2002, WFP submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit (“NOI”). The Facility is classified as a Sawmill and Planing Mill under Standard Industrial Classification (“SIC”) Code 2421 (“Sawmills & Planing Mills”). The 50% impervious Facility collects and discharges storm water from its approximately 3,300 square foot industrial site through at least one discharge point to Comanche Creek, which flows into Butte Creek, which in turn ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and Clear Creek 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 – 0.01mg/L; iron – 0.3 mg/L; 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 Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by WFP: total suspended solids – 100 mg/L; zinc – 0.117 mg/L; and, chemical oxygen demand – 120 mg/L. The State Water Quality Control Board has proposed adding a benchmark level for specific conductivity of 200 µmhos/cm.

II. Pollutant Discharges in Violation of the NPDES Permit.

WFP 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.

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.

On January 14, 2010, the U.S. EPA and Regional Board (“Inspectors”) inspected the Facility. Ms. Strang and Mr. David Matty, saw-yard supervisor, were present during the inspection. The Inspectors, based on their observations and noting that sampling results from the 2008-2009 and 2009-2010 wet seasons reported exceedances of the EPA benchmark values, ordered WFP to make the following corrections:

- 1) Develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”) and retain a copy of the SWPPP onsite;
- 2) Develop and retain an onsite written monitoring program;
- 3) Perform and document an Annual Comprehensive Site Compliance Evaluation in all Annual Reports;
- 4) Perform Quarterly Non-storm Water Discharge Visual Observations as required and maintain records of activities as required;
- 5) Conduct the Monitoring Program in accordance with the sample analysis requirements of the General Permit;
- 6) Implement adequate best management practices (“BMPs”) to prevent the discharge of pollutants from the metal waste storage bin located at the facility;
- 7) Implement adequate BMPs to prevent the transport of sediment offsite from unpaved areas of the facility;
- 8) Implement adequate BMPs to prevent the contribution of pollutants to storm water runoff from sawing operation in the fencing production area; and

- 9) Implement adequate BMPs to prevent the contribution of pollutants to storm water runoff from sawing operations associated with the re-saw facility.

On May 12, 2010, the Regional Water Quality Control Board, Region 5, sent a Notice of Violation to WFP regarding the January 14, 2010 inspection of the Facility. The Notice of Violation noted WFP's failures to comply with the General Permit and inadequacies found in the best management practices ("BMPs") implemented at the Facility. The Regional Board noted:

- (1) WFP's failure to maintain a written Storm Water Pollution Prevention Plan ("SWPPP") and monitoring plan for review on site
- (2) WFP's failure to conduct a monitoring program in compliance with the sample analysis requirements detailed in the General Permit;
- (3) WFP's failure to implement BMPs to prevent the discharge of pollutants from a metal waste storage bin adjacent to the fencing production area;
- (4) WFP's failure to implement BMPs to prevent the transport of sediment from unpaved areas in the southern and eastern portions of the site; and
- (5) WFP's failure to implement BMPs to prevent storm water from coming into contact with sawdust from both sawing and re-sawing operations at the facility

The Regional Board ordered WFP to complete the following actions:

- 1) Submit a copy of WFP's SWPPP and Monitoring Program to the Regional Board office by June 25, 2010
- 2) Implement appropriate erosion and sediment control BMPs to stabilize all disturbed areas and deploy;
- 3) Deploy appropriate BMPs for all metal scrap and sawing operations areas;
- 4) Execute appropriate BMP maintenance for all dilapidated BMPs onsite; and
- 5) Routinely clean and sweep the saw and re-saw operations at the WFP Facility.

The Regional Board further ordered WFP to submit a report describing how WFP has addressed the concerns and problems listed in the inspection report by June 11, 2010.

As of August 12, 2010, WFP's file at the Regional Board office did not contain: a revised SWPPP; a report regarding the June 11, 2010 inspection report; or, any evidence of new BMPs having been implemented at the Facility. Based on its review of available public documents, CSPA is informed and believes that WFP has failed to implement BMPs adequate to bring its discharge of pollutants in compliance with the General Permit. WFP's ongoing violations are discussed further below.

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

WFP has discharged and continues to discharge storm water with unacceptable levels of Total Suspended Solids (TSS), specific conductivity (SC), Chemical Oxygen Demand (COD) and Zinc (Zn) 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. WFP's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the General Permit provisions listed above. Self-monitoring reports under the General 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

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/20/2009	Westside	TSS	166 mg/L	100 mg/L
10/30/2008	Westside	TSS	149 mg/L	100 mg/L
03/26/2007	Westside	TSS	170 mg/L	100 mg/L
12/21/2006	Westside	TSS	120 mg/L	100 mg/L
02/07/2005	Westside	TSS	170 mg/L	100 mg/L

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

Date	Outfall	Parameter	Concentration in Discharge	Proposed Benchmark Value
10/30/2008	Westside	SC	298 µmhos/cm	200 µmhos/cm

3. Discharges of Storm Water Containing Chemical Oxygen Demand (COD) at Concentrations in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/20/2009	Westside	COD	130 mg/L	120 mg/L
04/22/2008	Westside	COD	190 mg/L	120 mg/L
03/26/2007	Westside	COD	220 mg/L	120 mg/L
12/21/2006	Westside	COD	Failure to Test	120 mg/L

4. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark

Date	Outfall	Parameter	Concentration in Discharge	EPA Benchmark Value
11/20/2009	Westside	Zn	0.2 mg/L	0.117 mg/L
04/22/2008	Westside	Zn	0.17 mg/L	0.117 mg/L
03/26/2007	Westside	Zn	0.3 mg/L	0.117 mg/L
12/21/2006	Westside	Zn	Failure to Test	0.117 mg/L
01/11/2006	Westside	Zn	“240” (unknown measurement)	0.117 mg/L
02/07/2005	Westside	Zn	0.45 mg/L	0.117 mg/L

CSPA’s investigation, including its review of WFP’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values, indicates that WFP has not implemented BAT and BCT at the Facility for its discharges of TSS, Chemical Oxygen Demand (COD), specific conductivity (SC), Zinc (Zn), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. WFP was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, WFP is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that WFP has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 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 October 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 WFP has discharged storm water containing impermissible levels of Total Suspended Solids (TSS), Chemical Oxygen Demand (COD), specific conductivity (SC), Zinc (Zn) 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 Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, WFP is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since October 29, 2005.

B. WFP 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 or the start of its operations. 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 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 WFP has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. WFP 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 or the start of its operations, and will continue to be in violation every day that WFP fails to develop and implement an effective SWPPP. WFP is subject to penalties for violations of the Order and the Act occurring since October 29, 2005.

C. WFP 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 conductivity, and total organic carbon. Oil and grease may be substituted for total organic carbon. Facilities, such as WFP, designated under SIC Code 2421 are also required to sample for Chemical Oxygen Demand (COD) and Zinc (Zn). 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 WFP has failed to implement an adequate Monitoring & Reporting Plan. CSPA's review of publicly available records reveals that: (1) For the 2005-2006 and 2007-2008 storm seasons, WFP failed to sample two storm events as required by the General Permit; (2) WFP failed to test for Zn and COD during the 2006-2007 wet season; (3) WFP failed to 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 for the

past three (3) Wet Seasons; and (4) WFP failed to sample the first storm event of the the 2007-2008 Wet Season.

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, WFP is subject to penalties for violations of the General Permit and the Act since October 29, 2005. These violations are set forth in greater detail below:

1. WFP Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Storm Events for the Last Five Years

Based on its review of publicly available documents, CSPA is informed and believes that WFP has failed to collect at least two storm water samples from all discharge points during qualifying storm events at the Facility during at least two of the past five years as required. WFP sampled only one storm event during the 2007-2008, and 2005-2006 wet seasons.

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

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

Section B(5)(c)(i) of the General Industrial Storm Water Permit requires WFP to sample for total suspended solids, specific conductivity, pH, and oil & grease or total organic carbon. The General Permit also requires facilities such as WFP which are designated as SIC Code 2421 to analyze its storm water discharge for Zinc (Zn) and Chemical Oxygen Demand (COD). Further, based on its investigation, CSPA is informed and believes that WFP has failed to monitor for other pollutants "likely to be present in storm water discharges in significant quantities" (see, General Permit Section B.5.C(ii)), including, but not necessarily limited to, tannins and lignins. WFP failed to analyze storm water samples for Zn and COD in its 2006-2007 Annual Report. Other pollutants likely to be present in the Facility's storm water discharges include: Aluminum (Al), Copper (Cu), Mercury (Hg), Iron (Fe), Lead (Pb), Arsenic (As), nitrate+nitrite (N+N), ammonia, biochemical oxygen demand and total phenols. WFP's failure to monitor these pollutants extends back to at least October 29, 2005. WFP's failure to monitor these other pollutants likely to be present in the Facility's storm water discharges has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

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

CSPA is informed and believes that available documents, including the EPA and Regional Board's inspection report from January 14, 2010, demonstrate WFP'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, WFP is subject to penalties for these violations of the General Permit and the Act since October 29, 2005.

D. WFP 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 WFP has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity (SC), Arsenic (As), nitrate+nitrite (N+N), ammonia, biochemical oxygen demand, chemical oxygen demand (COD), Aluminum (Al), Copper (Cu), Mercury (Hg), Iron (Fe), Lead (Pb), Zinc (Zn), Arsenic (As), tannins and lignins, and total phenols in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, WFP 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 WFP 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), follow all orders from the Regional Board in the January 14, 2010 inspection report and May 12, 2010 Notice of Violations, or eliminate storm water discharge from the Facility altogether. WFP has failed to adequately implement such measures.

WFP was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of operations. Therefore, WFP has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992 or the start of operations, and will continue to be in violation every day that WFP fails to implement BAT and BCT. WFP is subject to penalties for violations of the Order and the Act occurring since October 29, 2005.

E. WFP 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, WFP is discharging elevated levels of TSS, specific conductivity (SC), chemical oxygen demand (COD), and Zinc (Zn), and likely discharging elevated levels of Aluminum (Al), Copper (Cu), Mercury (Hg), Iron (Fe), Lead (Pb), Arsenic (As), nitrate+nitrite (N+N), ammonia, biochemical oxygen demand (BOD), tannins and lignins, and total phenols that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, WFP 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.

The SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Further, WFP did not identify how it addressed the concerns and problems noted in the January 14, 2010 inspection report by June 11, 2010, as ordered by the Regional Board in its May 12, 2010 letter. WFP 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 October 29, 2005, and will continue to be in violation every day that it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. WFP is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since October 29, 2005.

F. WFP 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 WFP has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, in its 2007-2008 Annual Report, WFP failed to collect samples of storm water discharge from two qualifying storm events and from the first storm event of the 2007-2008 wet season, as required by the General Permit, and yet WFP certified the Facility as fully compliant in the 2007-2008 Annual Report.

Based on its review of publicly available data on precipitation for the area, CSPA is informed and believes that there were at least two qualifying storm events during the 2007-2008 Wet Season in addition to the storm sampled by WFP on April 22, 2008, and that April 22, 2008, 2010 was not the first qualifying storm event for the 2007-2008 wet season. CSPA notes the following: (1) based on its own reporting as stated in its 2007-2008 Annual Report, WFP collected its first and only sample of storm water discharged from the Facility's identified discharge point on April 22, 2008¹; (2) while Ms. Strang notes in a letter accompanying the 2007-2008 Annual Report that a miscommunication prohibited sampling of the first qualifying storm event, she fails to explain why a second storm event prior to or after the April 22, 2008 [read: April 23, 2008] storm event was not sampled; and (5) publicly available precipitation data for the area reveals that .26" inches of precipitation was recorded as having fallen in the area on February 19, 2008, a weekday that followed three days without a significant rain event. Thus, WFP has failed to submit true and complete reports to the extent it has misrepresented to the Regional Board the frequency of qualifying storm events during which WFP could have collected a second storm water sample.

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

III. Persons Responsible for the Violations.

CSPA puts DuBug No. 7, Inc., Mr. Frank Solinsky and Ms. Carolyn Strang on notice that they are the persons responsible for the violations described above. If

¹ Publicly available rainfall data indicates that no rain fell on the Facility on April 22, 2008. Publicly available rainfall data indicates that on April 23, 2008, 0.24" inches of rain fell on the Facility.

additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts DuBug No. 7, Inc., Mr. Frank Solinsky and Ms. Carolyn Strang 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
Hallie B. Albert
Law Offices of Andrew L. Packard
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
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And to:

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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 DuBug No. 7, Inc., Mr. Frank Solinsky and Ms. Carolyn Strang 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

Notice of Violation and Intent To File Suit

October 29, 2010

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Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against DuBug No. 7, Inc. 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 black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style with a large 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

ATTACHMENT A
Notice of Intent to File Suit, WFP (Chico, CA)
Significant Rain Events,* October 29, 2005 – October 29, 2010

Oct.	31	2005	Mar.	28	2006	May	04	2007	Nov.	10	2008
Nov.	04	2005	Mar.	29	2006	Oct.	01	2007	Dec.	15	2008
Nov.	08	2005	April	02	2006	Oct.	10	2007	Dec.	24	2008
Nov.	25	2005	April	03	2006	Oct.	12	2007	Dec.	25	2008
Nov.	28	2005	April	04	2006	Oct.	17	2007	Jan.	05	2009
Nov.	29	2005	April	05	2006	Nov.	10	2007	Jan.	12	2009
Dec.	01	2005	April	10	2006	Nov.	11	2007	Jan.	13	2009
Dec.	17	2005	April	11	2006	Nov.	13	2007	Jan.	20	2009
Dec.	18	2005	April	12	2006	Dec.	04	2007	Jan.	28	2009
Dec.	19	2005	April	13	2006	Dec.	07	2007	Feb.	06	2009
Dec.	20	2005	April	16	2006	Dec.	18	2007	Feb.	09	2009
Dec.	21	2005	April	17	2006	Dec.	19	2007	Feb.	11	2009
Dec.	22	2005	April	22	2006	Dec.	20	2007	Feb.	12	2009
Dec.	25	2005	April	24	2006	Dec.	21	2007	Feb.	13	2009
Dec.	26	2005	May	21	2006	Dec.	28	2007	Feb.	15	2009
Dec.	27	2005	May	22	2006	Dec.	29	2007	Feb.	16	2009
Dec.	28	2005	Oct.	05	2006	Jan.	03	2008	Feb.	17	2009
Dec.	29	2005	Nov.	03	2006	Jan.	04	2008	Feb.	18	2009
Dec.	30	2005	Nov.	11	2006	Jan.	05	2008	Feb.	23	2009
Dec.	31	2005	Nov.	13	2006	Jan.	07	2008	Feb.	24	2009
Jan.	01	2006	Nov.	16	2006	Jan.	08	2008	Feb.	26	2009
Jan.	03	2006	Nov.	26	2006	Jan.	09	2008	Mar.	01	2009
Jan.	04	2006	Nov.	27	2006	Jan.	11	2008	Mar.	02	2009
Jan.	11	2006	Dec.	09	2006	Jan.	12	2008	Mar.	03	2009
Jan.	14	2006	Dec.	10	2006	Jan.	21	2008	Mar.	04	2009
Jan.	17	2006	Dec.	11	2006	Jan.	22	2008	Mar.	23	2009
Jan.	18	2006	Dec.	12	2006	Jan.	24	2008	April	09	2009
Jan.	30	2006	Dec.	13	2006	Jan.	25	2008	May	01	2009
Jan.	31	2006	Jan.	09	2007	Jan.	26	2008	May	02	2009
Feb.	02	2006	Feb.	08	2007	Jan.	27	2008	May	05	2009
Feb.	26	2006	Feb.	09	2007	Jan.	28	2008	Oct.	13	2009
Feb.	27	2006	Feb.	10	2007	Jan.	29	2008	Oct.	14	2009
Feb.	28	2006	Feb.	12	2007	Jan.	31	2008	Nov.	18	2009
Mar.	02	2006	Feb.	13	2007	Feb.	02	2008	Nov.	23	2009
Mar.	03	2006	Feb.	22	2007	Feb.	19	2008	Nov.	27	2009
Mar.	05	2006	Feb.	24	2007	Feb.	20	2008	Nov.	30	2009
Mar.	06	2006	Feb.	26	2007	Feb.	21	2008	Dec.	11	2009
Mar.	07	2006	Feb.	28	2007	Feb.	22	2008	Dec.	12	2009
Mar.	12	2006	Mar.	26	2007	Feb.	23	2008	Dec.	13	2009
Mar.	13	2006	Mar.	27	2007	Feb.	24	2008	Dec.	14	2009
Mar.	14	2006	April	11	2007	Mar.	15	2008	Dec.	16	2009
Mar.	16	2006	April	12	2007	April	23	2008	Dec.	20	2009
Mar.	17	2006	April	14	2007	May	24	2008	Dec.	21	2009
Mar.	20	2006	April	16	2007	Oct.	06	2008	Dec.	27	2009
Mar.	21	2006	April	19	2007	Oct.	31	2008	Dec.	29	2009
Mar.	24	2006	April	21	2007	Nov.	01	2008	Dec.	30	2009
Mar.	25	2006	April	23	2007	Nov.	03	2008	Jan.	04	2010
Mar.	27	2006	May	02	2007	Nov.	04	2008	Jan.	12	2010

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

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Significant Rain Events,* October 29, 2005 – October 29, 2010

Jan.	13	2010
Jan.	14	2010
Jan.	17	2010
Jan.	18	2010
Jan.	19	2010
Jan.	20	2010
Jan.	21	2010
Jan.	22	2010
Jan.	24	2010
Jan.	25	2010
Jan.	26	2010
Jan.	27	2010
Jan.	30	2010
Feb.	01	2010
Feb.	04	2010
Feb.	06	2010
Feb.	08	2010
Feb.	09	2010
Feb.	22	2010
Feb.	24	2010
Mar.	03	2010
Mar.	12	2010
Mar.	13	2010
Mar.	15	2010
Mar.	24	2010
April	05	2010
April	06	2010
April	12	2010
April	13	2010
April	20	2010
April	21	2010
April	27	2010
April	28	2010
April	29	2010
May	11	2010
May	18	2010
May	26	2010
May	28	2010
Oct.	23	2010
Oct.	24	2010
Oct.	29	2010

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