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9 Attorneys for Plaintiff  
 10 CALIFORNIA SPORTFISHING  
 11 PROTECTION ALLIANCE

12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CALIFORNIA SPORTFISHING  
 15 PROTECTION ALLIANCE, a non-profit  
 16 corporation,

17 Plaintiff,

18 vs.

19 LAS ANIMAS CONCRETE & BUILDING  
 20 SUPPLY, INC., and SCOTT FRENCH,

21 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF AND  
 CIVIL PENALTIES**

(Federal Water Pollution Control Act,  
 33 U.S.C. §§ 1251 to 1387)

22 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
 23 through its counsel, hereby alleges:

24 **I. JURISDICTION AND VENUE**

25 1. This is a civil suit brought under the citizen suit enforcement provisions of the  
 26 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
 27 or “the Act”) against LAS ANIMAS CONCRETE & BUILDING SUPPLY, INC., and SCOTT  
 28 FRENCH (hereafter “Defendants”). This Court has subject matter jurisdiction over the  
 parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33  
 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United  
 States). The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue

1 declaratory relief in case of actual controversy and further necessary relief based on such a  
2 declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d),  
3 1365(a) (civil penalties).

4 2. On or about December 6, 2013, Plaintiff provided notice of Defendants'  
5 violations of the Act ("CWA Notice Letter"), and of its intention to file suit against  
6 Defendants, to the Administrator of the United States Environmental Protection Agency  
7 ("EPA"); the Administrator of EPA Region IX; the Executive Director of the State Water  
8 Resources Control Board ("State Board"); the Executive Officer of the Regional Water  
9 Quality Control Board, Central Valley Region ("Regional Board"); and to Defendants, as  
10 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CSPA's CWA  
11 Notice Letter is attached hereto as Exhibit A, and is incorporated by reference.

12 3. More than sixty days have passed since this CWA Notice Letter was served on  
13 Defendants and the State and federal agencies. Plaintiff is informed and believes, and  
14 thereupon alleges, that neither the EPA nor the State of California has commenced nor is  
15 diligently prosecuting a court action to redress the violations alleged in this Complaint. This  
16 action's claim for civil penalties is not barred by any prior administrative penalty under  
17 Section 309(g) of the Act, 33 U.S.C. § 1319(g).

18 4. Venue is proper in the Northern District of California pursuant to Section  
19 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
20 located within this judicial district. Pursuant to Local Rule 3-2(e), intra-district venue is  
21 proper in San Jose, California because the sources of the violations are located within Santa  
22 Cruz County.

## 23 **II. INTRODUCTION**

24 5. This Complaint seeks relief for Defendants' discharges of pollutants from an  
25 approximately 3-acre ready-mix concrete production plant owned and/or operated by  
26 Defendants (the "Facility"). The Facility is located at 146 Encinal Street in Santa Cruz,  
27 California. Defendants discharge pollutant-contaminated storm water from the Facility into  
28 San Lorenzo Creek and ultimately into the Pacific Ocean.

1           6. Defendants' discharges of pollutant-contaminated storm water from the  
2 Facility have violated and continue to violate the Act and the State of California's General  
3 Industrial Permit for storm water discharges, State Water Resources Control Board ("State  
4 Board") Water Quality Order No. 91-13-DWQ, as amended by Water Quality Order No. 92-  
5 12-DWQ and Water Quality Order No. 97-03-DWQ, National Pollutant Discharge  
6 Elimination System ("NPDES") General Permit No. CAS000001 (hereinafter "General  
7 Permit" or "Permit"). Defendants' violations of the filing, monitoring, reporting, discharge  
8 and management practice requirements, and other procedural and substantive requirements  
9 of the General Permit and the Act are ongoing and continuous.

10           7. The failure on the part of industrial facility operators such as Defendants to  
11 comply with the General Permit is recognized as a significant cause of the continuing decline  
12 in water quality of these receiving waters. The general consensus among regulatory agencies  
13 and water quality specialists is that storm water pollution amounts to more than half the total  
14 pollution entering the marine environment each year. With every rainfall event, hundreds of  
15 thousands of gallons of polluted storm water originating from industrial facilities discharge  
16 to the San Lorenzo River and the Pacific Ocean.

### 17 **III. PARTIES**

18           8. Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
19 ("CSPA") is a non-profit public benefit corporation organized under the laws of the State of  
20 California with its main offices in Stockton, California. CSPA has approximately 2,000  
21 members who live, recreate and work in and around waters of the State of California,  
22 including the San Lorenzo River and the Pacific Ocean. CSPA is dedicated to the  
23 preservation, protection, and defense of the environment, and the wildlife and the natural  
24 resources of all waters of California. To further these goals, CSPA actively seeks federal  
25 and state agency implementation of the Act and other laws and, where necessary, directly  
26 initiates enforcement actions on behalf of itself and its members.

27           9. Members of CSPA reside in California and use and enjoy California's  
28 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the

1 waters of the San Lorenzo River and the Pacific Ocean, into which Defendants have caused,  
2 are causing, and will continue to cause, pollutants to be discharged. Members of CSPA use  
3 these areas to fish, sail, boat, kayak, swim, birdwatch, view wildlife and engage in scientific  
4 study, including monitoring activities, among other things. Defendants' discharges of  
5 pollutants threaten or impair each of those uses or contribute to such threats and  
6 impairments. Thus, the interests of CSPA's members have been, are being, and will  
7 continue to be adversely affected by Defendants' ongoing failure to comply with the Clean  
8 Water Act. The relief sought herein will redress the harms to Plaintiff caused by Defendants'  
9 activities.

10 10. Continuing commission of the acts and omissions alleged above will  
11 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have  
12 no plain, speedy or adequate remedy at law.

13 11. Plaintiff is informed and believes, and thereupon alleges that Defendant Las  
14 Animas Concrete, Inc. is a corporation organized under the laws of the State of California,  
15 and that the corporation, together with Defendant Scott French, owns and/or operates the  
16 Facility.

17 **IV. STATUTORY BACKGROUND**

18 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
19 pollutant into waters of the United States, unless such discharge is in compliance with  
20 various enumerated sections of the Act. Among other things, Section 301(a) prohibits  
21 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
22 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

23 13. Section 402(p) of the Act establishes a framework for regulating municipal  
24 and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p).  
25 States with approved NPDES permit programs are authorized by Section 402(p) to regulate  
26 industrial storm water discharges through individual permits issued to dischargers and/or  
27 through the issuance of a single, statewide general permit applicable to all industrial storm  
28 water dischargers. 33 U.S.C. § 1342.

1           14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of  
2 the U.S. EPA has authorized California's State Board to issue NPDES permits including  
3 general NPDES permits in California.

4           15. The State Board elected to issue a statewide general permit for industrial  
5 discharges. The State Board issued the General Permit on or about November 19, 1991,  
6 modified the General Permit on or about September 17, 1992, and reissued the General  
7 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33  
8 U.S.C. § 1342(p).

9           16. The General Permit contains certain absolute prohibitions. Discharge  
10 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
11 other than storm water ("non-storm water discharges"), which are not otherwise regulated by  
12 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
13 General Permit prohibits storm water discharges and authorized non-storm water discharges  
14 that cause or threaten to cause pollution, contamination or nuisance. Receiving Water  
15 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
16 ground water that adversely impact human health or the environment. Receiving Water  
17 Limitation C(2) of the General Permit prohibits storm water discharges that cause or  
18 contribute to an exceedance of any applicable water quality standards contained in a  
19 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

20           17. In addition to absolute prohibitions, the General Permit contains a variety of  
21 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
22 or having the potential to discharge, storm water associated with industrial activity that have  
23 not obtained an individual NPDES permit must apply for coverage under the State's General  
24 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing  
25 dischargers to file their NOIs before March 30, 1992.

26           18. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
27 or prevent pollutants in its storm water discharges through implementation of the Best  
28 Available Technology Economically Achievable ("BAT") for toxic and nonconventional

1 pollutants and the Best Conventional Pollutant Control Technology (“BCT”) for  
2 conventional pollutants. BAT and BCT include both nonstructural and structural measures.  
3 General Permit, Section A(8).

4 19. EPA has established Benchmark Levels as guidelines for determining  
5 whether a facility discharging industrial storm water has implemented the requisite BAT and  
6 BCT standards. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks  
7 have been established for pollutants discharged by Defendants: total suspended solids (100  
8 mg/L); oil & grease (15 mg/L); iron (1.0 mg/L), lead (0.0816 mg/L) and zinc (0.117 mg/L).  
9 The State Water Quality Control Board has proposed adding a benchmark level for specific  
10 conductance of 200  $\mu$ mhos/cm.

11 20. Dischargers must develop and implement a Storm Water Pollution  
12 Prevention Plan (“SWPPP”) before October 1, 1992. The SWPPP must comply with the  
13 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
14 (1) a narrative description and summary of all industrial activity, potential sources of  
15 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
16 water conveyance system, associated points of discharge, direction of flow, areas of  
17 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
18 storm water management practices, best management practices (“BMPs”) and preventive  
19 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)  
20 the location where Significant Materials are being shipped, stored, received and handled, as  
21 well as the typical quantities of such materials and the frequency with which they are  
22 handled; (5) a description of potential pollutant sources including industrial processes,  
23 material handling and storage areas, dust and particulate generating activities; (6) a summary  
24 of storm water sampling points; (7) a description of individuals and their responsibilities for  
25 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of  
26 potential pollutant sources including industrial processes, material handling and storage  
27 areas, and dust and particulate generating activities; (9) a description of significant spills and  
28 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description

1 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an  
2 assessment of potential pollutant sources at the Facility and a description of the BMPs to be  
3 implemented at the Facility that will reduce or prevent pollutants in storm water discharges  
4 and authorized non-storm water discharges, including structural BMPs where non-structural  
5 BMPs are not effective (Section A(7), (8)).

6 21. The SWPPP must be re-evaluated annually to ensure effectiveness and must  
7 be revised where necessary (Section A(9),(10)). Section C(3) of the General Permit requires  
8 a discharger to prepare and submit a report to the Regional Board describing changes it will  
9 make to its current BMPs in order to prevent or reduce any pollutant in its storm water  
10 discharges that is causing or contributing to an exceedance of water quality standards. Once  
11 approved by the Regional Board, the additional BMPs must be incorporated into the  
12 Facility's SWPPP. The report must be submitted to the Regional Board no later than 60 days  
13 from the date the discharger first learns that its discharge is causing or contributing to an  
14 exceedance of an applicable water quality standard. Section C(4)(a). Section C(11)(d) of  
15 the General Permit's Standard Provisions also requires dischargers to report any  
16 noncompliance. *See also* Section E(6). Lastly, Section A(9) of the General Permit requires  
17 an annual evaluation of storm water controls including the preparation of an evaluation  
18 report and implementation of any additional measures in the SWPPP to respond to the  
19 monitoring results and other inspection activities.

20 22. The General Permit requires dischargers to eliminate all non-storm water  
21 discharges to storm water conveyance systems other than those specifically set forth in  
22 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth  
23 in Special Condition D(1)(b).

24 23. The General Permit requires dischargers commencing industrial activities  
25 before October 1, 1992 to develop and implement an adequate written Monitoring and  
26 Reporting Program no later than October 1, 1992. Existing facilities covered under the  
27 General Permit must implement all necessary revisions to their monitoring programs no later  
28 than August 1, 1997.



1           24.       The General Permit also requires dischargers to submit yearly “Annual  
2 Reports” to the Regional Board. As part of their monitoring program, dischargers must  
3 identify all storm water discharge locations that produce a significant storm water discharge,  
4 evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether  
5 pollution control measures set out in the SWPPP are adequate and properly implemented.  
6 Dischargers must then conduct visual observations of these discharge locations for at least  
7 one storm per month during the wet season (October through May) and record their findings  
8 in their Annual Report. Dischargers must also collect and analyze storm water samples from  
9 at least two storms per year. Section B requires dischargers to sample and analyze during the  
10 wet season for basic parameters such as pH, total suspended solids (“TSS”), specific  
11 conductance (“SC”), and total organic carbon (“TOC”) or oil and grease (“O&G”), certain  
12 industry-specific parameters, and toxic chemicals and other pollutants likely to be in the  
13 storm water discharged from the facility. Dischargers must also conduct dry season visual  
14 observations to identify sources of non-storm water pollution. The monitoring and reporting  
15 program requires dischargers to certify, based upon the annual site inspections, that the  
16 facility is in compliance with the General Permit and report any non-compliance, and  
17 contains additional requirements as well.

18           25.       In order to discharge storm water lawfully in California, industrial  
19 dischargers must comply with the terms of the General Permit or have obtained and  
20 complied with an individual NPDES permit.

21           26.       The term “discharge of pollutants” means “any addition of any pollutant to  
22 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
23 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
24 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

25           27.       A point source is defined as “any discernible, confined and discrete  
26 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .  
27 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

28           28.       “Navigable waters” means “the waters of the United States.” 33 U.S.C.



1 § 1362(7). Waters of the United States include tributaries to waters that are navigable in  
2 fact. Waters of the United States include man-made water bodies that are tributary to waters  
3 that are navigable in fact. Waters of the United States include ephemeral waters that are  
4 tributary to waters that are navigable in fact.

5 29. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
6 enforcement actions against any “person,” including individuals, corporations, or  
7 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of  
8 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under  
9 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an  
10 assessment of civil penalties of up to \$37,500 per day for violations occurring after January 12,  
11 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40  
12 C.F.R. §§ 19.1 - 19.4.

13 30. The Regional Board has established water quality standards for the San  
14 Lorenzo River and the Pacific Ocean in the Water Quality Control Plan for the Central Coast  
15 Basin, generally referred to as the “Basin Plan.”

16 31. The Basin Plan includes a toxicity standard which states that “[a]ll waters  
17 shall be maintained free of toxic substances in concentrations which are toxic to or which  
18 produce detrimental physiological responses in, human, plant, animal, or aquatic life.”

19 32. The Basin Plan provides that “[w]aters shall not contain concentrations of  
20 chemical constituents known to be deleterious to fish or wildlife.”

21 33. The Basin Plan provides that “[a]t a minimum, water designated for use as  
22 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
23 constituents in excess of the maximum contaminant levels (MCLs).”

## 24 **V. STATEMENT OF FACTS**

25 34. The Facility is classified as conforming to Standard Industrial Classification  
26 (“SIC”) Code 3272 (“Concrete, Gypsum and Plaster Product Manufacturing”). Industrial  
27 activities occur throughout the Facility. The Facility is primarily used to receive, store,  
28 handle and transport aggregate materials for the manufacture of read-mix concrete. Other

1 activities at the Facility include the use and storage of heavy machinery and motorized  
2 vehicles, including trucks used to haul materials to, from and within the Facility. Most of  
3 these activities occur outside in areas that are exposed to storm water and storm flows due to  
4 the lack of overhead coverage, functional berms, and other storm water controls. Plaintiff is  
5 informed and believes that Defendants' storm water controls, to the extent any exist, fail to  
6 achieve BAT and BCT standards.

7 35. The management practices at the Facility are wholly inadequate to prevent  
8 the sources of contamination described above from causing the discharge of pollutants to  
9 waters of the United States and fail to meet BAT and BCT standards. The Facility lacks  
10 essential structural controls such as grading, berming and roofing to prevent rainfall and  
11 storm water flows from coming into contact with these and other sources of contaminants,  
12 thereby allowing storm water to flow over and across these materials and become  
13 contaminated prior to leaving the Facility. In addition, the Facility lacks structural controls  
14 to prevent the discharge of water once contaminated. The Facility also lacks an adequate  
15 filtration system to treat water once it is contaminated.

16 36. Vehicle traffic at the Facility tracks dust and particulate matter, increasing  
17 the discharges of polluted water and mud into waters of the United States.

18 37. During rain events storm water laden with pollutants discharges from the  
19 Facility to the San Lorenzo River and the Pacific Ocean.

20 38. Information available to Plaintiff indicates that as a result of these practices,  
21 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
22 being discharged from the Facility directly to these waters during significant rain events.

23 39. Information available to Plaintiff indicates that Defendants have not fulfilled  
24 the requirements set forth in the General Permit for discharges from the Facility due to the  
25 continued discharge of contaminated storm water.

26 40. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
27 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan at  
28 the Facility.

1 41. Information available to Plaintiff indicates the continued existence of  
2 unlawful storm water discharges at the Facility.

3 42. Plaintiff is informed and believes, and thereupon alleges, that Defendants  
4 have failed to develop and implement adequate storm water monitoring, reporting and  
5 sampling programs at the Facility. Plaintiff is informed and believes, and thereupon alleges,  
6 that Defendants have not sampled with adequate frequency, have not conducted visual  
7 monitoring, and have not analyzed the storm water samples collected at the Facility for the  
8 required pollutant parameters.

9 43. Plaintiff is informed and believes, and thereupon alleges, that all of the  
10 violations alleged in this Complaint are ongoing and continuing.

11 **V. CLAIMS FOR RELIEF**

12 **FIRST CAUSE OF ACTION**  
13 **Discharges of Contaminated Storm Water From The Facility**  
14 **in Violation of Permit Conditions and the Act**  
15 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

16 44. Plaintiff incorporates the allegations contained in the above paragraphs as  
17 though fully set forth herein.

18 45. Discharge Prohibition A(2) of the General Permit requires that storm water  
19 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
20 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
21 General Permit require that storm water discharges and authorized non-storm water discharges  
22 shall not adversely impact human health or the environment, and shall not cause or contribute  
23 to a violation of any water quality standards contained in a Statewide Water Quality Control  
24 Plan or the applicable Regional Board's Basin Plan.

25 46. Plaintiff is informed and believes, and thereupon alleges, that since at least  
26 October 1, 1992, Defendants have been discharging polluted storm water from the Facility into  
27 the San Lorenzo River and the Pacific Ocean in violation of the General Permit.

28 47. During every significant rain event, storm water flowing over and through  
materials at the Facility becomes contaminated with pollutants, flowing untreated from the

1 Facility to the San Lorenzo River and the Pacific Ocean.

2 48. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
3 of contaminated storm water are causing pollution and contamination of waters of the United  
4 States in violation of Discharge Prohibition A(2) of the General Permit.

5 49. Plaintiff is informed and believes, and thereupon alleges, that these  
6 discharges of contaminated storm water are adversely affecting human health and the  
7 environment in violation of Receiving Water Limitation C(1) of the General Permit.

8 50. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
9 of contaminated storm water are contributing to the violation of the applicable water quality  
10 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's  
11 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

12 51. Plaintiff is informed and believes, and thereupon alleges, that every day since  
13 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water  
14 from the Facility in violation of the General Permit. Every day Defendants have discharged  
15 and continue to discharge polluted storm water from the Facility in violation of the General  
16 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).  
17 These violations are ongoing and continuous.

18 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

19 **SECOND CAUSE OF ACTION**  
20 **Failure to Develop and Implement an Adequate**  
21 **Storm Water Pollution Prevention Plan For the Facility**  
22 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

23 52. Plaintiff incorporates the allegations contained in the above paragraphs as  
24 though fully set forth herein.

25 53. Section A and Provision E of the General Permit require dischargers of storm  
26 water associated with industrial activity to develop and implement an adequate Storm Water  
27 Pollution Prevention Plan (“SWPPP”) no later than October 1, 1992.

28 54. Defendants have failed to develop and implement an adequate SWPPP for  
the Facility. Defendants’ ongoing failure to develop and implement an adequate SWPPP for

1 the Facility is evidenced by, *inter alia*, Defendants’ outdoor storage of industrial materials  
2 without appropriate best management practices; the continued exposure of significant  
3 quantities of industrial material to storm water flows; the failure to either treat storm water  
4 prior to discharge or to implement effective containment practices; and the continued  
5 discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark  
6 values and other applicable water quality standards.

7 55. Defendants have further failed to update the Facility’s SWPPP in response to  
8 the analytical results of the Facility’s storm water monitoring as required by the General  
9 Permit.

10 56. Each day since October 1, 1992 that Defendants have failed to develop and  
11 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate  
12 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

13 57. Defendants have been in violation of the SWPPP requirement every day since  
14 October 1, 1992. Defendants will continue to be in violation of the Act each day that they fail  
15 to develop and fully implement an adequate SWPPP for the Facility.

16 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Develop and Implement the Best Available  
19 And Best Conventional Treatment Technologies At The Facility  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

20 58. Plaintiff incorporates the allegations contained in the above paragraphs as  
21 though fully set forth herein.

22 59. The General Permit’s SWPPP requirements and Effluent Limitation B(3)  
23 require dischargers to reduce or prevent pollutants in their storm water discharges through  
24 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
25 pollutants.

26 60. Defendants have failed to implement BAT and BCT at the Facility for their  
27 discharges of iron, oil & grease, specific conductance, and other as yet unmonitored  
28 pollutants in violation of Effluent Limitation B(3) of the General Permit.



1 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.  
2 § 1311(a). These violations are ongoing and continuous.

3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

4 **VI. RELIEF REQUESTED**

5 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

6 a. Declare Defendants to have violated and to be in violation of the Act, as  
7 alleged herein;

8 b. Enjoin Defendants from discharging pollutants from the Facility and to the  
9 surface waters surrounding and downstream from the Facility;

10 c. Enjoin Defendants from further violating the substantive and procedural  
11 requirements of the General Permit;

12 d. Order Defendants to pay civil penalties of \$37,500 per day per violation for  
13 all violations occurring after January 12, 2009, for each violation of the Act pursuant to  
14 Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§  
15 19.1 - 19.4 (pp. 200-202) (Dec. 31, 1996);

16 e. Order Defendants to take appropriate actions to restore the quality of  
17 navigable waters impaired by their activities;

18 f. Award Plaintiff's costs (including reasonable attorney, witness, and  
19 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,

20 g. Award any such other and further relief as this Court may deem appropriate.

21 Dated: February 7, 2014

Respectfully Submitted,

22 LAW OFFICES OF ANDREW L. PACKARD

23  
24 By: /s/ Andrew L. Packard  
25 Andrew L. Packard  
26 Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
27 PROTECTION ALLIANCE  
28



**EXHIBIT A**



December 6, 2013

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Warren French, President  
Larry Busch, Quality Control Manager  
Las Animas Concrete & Building Supply, Inc.  
146 Encinal Street  
Santa Cruz, CA 95060

Scott French, Facility Operator Contact & Agent for Service of Process  
Las Animas Concrete & Building Supply, Inc.  
146 Encinal Street  
Santa Cruz, CA 95060

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

Dear Messrs. French, French, and Busch:

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 Las Animas Concrete & Building Supply, Inc. facility located at 146 Encinal Street in Santa Cruz, California (“the Facility”). The WDID identification number for the Facility is 344I000907. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters and the Pacific Ocean. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Las Animas Concrete & Building Supply, Inc., Warren French, Scott French and Larry Busch shall hereinafter be collectively referred to as Las Animas.

This letter addresses Las Animas’ unlawful discharges of pollutants from the Facility to the City of Santa Cruz’s storm water drainage system, which conveys storm water discharged from the Facility into the San Lorenzo River. From this river, the storm

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water discharged from Las Animas flows into the Pacific Ocean. 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, Las Animas Concrete & Building Supply, Inc., Warren French, Scott French and Larry Busch 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 Las Animas Concrete & Building Supply, Inc., Warren French, Scott French and Larry Busch 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.**

Las Animas owns and operates a ready-mix concrete facility located in Santa Cruz, California. The Facility falls under Standard Industrial Classification (“SIC”) Code 3272 (“Concrete, Gypsum and Plaster Product Manufacturing”). The Facility is primarily used to receive, store, handle and transport aggregate materials for the manufacture of concrete. Other activities at the Facility include the use and storage of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility.

Las Animas collects and discharges storm water from its approximately 3-acre Facility through at least one (1) discharge point into the City of Santa Cruz’s storm water drainage system. The storm water discharged by Las Animas travels from the City of Santa Cruz’s storm water drainage system into the San Lorenzo River and ultimately into the Pacific Ocean. The San Lorenzo River and its tributaries and the Pacific Ocean are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board (“Regional Board”) has established water quality standards for waters in its region, in the “Water Quality Control Plan for the Central Coast Basin” (“Basin Plan”). The Basin Plan requires “[a]ll waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic

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life.” The Basin Plan also requires “[t]he pH value shall neither be depressed below 6.5 nor raised above 8.3.” *Id.* at III-5. Further, it prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at III-3.

The Basin Plan provides maximum contaminant levels (“MCLs”) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: aluminum – 1.0 mg/L; arsenic - 0.05 mg/L; lead - 0.05 mg/L; and mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for mercury - 0.002 mg/L; lead – 0.015 mg/L; chromium – 0.1 mg/L; and, copper – 1.3 mg/L. The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for aluminum - 0.05 mg/L to 0.2 mg/L and zinc - 5.0 mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has 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 mg/L (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 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 Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury. *See* [www.swrcb.ca.gov/water\\_issues/programs/tmdl/docs/-2002reg3303dlist.pdf](http://www.swrcb.ca.gov/water_issues/programs/tmdl/docs/-2002reg3303dlist.pdf). It has specifically the San Lorenzo River as failing to meet water quality standards due to the pollutant/stressor pathogens. The Regional Board has also identified the Pacific Ocean, in the area where the San Lorenzo River discharges, as failing to meet water quality standards due to the pollutant/stressor Dieldrin. Discharges of listed pollutants into 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

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(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 Las Animas: iron – 1.0 mg/L and oil & grease – 15 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance – 200 µmhos/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, aluminum - 0.75 mg/L; copper – 0.0636 mg/L; lead - 0.0816 mg/L; and, zinc – 0.117 mg/L.

## **II. Las Animas Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States.**

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The San Lorenzo River and Pacific Ocean are waters of the United States. Accordingly, Las Animas’ discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

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CSPA is informed and believes, and thereupon alleges, that Las Animas has discharged and continues to discharge pollutants from the Facility to waters of the United States every day that there has been or will be any measurable discharge of water from the Facility since December 6, 2008. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Las Animas is subject to penalties for violations of the Act since December 6, 2008.

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

Las Animas 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 Total Suspended Solids (“TSS”), Oil & Grease (“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.

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Based on its review of available public documents, CSPA is informed and believes: (1) that Las Animas continues to discharge pollutants in excess of EPA benchmark values and (2) that Las Animas has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. Las Animas' ongoing violations are discussed further below.

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

Las Animas has discharged and continues to discharge storm water with unacceptable levels of Iron (Fe), Oil & Grease (O&G) and Specific Conductance (SC) 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. Las Animas' 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 Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Benchmark Value</b>
3/19/13	Fe	4.1 mg/L	1.0 mg/L
3/19/13	Fe	2.2 mg/L	1.0 mg/L
3/5/13	Fe	1.2 mg/L	1.0 mg/L
3/5/13	Fe	12.0 mg/L	1.0 mg/L
11/30/12	Fe	17.0 mg/L	1.0 mg/L
11/18/12	Fe	6.2 mg/L	1.0 mg/L
11/9/12	Fe	26.0 mg/L	1.0 mg/L
2/14/2011	Fe	220 mg/L	1.0 mg/L
4/27/2010	Fe	3.0 mg/L	1.0 mg/L



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1/18/2010	Fe	3.0 mg/L	1.0 mg/L
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**2. Discharges of Storm Water Containing Oil & Grease (O&G) at Concentrations in Excess of Applicable EPA Benchmark Value.**

Date	Parameter	Concentration in Discharge	Benchmark Value
4/27/2010	O&G	23 mg/L	15 mg/L
1/18/2010	O&G	21 mg/L	15 mg/L

**3. Discharges of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed EPA Benchmark Value.**

Date	Parameter	Concentration in Discharge	Proposed Benchmark Value
3/19/13	SC	752.1 $\mu$ mhos/cm	200 $\mu$ mhos/cm
3/5/13	SC	320.5 $\mu$ mhos/cm	200 $\mu$ mhos/cm
1/25/13	SC	550 $\mu$ mhos/cm	200 $\mu$ mhos/cm
11/18/12	SC	270 $\mu$ mhos/cm	200 $\mu$ mhos/cm
11/9/12	SC	350 $\mu$ mhos/cm	200 $\mu$ mhos/cm
3/13/12	SC	520 $\mu$ mhos/cm	200 $\mu$ mhos/cm
11/11/11	SC	518 $\mu$ mhos/cm	200 $\mu$ mhos/cm
2/14/2011	SC	530 $\mu$ mhos/cm	200 $\mu$ mhos/cm
4/27/2010	SC	530 $\mu$ mhos/cm	200 $\mu$ mhos/cm
1/18/2010	SC	510 $\mu$ mhos/cm	200 $\mu$ mhos/cm
2/13/2009	SC	500 $\mu$ mhos/cm	200 $\mu$ mhos/cm

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**4. Discharges of Storm Water With pH in Excess of Applicable EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Benchmark Value</b>
3/19/13	pH	10.31	6.0 – 9.0 s.u.
3/5/13	pH	10.31	6.0 – 9.0 s.u.
11/30/12	pH	9.8	6.0 – 9.0 s.u.
11/18/12	pH	9.3	6.0 – 9.0 s.u.
11/9/12	pH	10.3	6.0 – 9.0 s.u.

**5. Discharges of Storm Water With Total Suspended Solids Concentrations in Excess of Applicable EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Benchmark Value</b>
3/19/13	TSS	160	100 mg/L
3/5/13	TSS	290	100 mg/L
11/30/12	TSS	420	100 mg/L
11/9/12	TSS	570	100 mg/L

**6. Discharges of Storm Water With Lead Concentrations in Excess of Applicable Proposition 65 Level.**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Benchmark Value</b>
3/19/13	Pb	0.0015	0.00025 mg/L
3/5/13	Pb	0.0043	0.00025 mg/L
11/18/12	Pb	0.0017	0.00025 mg/L

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**7. Discharges of Storm Water With Aluminum Concentrations in Excess of Applicable EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Benchmark Value</b>
3/19/13	Al	4.3	0.75 mg/L
3/5/13	Al	12.0	0.75 mg/L
11/18/12	Al	6.0	0.75 mg/L

**8. Discharges of Storm Water With Zinc Concentrations in Excess of Applicable EPA Benchmark Value.**

<b>Date</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Benchmark Value</b>
3/19/13	Zn	0.200	0.117 mg/L
3/5/13	Zn	0.120	0.117 mg/L

CSPA's investigation, including its review of Las Animas' 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 levels for specific conductivity, indicates that Las Animas has not implemented BAT and BCT at the Facility for its discharges of Iron (Fe), Oil & Grease (O&G), Specific Conductance (SC), pH, Total Suspended Solids (TSS), Lead (Pb), Aluminum (Al), Zinc (Zn) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Las Animas was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Las Animas is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Las Animas has known that its storm water contains pollutants at levels exceeding EPA benchmark values and other water quality criteria since at least December 6, 2008. 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 December 6, 2008, 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 Las Animas has discharged storm water containing impermissible levels of Iron (Fe), Oil & Grease (O&G) and Specific Conductance (SC) and other unmonitored pollutants (e.g. Aluminum (Al), Copper (Cu), Lead (Pb) and Zinc (Zn)) in violation of Discharge

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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 storm water 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, Las Animas is subject to penalties for violations of the General Permit and the Act since December 6, 2008.

**B. Las Animas 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.” Section B(10) of the General Permit provides that “facility operators shall explain how the facility’s monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2.”

Based on its investigation, CSPA is informed and believes that Las Animas 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 Las Animas has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit,<sup>1</sup> during each of the past five Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that Las Animas has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during each of the past five Wet Seasons. Third, based on its review of publicly available documents, CSPA is informed and

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<sup>1</sup> For storm water sampling and visual observation purposes, a qualifying storm event within the meaning of the General Permit is a storm that causes a storm water discharge to occur during scheduled facility operating hour and that is preceded by at least three (3) days without storm water discharges. See General Permit, Sections B.4.b. and B.5.b.

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believes that, for the past five Wet Seasons, Las Animas has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Las Animas is subject to penalties for violations of the General Permit and the Act since December 6, 2008. These violations are set forth in greater detail below:

**1. Las Animas Has Failed to Collect Storm Water Samples During at Least Two Rain Events Each Reporting Period, And Failed to Capture the First Flush.**

Based on its review of publicly available documents, CSPA is informed and believes that Las Animas has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five Wet Seasons, as required by the General Permit. For example, CSPA notes that the Annual Report filed by Las Animas for the Facility for the 2010-2011 Wet Season reported that it analyzed samples of storm water discharged during two qualifying storm events that season. However, upon closer scrutiny it turns out that, not only did Las Animas did not sample from two qualifying storm events within the meaning of the General Permit, but Las Animas failed to analyze the second sample of storm water (discussed further below). For the 2009-2010 Wet Season, Las Animas also reported that it analyzed samples of storm water discharged during two qualifying storm events that season. However, upon closer scrutiny it turns out that Las Animas only sampled from one qualifying storm event within the meaning of the General Permit (discussed further below). Further, Las Animas failed to sample a single qualifying storm event in the 2008-2009 Wet Season and only sampled one storm event in the 2007-2008 Wet Season (discussed further below). In total, over Las Animas' last four Annual Reports (i.e. 2007-2008; 2008-2009; 2009-2010; 2010-2011), it analyzed samples from only five storm events, instead of the required eight, and sampled only three qualifying storm events.

Las Animas has also failed to sample from the first qualifying storm event of the season during the Wet Season. Several years, Las Animas has not sampled earlier than the fourth month of the Wet Season. For example, in the 2010-2011 Wet Season, Las Animas did not take its first sample until a storm event on February 16, 2011 – the fifth month of the eight-month Wet Season. Further, Las Animas reported in its 2007-2008 and 2008-2009 Annual Reports that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season. Specifically, Las Animas reported in its 2008-2009 Annual Report that it sampled the first qualifying storm event of the Wet Season, but Las Animas' first sample was collected on February 13, 2009. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2008-2009 Wet Season occurred as early as Friday, October 3, 2008, when 0.28" of rain fell on the Facility. Further, Las Animas reported in its 2007-2008 Annual Report that it sampled the first qualifying

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storm event of the Wet Season, but Las Animas' first sample was collected on March 13, 2008. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2007-2008 Wet Season occurred as early as Friday, October 12, 2007, when 0.49" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**2. Las Animas Has Failed to Collect Storm Water Samples From Each Discharge Point During at Least Two Rain Events In Each of the Last Five Wet Seasons.**

Based on its review of publicly available documents, CSPA is informed and believes that Las Animas has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five Wet Seasons. Based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one sampling/discharge point currently designated by Las Animas. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

**3. Las Animas Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.**

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in Las Animas annual reports for the last five Wet Seasons, CSPA is informed and believes that Las Animas has failed to comply with this requirement of the General Permit.

Specifically, Las Animas failed to conduct monthly visual observations of discharges from qualifying storm events for most months during each of the past five Wet Seasons. Instead, Las Animas documented its visual observations of storm water that discharged during non-qualifying storm events or on dates during which no rain fell on the Facility, for most months during the entire Wet Season of each of the past five years (discussed further below). However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that Las Animas could have observed.

For example, Las Animas reported in its 2009-2010 Annual Report that it observed a qualifying storm event on December 10, 2009. However, CSPA is informed and believes that this could not possibly be true because 0.37" of rain fell on the Facility three days prior, on December 7, 2009, likely making that December 7th storm a qualifying storm event and disqualifying all storm events for the next three days. Las Animas' failure to conduct this required monthly Wet Season visual monitoring extends

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back to at least December 6, 2008. Las Animas' failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

**4. Las Animas Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since December 6, 2008.**

CSPA is informed and believes that publicly available documents demonstrate Las Animas' consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2010-2011 Annual Report Las Animas reported having collected samples of storm water discharged during two qualifying storm events, only one storm event was a qualifying storm event within the meaning of the General Permit. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on February 16, 2011 was not a qualifying storm event because enough rain fell on the Facility two days prior to result in a discharge of storm water from the Facility, thereby invalidating the February 16<sup>th</sup> storm as a qualifying storm event. Specifically, Las Animas sampled a rain event on Wednesday, February 16, 2011 that produced 0.79" of rainfall on the Facility. However, two days prior, on February 14, 2011, 0.28" of rain fell on the Facility. Therefore, the February 14<sup>th</sup> storm event renders any storm occurring for three days afterwards a non-qualifying storm event.

Further, Las Animas sampled its first storm event of the 2010-2011 Wet Season on February 14<sup>th</sup> and its second sample on February 16<sup>th</sup>, thereby taking its only two samples of the Wet Season within three days of each other. Las Animas also reported that it sampled on Wednesday February 16, 2011, but did not actually analyze this sample. Therefore, Las Animas only sampled and analyzed one storm event for the 2010-2011 Wet Season, instead of the required two storm events.

Additionally, Las Animas is in violation of the General Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit Section B.10.a.iii. The Regional Board has determined that the appropriate laboratory test method to employ when analyzing storm water samples for the presence and concentration of oil and grease is EPA method 413.2 or 1664. However, as demonstrated by Las Animas' Annual Reports filed for at least each of the last two Wet Seasons (e.g., 2009-2010; 2010-2011), the test method employed by the laboratory utilized by Las Animas to analyze the concentration of oil & grease in the storm water discharged from its Facility was not EPA method 413.2 or 1664, but rather, EPA method A5520B.

Further, the Regional Board has determined that the appropriate laboratory test method to employ when analyzing storm water samples for the presence and concentration of pH is EPA method 9040 and/or a Field Test with Calibrated Paper or



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Portable Instrument. However, as demonstrated by Las Animas' Annual Reports filed for at least three Wet Seasons (e.g., 2007-2008; 2009-2010; 2010-2011), the test method employed by the laboratory utilized by Las Animas to analyze the concentration of pH in the storm water discharged from its Facility was not EPA method 9040 and/or a Field Test with Calibrated Paper or Portable Instrument, but rather, EPA method A4500HB or E150.1.

Las Animas is in violation of the General Permit for failing to employ laboratory test methods and detection limits that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." General Permit Section B.2.a. ("Monitoring Program Objectives"). Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Las Animas is subject to penalties for these violations of the General Permit and the Act since December 6, 2008.

**C. Las Animas 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 Las Animas has not implemented BAT and BCT at the Facility for its discharges of Iron (Fe), Oil & Grease (O&G) and Specific Conductance (SC) 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, Las Animas 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 Las Animas 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. Las Animas has failed to adequately implement such measures.

Las Animas was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Las Animas 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 it fails to implement BAT and BCT. Las Animas is subject to penalties for violations of the General Permit and the Act occurring since December 6, 2008.

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**D. Las Animas 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 9, 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 publicly available documents regarding conditions at the Facility indicate that Las Animas has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth

Notice of Violation and Intent To File Suit

December 6, 2013

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above. Las Animas has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Las Animas 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. Las Animas is subject to penalties for violations of the General Permit and the Act occurring since December 6, 2008.

**E. Las Animas 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, Las Animas is discharging elevated levels of Iron (Fe), Oil & Grease (O&G), Specific Conductance (SC), pH, Total Suspended Solids (TSS), Lead (Pb), Aluminum (Al), Zinc (Zn) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Las Animas 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, Las Animas was aware of high levels of these pollutants prior to December 6, 2008. Likewise, Las Animas 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). Las Animas 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 December 6, 2008, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Las Animas is subject to penalties for violations of the General Permit and the Act occurring since December 6, 2008.

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**F. Las Animas 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 Las Animas has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, as discussed above, over the past five years, Las Animas has never sampled earlier than four months into the eight-month Wet Season. Further, Las Animas reported in the 2008-2009 Annual Report that it observed storm water discharge occurring during the first storm of the season. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this cannot possibly be true.

Las Animas has also failed to sample from qualifying storm events in storm water samples collected during the last five Wet Seasons. As discussed above, in 2010-2011, Las Animas failed to sample two qualifying storm events and failed to analyze more than one sample. Further, in the 2009-2010 Annual Report, Las Animas reported that it sampled a qualifying storm event on January 18, 2010, when CSPA's review of publicly available rainfall data indicates this cannot possibly be true. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on January 18, 2010 was not a qualifying storm event because enough rain fell on the Facility one day prior to likely result in a discharge of storm water from the Facility, thereby invalidating the January 18th storm as a qualifying storm event. Specifically, Las Animas sampled a rain event on Monday, January 18, 2010 that produced 1.26" of rainfall on the Facility. However, one day prior, on January 17, 2010, 0.57" of rain fell on the Facility. Therefore, the January 17th storm event likely renders any storm occurring for three days afterwards a non-qualifying storm event. Finally, in the 2008-2009 Annual Report, Las Animas reported that it sampled a qualifying storm event on February 13, 2009 when CSPA's review of publicly available rainfall data indicates this cannot possibly be true. Based on publicly available rainfall data, the storm event on February 13, 2009 produced 0.90" of rainfall on the Facility. However, two days prior, on February 11, 2009, 0.56" of rain fell on the Facility. Therefore, the February 11<sup>th</sup> storm event likely renders any storm event occurring for the three days afterwards a non-qualifying storm event.

Further, Las Animas failed to comply with the monthly visual observations of storm water discharges requirement for every single Annual Report filed for the Facility for each of the last five years. In the 2009-2010 Annual Report, Las Animas observed

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only one qualifying storm event within the meaning of the General Permit. For example, as discussed above, Las Animas reported that it observed a qualifying storm event on December 10, 2009, but based on publicly available rainfall data, CSPA is informed and believes that this cannot possibly be true. Further, in the 2008-2009 Annual Report, Las Animas did not observe a single qualifying storm event within the meaning of the General Permit. For example, in the 2008-2009 Annual Report, Las Animas reported that it observed discharge from a qualifying storm event on Friday, December 19, 2008. However, based on publicly available rainfall data, CSPA is informed and believes that this cannot possibly be true. On December 19, 2008, 0.29" of rain fell on the Facility, but on December 16<sup>th</sup>, 0.14" of rain fell on the Facility, likely invalidating the storm observed on December 19th.

These are only a few examples of how Las Animas has failed to file completely true and accurate reports. As indicated above, Las Animas has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Las Animas has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Las Animas submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Las Animas' failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Las Animas is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since December 6, 2008.

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

CSPA puts Las Animas Concrete & Building Supply, Inc., Warren French, Scott French and Larry Busch 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 Las Animas Concrete & Building Supply, Inc., Warren French, Scott French and Larry Busch on notice that it intends to include those persons in this action.

#### **V. 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.

#### **VI. Counsel.**

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

Andrew L. Packard  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301

Notice of Violation and Intent To File Suit

December 6, 2013

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Petaluma, CA 94952

Tel. (707) 763-7227

Fax. (707) 763-9227

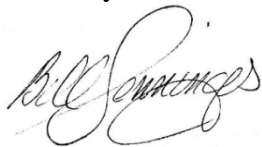
Email: Andrew@PackardLawOffices.com

## **VII. 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 Las Animas Concrete & Building Supply, Inc., Warren French, Scott French and Larry Busch 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 against Las Animas Concrete & Building Supply, Inc., Warren French, Scott French and Larry Busch and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

**SERVICE LIST**

Gina McCarthy, 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

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

Kenneth A. Harris, Jr., Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906



## ATTACHMENT A

**Notice of Intent to File Suit, Las Animas (Santa Cruz, CA)  
Significant Rain Events,\* December 6, 2008 – December 6, 2013**

Dec. 14 2008	Dec. 29 2009	Nov. 21 2010	May 16 2011
Dec. 15 2008	Dec. 30 2009	Nov. 22 2010	May 17 2011
Dec. 16 2008	Jan. 12 2010	Nov. 23 2010	May 25 2011
Dec. 18 2008	Jan. 13 2010	Nov. 27 2010	May 28 2011
Dec. 19 2008	Jan. 17 2010	Dec. 05 2010	May 30 2011
Dec. 21 2008	Jan. 18 2010	Dec. 08 2010	Jun 04 2011
Dec. 24 2008	Jan. 19 2010	Dec. 09 2010	Jun 28 2011
Dec. 25 2008	Jan. 20 2010	Dec. 10 2010	Oct 03 2011
Jan. 02 2009	Jan. 21 2010	Dec. 14 2010	Oct 04 2011
Jan. 21 2009	Jan. 22 2010	Dec. 16 2010	Oct 05 2011
Jan. 22 2009	Jan. 23 2010	Dec. 17 2010	Nov 03 2011
Jan. 23 2009	Jan. 25 2010	Dec. 18 2010	Nov 04 2011
Feb. 05 2009	Jan. 26 2010	Dec. 19 2010	Nov 05 2011
Feb. 06 2009	Jan. 29 2010	Dec. 20 2010	Nov 06 2011
Feb. 08 2009	Feb 04 2010	Dec. 21 2010	Nov 11 2011
Feb. 10 2009	Feb 05 2010	Dec. 22 2010	Nov 19 2011
Feb. 11 2009	Feb. 06 2010	Dec. 25 2010	Nov 20 2011
Feb. 13 2009	Feb. 09 2010	Dec. 28 2010	Nov 20 2011
Feb. 14 2009	Feb. 12 2010	Dec. 29 2010	Nov 20 2011
Feb. 15 2009	Feb. 21 2010	Jan. 01 2011	Dec 15 2011
Feb. 16 2009	Feb. 23 2010	Jan. 02 2011	Jan 19 2012
Feb. 17 2009	Feb. 24 2010	Jan. 29 2011	Jan 20 2012
Feb. 21 2009	Feb. 26 2010	Jan. 30 2011	Jan 21 2012
Feb. 22 2009	Feb. 27 2010	Feb. 14 2011	Jan 22 2012
Feb. 23 2009	Mar. 02 2010	Feb. 15 2011	Jan 23 2012
Feb. 26 2009	Mar. 03 2010	Feb. 16 2011	Jan 24 2012
Mar. 01 2009	Mar. 08 2010	Feb. 17 2011	Jan 25 2012
Mar. 02 2009	Mar. 10 2010	Feb. 18 2011	Jan 26 2012
Mar. 03 2009	Mar. 12 2010	Feb. 19 2011	Feb 07 2012
Mar. 04 2009	Mar. 24 2010	Feb. 24 2011	Feb 12 2012
Mar. 05 2009	Mar. 29 2010	Feb. 25 2011	Feb 13 2012
Mar. 16 2009	Mar. 30 2010	Mar. 02 2011	Feb 15 2012
Mar. 21 2009	Mar. 31 2010	Mar. 06 2011	Feb 29 2012
Mar. 22 2009	April 02 2010	Mar. 13 2011	Mar 01 2012
April 07 2009	April 04 2010	Mar. 14 2011	Mar 13 2012
April 09 2009	April 05 2010	Mar. 15 2011	Mar 14 2012
May 01 2009	April 11 2010	Mar. 16 2011	Mar 15 2012
May 03 2009	April 12 2010	Mar. 18 2011	Mar 16 2012
May 04 2009	April 20 2010	Mar. 19 2011	Mar 17 2012
May 05 2009	April 27 2010	Mar. 20 2011	Mar 18 2012
Oct. 13 2009	April 28 2010	Mar. 21 2011	Mar 24 2012
Oct. 14 2009	May 10 2010	Mar. 22 2011	Mar 27 2012
Oct. 19 2009	May 17 2010	Mar. 23 2011	Mar 28 2012
Nov. 05 2009	May 25 2010	Mar. 24 2011	Mar 31 2012
Nov. 20 2009	Oct. 21 2010	Mar. 25 2011	Apr 10 2012
Dec. 07 2009	Oct. 22 2010	Mar. 26 2011	Apr 11 2012
Dec. 10 2009	Oct. 23 2010	Mar. 27 2011	Apr 12 2012
Dec. 11 2009	Oct. 24 2010	Apr 13 2011	Apr 13 2012
Dec. 12 2009	Oct. 29 2010	Apr 20 2011	Apr 23 2012
Dec. 13 2009	Oct. 30 2010	Apr 21 2011	Apr 25 2012
Dec. 21 2009	Nov. 07 2010	Apr 23 2011	Apr 26 2012
Dec. 26 2009	Nov. 09 2010	Apr 24 2011	Jun 04 2012
Dec. 27 2009	Nov. 19 2010	May 14 2011	Oct 28 2012
Dec. 28 2009	Nov. 20 2010	May 15 2011	Nov 01 2012

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

**ATTACHMENT A**

**Notice of Intent to File Suit, Las Animas (Santa Cruz, CA)  
Significant Rain Events,\* December 6, 2008 – December 6, 2013**

Nov	08	2012
Nov	16	2012
Nov	21	2012
Nov	28	2012
Dec	12	2012
Dec	21	2012
Jan	05	2013
Jan	24	2013
Feb	19	2013
Mar	05	2013
Mar	19	2013
Mar	28	2013
Sep	21	2013
Nov	19	2013

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

JS 44 (Rev. 12/12)  
 Cand rev (1/15/13)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  California Sportfishing Protection Alliance</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Santa Cruz</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)                  Law Offices of Andrew L. Packard                  100 Petaluma Boulevard North, Suite 301                  Petaluma, CA 94952</p>	<p><b>DEFENDANTS</b>                  Las Animas Concrete, Inc., Scott French</p> <p>County of Residence of First Listed Defendant _____                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)                  Gary Redenbacher, Law Offices of Gary Redenbacher                  P.O. Box 66134                  Scotts Valley, CA 95067</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff x <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

x  1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from Another District (specify)  6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Federal Water Pollution Control Actm, 33 USC sections 1251 et seq. and 1365

Brief description of cause:  
Citizen enforcement action to enforce the requirements of California's General Industrial Storm Water Permit

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** \_\_\_\_\_ **CHECK YES only if demanded in complaint:**  
**JURY DEMAND:**  Yes x No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)**  
 (Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA

DATE: 2/7/14

SIGNATURE OF ATTORNEY OF RECORD: 