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20 CALIFORNIA SPORTFISHING  
21 PROTECTION ALLIANCE

22 **UNITED STATES DISTRICT COURT**  
23 **EASTERN DISTRICT OF CALIFORNIA**

24 CALIFORNIA SPORTFISHING  
25 PROTECTION ALLIANCE, a non-profit  
26 corporation,

27 Plaintiff,

28 vs.

29 CITY OF REDDING, COUNTY OF  
30 SHASTA, and KURT STARMAN, an  
31 individual,

32 Defendants.

Case No. 2:10-CV-01389-WBS-CMK

**[PROPOSED] CONSENT AGREEMENT**

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

33 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “**CSPA**”  
34 or “**PLAINTIFF**”) is a non-profit public benefit corporation dedicated to the preservation,  
35 protection, and defense of the environment, wildlife, and natural resources of California’s  
36 waters;

37 **WHEREAS**, Defendant the County of Shasta (“**COUNTY**”) owns the property located

1 at 14095 Clear Creek Road, in the unincorporated area of Shasta County known as Igo, in the  
2 State of California upon which the West Central Landfill is sited (the “**Facility**”), Defendant  
3 the City of Redding (“**CITY**”) operates the Facility, and Defendant Mr. Kurt Starman  
4 (“**STARMAN**”)<sup>1</sup> was only named as a defendant in this matter in his capacity as the City  
5 Manager for the CITY;

6 **WHEREAS**, the Facility is an approximately 230-acre landfill facility within a larger  
7 1000-acre site;

8 **WHEREAS**, unless otherwise noted, CITY, COUNTY and STARMAN shall be  
9 referred to herein collectively as DEFENDANTS;

10 **WHEREAS**, DEFENDANTS entered into an agreement effective July 26, 1990  
11 concerning the use and operation of the Facility and nothing in this Consent Agreement  
12 (“**Agreement**”) shall affect, alter, or amend any rights or obligations of the COUNTY or CITY  
13 arising out of agreements between DEFENDANTS relating to ownership or operation of the  
14 Facility;

15 **WHEREAS**, CSPA and DEFENDANTS collectively shall be referred to as the  
16 “**Parties**”;

17 **WHEREAS**, the Facility collects and discharges storm water to Dry Creek and Dry  
18 Creek flows into Cottonwood Creek, which then ultimately flows into the Sacramento River,  
19 and the Sacramento-San Joaquin Delta (a map of the Facility is attached hereto as **Exhibit A**  
20 and incorporated herein by this reference);

21 **WHEREAS**, storm water discharges associated with industrial activity are regulated  
22 pursuant to the National Pollutant Discharge Elimination System (“**NPDES**”), General Permit  
23 No. CAS000001 Water Quality Order No. 91-13-DWQ (as amended by Water Quality  
24 Order 92-12 DWQ and 97-03-DWQ), issued by the State Water Resources Control Board  
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26 \_\_\_\_\_  
27 <sup>1</sup> STARMAN was only named as a defendant in this matter in his capacity as City Manager for the CITY.  
28 Accordingly, the parties agree that STARMAN’s obligations, if any, arising under this Consent Agreement,  
shall terminate prior to the Termination Date reflected in the parties’ Consent Agreement, if he ceases to serve  
the CITY as its City Manager.

1 pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter “**General**  
2 **Permit**”);

3 **WHEREAS**, on or about April 8, 2010, and again on or about May 24, 2010,  
4 PLAINTIFF provided notice of DEFENDANTS’ violations of the Act, and of its intention to  
5 file suit against DEFENDANTS, to the Administrator of the United States Environmental  
6 Protection Agency (“**EPA**”); the Administrator of EPA Region IX; the Executive Director of  
7 the State Water Resources Control Board (“**State Board**”); the Executive Officer of the  
8 Regional Water Quality Control Board, Central Valley Region (“**Regional Board**”); and to  
9 DEFENDANTS, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of  
10 CSPA’s notice letters (“**Notices**”) are attached as **Exhibit B** and incorporated herein by  
11 reference);

12 **WHEREAS**, DEFENDANTS deny the occurrence of the violations alleged in the  
13 Notices and maintain that they have complied at all times with the provisions of the General  
14 Permit;

15 **WHEREAS**, CSPA filed a complaint (*California Sportfishing Protection Alliance v.*  
16 *City of Redding, et al.*, Case No. 2:10-CV-01389-WBS-CMK) (the “**Action**”) against CITY  
17 and STARMAN in the United States District Court, Eastern District of California, on June 7,  
18 2010, and, upon the expiration of PLAINTIFF’s May 24, 2010 notice letter to COUNTY, filed  
19 a First Amended Complaint adding COUNTY as a defendant on July 23, 2010;

20 **WHEREAS**, for purposes of this Agreement, the Parties stipulate that venue is proper  
21 in this Court, and that DEFENDANTS do not contest the exercise of jurisdiction by this Court  
22 to enter this Consent Agreement;

23 **WHEREAS**, this Agreement shall be submitted to the United States Department of  
24 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall  
25 thereafter be submitted for approval by the Court, the date of which approval shall be referred  
26 to herein as the “**Court Approval Date**;”

27 **WHEREAS**, at the time the Agreement is submitted for approval to the United States  
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1 District Court, CSPA shall request a dismissal of the First Amended Complaint with prejudice  
2 and the Parties shall stipulate and request that the Court retain jurisdiction for the enforcement  
3 of this Agreement as provided herein;

4 **AND WHEREAS**, the Parties, through their authorized representatives and without  
5 either adjudication of CSPA's claims or admission by DEFENDANTS of any alleged violation  
6 or other wrongdoing, have chosen to resolve this matter through settlement to avoid the cost  
7 and uncertainties of further litigation;

8 **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE**  
9 **SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS**  
10 **FOLLOWS:**

11 **I. COMMITMENT OF DEFENDANTS**

12 **1. Compliance With General Permit & Clean Water Act.** Beginning  
13 immediately, DEFENDANTS shall operate the Facility in full compliance with the  
14 requirements of the General Permit and the Clean Water Act, subject to any defenses available  
15 under the law.

16 **2. DEFENDANTS' Implementation of Specific Storm Water Best**  
17 **Management Practices.** DEFENDANTS shall complete the implementations of the  
18 following storm water control measures/best management practices ("**BMPs**") in the time  
19 frames provided:

20 (a) DEFENDANTS shall install aggregate-based berms with an asphalt  
21 bitumen (liquid asphalt) surface layer around the Facility's "**Self-Haul Transfer Area**"  
22 within sixty (60) days of the completed mutual execution of this Agreement to the  
23 extent necessary to direct storm water north to a newly established and designated storm  
24 water discharge point and sampling location;

25 (b) DEFENDANTS shall install asphalt berms for the 2011 to 2015 Wet  
26 Seasons on or before July 1, 2011, around the Facility's Self-Haul Transfer Area to the  
27 extent necessary to direct storm water north to a newly established and designated storm  
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water discharge point and sampling location;

(c) DEFENDANTS shall install a litter filter and an oil-water separator at the newly established storm water discharge point/sampling location described in Clause 2(a), above, within ninety (90) days of the completed mutual execution of this Agreement;

(d) DEFENDANTS shall create a new, comprehensive erosion control plan for the Facility and integrate it into the Facility SWPPP within sixty (60) days of the completed mutual execution of this Agreement;

(e) DEFENDANTS shall remediate the main drainage through the southern canyon by re-grading the drainage's existing slopes and installing rock to prevent future erosion of the drainage within thirty (30) days of the completed mutual execution of this Agreement;

(f) DEFENDANTS shall remediate the drainage issues on the access road down to Dry Creek by re-grading the road, installing a rock lined drainage ditch and installing cross drains to deter erosion of the road surface within thirty (30) days of the completed mutual execution of this Agreement;

(g) DEFENDANTS shall hydro-seed the barren areas on the existing waste pile within thirty (30) days of the completed mutual execution of this Agreement;

(h) DEFENDANTS shall strive to minimize the amount of windblown debris at the Facility to the greatest extent feasible by continuing to remove windblown trash from the Facility no less than twice per week;

(i) During each Wet Season throughout the life of this Agreement, DEFENDANTS shall weekly monitor and maintain all of the Facility's storm water conveyances (e.g., drainage trenches, pipes, dams), discharge points and BMP structures in a manner that ensures they are kept free of debris and materials not related to the control or treatment of storm water;

(j) DEFENDANTS shall develop and implement a training program for all

1 new employees and a yearly refresher course for employees to train the employees in  
2 storm water management and pollution prevention practices at the Facility, on or before  
3 February 1, 2011. Further, throughout the life of this Agreement, DEFENDANTS shall  
4 maintain records at the Facility of the monitoring and maintenance required by Clause  
5 2(h), above, and of any employee training related to storm water management; and,

6 (k) Within sixty (60) days of the completed mutual execution of this  
7 Agreement, DEFENDANTS shall create a visual inspection checklist that must be used  
8 by trained Facility personnel when conducting the visual observations and monitoring  
9 of storm water required under the General Permit, and such visual inspection checklists  
10 shall be incorporated into the Facility SWPPP.

11 **3. SWPPP Amendments/Additional BMPs.** Within sixty (60) days of the  
12 completed mutual execution of this Agreement, DEFENDANTS shall formally amend the  
13 Storm Water Pollution Prevention Plan (“SWPPP”) and the Storm Water Monitoring Plan  
14 (“SWMP”) for the Facility to incorporate all of the relevant requirements of this Consent  
15 Agreement, as well as the revised Facility map attached hereto as **Exhibit A**. DEFENDANTS  
16 shall provide a copy of the revised SWPPP and SWMP to CSPA upon their completion.

17 **4. Sampling Frequency.** DEFENDANTS shall collect and analyze samples from  
18 four (4) storm events, as qualified in the General Permit<sup>2</sup> for sampling purposes, in each of the  
19 five (5) Wet Seasons occurring during the term of this Agreement (2010-2011, 2011-2012,  
20 2012-2013, 2013-2014 and 2014-2015). The storm water sample results shall be compared  
21 with the values contained in Clause 5 below.

22 **5. Sampling Parameters.** The COUNTY shall analyze each storm water sample  
23 taken in accordance with the provisions of the General Permit. Accordingly, all samples shall  
24 be analyzed for each of the constituents listed in the below table by a laboratory accredited by  
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26 <sup>2</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are  
27 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
28 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 the State of California. All samples collected from the Facility shall be delivered to the  
2 laboratory as soon as possible to ensure that sample hold time is not exceeded. Analytical  
3 methods used by the laboratory shall be adequate to detect the individual constituents at or  
4 below the values specified in the below table.

| Parameter                 | Value        |
|---------------------------|--------------|
| pH                        | 6.0 – 9.0    |
| Specific Conductivity     | 200 µmhos/cm |
| Total Suspended Solids    | 100 mg/L     |
| Oil & Grease              | 15 mg/L      |
| Iron, Total               | 1.0 mg/L     |
| Aluminum, Total           | 0.75 mg/L    |
| Arsenic, Total            | 0.16854 mg/L |
| Cadmium, Total            | 0.0159 mg/L  |
| Copper, Total             | 0.0636 mg/L  |
| Magnesium, Total          | 0.0636 mg/L  |
| Mercury, Total            | 0.0024 mg/L  |
| Nitrate + Nitrite (“N+N”) | 0.68 mg/L    |

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20         6.         Sampling results shall be provided to CSPA within thirty (30) days of  
21 DEFENDANTS’ receipt of the laboratory report from each sampling event pursuant to the  
22 Notice provisions below. If the results of any samples exceed the parameter values set forth  
23 above, DEFENDANTS shall comply with the “**Action Memorandum**” requirements set forth  
24 in Clause 7 of this Agreement.

25         7.         “**Action Memorandum**” **Trigger.** If any sample taken during the five (5) Wet  
26 Seasons referenced in Clause 4 above exceeds the evaluation levels set forth in the table in  
27 Clause 5, or if DEFENDANTS fail to collect and analyze samples from four (4) storm events,  
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1 as required in the General Permit, DEFENDANTS shall prepare a written statement discussing  
2 (1) the exceedance(s) and /or failure to collect and analyze samples from four (4) storm events,  
3 (2) the possible cause and/or source of the exceedance(s), and (3) additional feasible measures  
4 that will be taken to address and eliminate the problem and future exceedances (“**Action**  
5 **Memorandum**”). The Action Memorandum shall be provided to CSPA not later than July  
6 30<sup>th</sup> following the conclusion of each Wet Season. Recognizing that a SWPPP is an ongoing  
7 iterative process meant to encourage innovative BMPs, such additional measures may include,  
8 but are not limited to, material improvements to the storm water collection and discharge  
9 system, reviewing the frequency of Facility sweeping, changing the type and extent of storm  
10 water filtration media or modifying other industrial activities or management practices at the  
11 Facility. Such additional measures, to the extent feasible, shall be implemented immediately  
12 and in no event later than sixty (60) days after the due date of the Action Memorandum, except  
13 where 1) structural changes require longer than sixty (60) days to complete; 2) weather-related  
14 conditions render immediate implementation infeasible; or 3) the Parties agree in writing to  
15 defer implementation of specific measures in order to effectively meet and confer as discussed  
16 in this section below. Within thirty (30) days of implementation, the Facility SWPPP shall be  
17 amended to include all additional BMP measures designated in the Action Memorandum.

18 **8. CSPA Review Of “Action Memorandum”; Meet-and-Confer.** CSPA may  
19 review and comment on an Action Memorandum and suggest any additional pollution  
20 prevention measures it believes are appropriate. CSPA shall make good faith efforts to  
21 provide DEFENDANTS any comments and suggestions within thirty (30) days of its receipt of  
22 the Action Memorandum; however, CSPA’s failure to do so shall not be deemed to constitute  
23 agreement with the proposal(s) set forth in the Action Memorandum. Upon request by CSPA,  
24 DEFENDANTS agree to meet and confer in good faith (at the Facility, if requested by  
25 PLAINTIFF) regarding the contents and sufficiency of the Action Memorandum. If, after  
26 meeting and conferring on the Action Memorandum, the Parties fail to reach agreement on  
27 additional measures, either of the Parties may bring a motion before the Magistrate Judge  
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1 consistent with the Agreement's dispute resolution procedures described below. If CSPA  
2 failed to provide DEFENDANTS its objections or comments to the contents and sufficiency of  
3 the Action Memorandum within thirty (30) days of its receipt thereof and CSPA subsequently  
4 brings a motion before the Magistrate Judge challenging the sufficiency of DEFENDANTS'  
5 storm water management measures implemented prior to CSPA's filing of such motion, the  
6 Court may consider CSPA's failure to provide DEFENDANTS feedback on the Action  
7 Memorandum within thirty (30) days as one of many factors in its analysis of the sufficiency of  
8 storm water management measures implemented by DEFENDANTS prior to filing of the  
9 motion.

10 **9. Inspections During The Term Of This Agreement.** In addition to any site  
11 inspections conducted as part of the meet-and-confer process concerning an Action  
12 Memorandum as set forth above, DEFENDANTS shall permit representatives of CSPA to  
13 perform up to three (3) physical inspections of the Facility during the term of this Consent  
14 Agreement. These inspections shall be performed by CSPA's counsel and consultants and may  
15 include sampling, photographing, and/or videotaping and CSPA shall provide DEFENDANTS  
16 with a copy of all sampling reports, photographs and/or video. CSPA shall provide at least  
17 forty-eight (48) hours advance notice of such physical inspection, except that DEFENDANTS  
18 shall have the right to deny access if circumstances would make the inspection unduly  
19 burdensome and pose significant interference with business operations or any party/attorney, or  
20 the safety of individuals. In such case, DEFENDANTS shall specify at least three (3) dates  
21 within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed.  
22 DEFENDANTS shall not make any alterations to Facility conditions during the period between  
23 receiving CSPA's initial forty-eight (48) hour advance notice and the start of CSPA's  
24 inspection that DEFENDANTS would not otherwise have made but for receiving notice of  
25 CSPA's request to conduct a physical inspection of the Facility, excepting any actions taken in  
26 compliance with any applicable laws or regulations. Nothing herein shall be construed to  
27 prevent DEFENDANTS from continuing to implement any BMPs identified in the SWPPP  
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1 during the period prior to an inspection by CSPA or at any time.

2 **10. Defendants' Communications with Regional and State Boards.** During the  
3 term of this Agreement, DEFENDANTS shall provide CSPA with copies of all documents  
4 submitted to the Regional Board or the State Board concerning storm water discharges from  
5 the Facility, including, but not limited to, all documents and reports submitted to the Regional  
6 Board and/or State Board as required by the General Permit. Such documents and reports shall  
7 be provided to CSPA pursuant to the Notice provisions in Clause 24 and contemporaneously  
8 with DEFENDANTS' submission to such agencies.

9 **11. SWPPP Amendments.** DEFENDANTS shall provide CSPA with a copy of any  
10 amendments to the Facility SWPPP and SWMP (e.g., any additional storm water discharge  
11 points/sampling locations developed in response to erosion control efforts at the Facility and/or  
12 changed operational areas) made after the execution of this Agreement by the Parties within  
13 thirty (30) days of such amendment.

14 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

15 **12. Mitigation Payment.** In recognition of the good faith efforts by  
16 DEFENDANTS to comply with all aspects of the General Permit and the Clean Water Act,  
17 and in lieu of payment by DEFENDANTS of any civil penalties which may have been assessed  
18 in this action if the matter had proceeded to trial, and as mitigation of the Clean Water Act  
19 violations alleged in CSPA's First Amended Complaint, the Parties agree that DEFENDANTS  
20 will pay the sum of thirty thousand dollars (\$30,000) within fifteen (15) days after the Court  
21 Approval Date to the Rose Foundation for Communities and the Environment (6008 College  
22 Avenue, Oakland, CA 94618, Attn: Tim Little) for projects to improve water quality in Dry  
23 Creek, Cottonwood Creek, the Sacramento River and/or the Sacramento-San Joaquin River  
24 Delta Estuary. If the mitigation payment is not dispersed by the Rose Foundation as agreed  
25 above within two year(s) of the completed mutual execution of this Agreement, the funds shall  
26 be returned to DEFENDANTS to implement the mitigation.

27 **13. CSPA's Attorneys' Fees and Costs.** DEFENDANTS agree to reimburse CSPA  
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1 in the amount of thirty-two thousand five hundred dollars (\$32,500) to defray CSPA's  
2 reasonable investigative, expert, consultant and attorneys' fees and costs, and all other costs  
3 incurred as a result of investigating the activities at the Facility, bringing the action, and  
4 negotiating a resolution in the public interest. Such payment shall be made to the Law Offices  
5 of Andrew L. Packard Attorney-Client Trust Account and remitted within fifteen (15) days after  
6 the Court Approval Date.

7 **14. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,  
8 expert, consultant and attorneys' fees and costs associated with monitoring DEFENDANTS'  
9 compliance with this Consent Agreement over its five-year term, DEFENDANTS agree to  
10 contribute seventeen thousand five hundred dollars (\$17,500) to a compliance monitoring fund  
11 maintained by CSPA's counsel. Compliance monitoring activities may include, but shall not  
12 be limited to, site inspections, review of water quality sampling reports, review of annual  
13 reports, discussions with representatives of DEFENDANTS concerning the Action  
14 Memoranda referenced above, and potential changes to compliance requirements herein,  
15 preparation for and participation in meet-and-confer sessions, water quality sampling and  
16 analysis, and compliance-related activities. Such payment shall be made payable to the Law  
17 Offices of Andrew L. Packard Attorney-Client Trust Account and remitted within fifteen (15)  
18 days of the Court Approval Date. Any unused portion of these funds remaining on the  
19 Termination Date shall be refunded to DEFENDANTS within fifteen (15) days of the  
20 Termination Date of this Agreement.

21 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

22 **15. Meet and Confer Regarding Breach.** With the exception of the timelines set  
23 forth above for addressing exceedances of values specified in Clause 6 and Action Memoranda  
24 specified in Clause 8, if a dispute under this Agreement arises, or any Party under this  
25 Agreement believes that a breach of this Agreement has occurred, the Parties shall meet and  
26 confer within seven (7) days of receiving written notification from the other Party of a request  
27 for a meeting to determine whether a violation has occurred and to develop a mutually agreed  
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1 upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet  
2 and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) days have  
3 passed after the meet-and-confer occurred or should have occurred, either Party shall be  
4 entitled to all rights and remedies under the law, including filing a motion before the  
5 Magistrate Judge in the District Court of California, Eastern District, which shall retain  
6 jurisdiction over the Action for the limited purposes of enforcement of the terms of this  
7 Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in any such  
8 motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in  
9 Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law  
10 interpreting such provision.

11 **16. CSPA Waiver and Release.** Upon Court approval and entry of this Agreement,  
12 CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
13 directors, officers, agents, attorneys, representatives, and employees, releases DEFENDANTS  
14 and their elected officials, officers, directors, employees, shareholders, parents, subsidiaries,  
15 and affiliates, and each of their predecessors, successors and assigns, and each of their agents,  
16 attorneys, consultants, and other representatives (each a “**Released Defendant Party**”) from,  
17 and waives all claims which arise from or pertain to the Action, including, without limitation,  
18 all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including  
19 fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
20 which could have been claimed in this Action, for the alleged failure of DEFENDANTS to  
21 comply with the Clean Water Act at the Facility.

22 **17. DEFENDANTS’ Waiver and Release.** DEFENDANTS, on their own behalf  
23 and on behalf of those Released Defendant Parties under their control, release CSPA (and its  
24 officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their  
25 successors and assigns, and its agents, attorneys, and other representative) from, and waive all  
26 claims which arise from or pertain to the Action, including all claims for fees (including fees  
27 of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or  
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1 which could have been claimed for matters associated with or related to the Action.

2 **18. Stipulation for Dismissal.** Upon the Court Approval Date, the Parties shall file  
3 with the Court a Stipulation and Order which shall provide that:

4 a. The First Amended Complaint and all claims therein shall be dismissed  
5 with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2); and

6 b. The Court shall retain and have jurisdiction over the Parties with respect  
7 to disputes arising under this Agreement. Nothing in this Agreement shall be construed  
8 as a waiver of any Party's right to appeal from an order that arises from an action to  
9 enforce the terms of this Agreement.

10 **IV. MISCELLANEOUS PROVISIONS**

11 **19. No Admission of Liability or Fault.** The Parties enter into this Agreement for  
12 the purpose of avoiding prolonged and costly litigation. Nothing in this Agreement shall be  
13 construed as, and DEFENDANTS expressly do not intend to imply, an admission as to any  
14 fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement  
15 constitute or be construed as an admission by DEFENDANTS of any fact, finding, conclusion,  
16 issue of law, or violation of law. However, this paragraph shall not diminish or otherwise  
17 affect the obligation, responsibilities, and duties of the Parties under this Agreement.

18 **20. Completed Mutual Execution.** The term "**completed mutual execution,**" as  
19 used in this Agreement, shall mean the last date on which the signature of a Party to this  
20 Agreement is executed.

21 **21. Termination Date.** This Agreement shall terminate on September 30, 2015.

22 **22. Counterparts.** This Agreement may be executed in one or more counterparts  
23 which, taken together, shall be deemed to constitute one and the same document. An executed  
24 copy of this Consent Agreement shall be valid as an original.

25 **23. Severability.** In the event that any one of the provisions of this Agreement is  
26 held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
27 adversely affected.

1           **24. Construction; Governing Law.** The language in all parts of this Agreement,  
2 unless otherwise stated, shall be construed according to its plain and ordinary meaning. This  
3 Agreement shall be construed pursuant to California law, without regarding to conflict of law  
4 principles.

5           **25. Authority.** The undersigned are authorized to execute this Agreement on behalf  
6 of their respective parties and have read, understood and agreed to be bound by all of the terms  
7 and conditions of this Agreement.

8           **26. Entire Agreement.** All agreements, covenants, representations and warranties,  
9 express or implied, oral or written, of the Parties concerning the subject matter of this  
10 Agreement are contained herein. This Agreement and its attachments are made for the sole  
11 benefit of the Parties, and no other person or entity shall have any rights or remedies under or  
12 by reason of this Stipulated Judgment, unless otherwise expressly provided for therein.

13           **27. Notices.** Any notices or documents required or provided for by this Agreement  
14 or related thereto that are to be provided to CSPA pursuant to this Agreement shall be  
15 hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the  
16 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

17           Bill Jennings, Executive Director  
18           California Sportfishing Protection Alliance  
19           3536 Rainier Avenue  
20           Stockton, CA 95204  
21           E-mail: [DeltaKeep@aol.com](mailto:DeltaKeep@aol.com)

22           With copies sent to:

23           Andrew L. Packard  
24           Erik M. Roper  
25           Law Offices of Andrew L. Packard  
26           100 Petaluma Boulevard North, Suite 301  
27           Petaluma, CA 94952  
28           Tel: (707) 763-7227  
29           E-mail: [Andrew@packardlawoffices.com](mailto:Andrew@packardlawoffices.com)  
30                        [Erik@packardlawoffices.com](mailto:Erik@packardlawoffices.com)

31           And to:

32           Robert J. Tuerck, Esq.  
33           Jackson & Tuerck  
34           P.O. Box 148

1 429 W. Main Street, Suite C  
2 Quincy, CA 95971  
3 Tel: 530-283-0406  
4 Fax: 530-283-0416  
5 E-mail: [Bob@JacksonTuerck.com](mailto:Bob@JacksonTuerck.com)

6 Any notices or documents required or provided for by this Agreement or related thereto that  
7 are to be provided to DEFENDANTS pursuant to this Agreement shall be sent by U.S. Mail,  
8 postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
9 transmission to the email addresses listed below:

10 Rick Duvernay, City Attorney  
11 City of Redding  
12 City Attorney's Office  
13 777 Cypress Avenue  
14 Redding, CA 96049-6071  
15 Tel.: (530) 225-4050  
16 Fax.: (530) 225-4362  
17 E-mail: [rduvernay@ci.redding.ca.us](mailto:rduvernay@ci.redding.ca.us)

18 Rubin Cruse, County Counsel  
19 James R. Ross, Assistant County Counsel  
20 Shasta County  
21 1450 Court Street, Room 332  
22 Redding, CA 96001-1675  
23 Tel.: (530) 225-5711  
24 Fax.: (530) 225-5817  
25 E-mail: [rcruse@co.shasta.ca.us](mailto:rcruse@co.shasta.ca.us)  
26 [jross@co.shasta.ca.us](mailto:jross@co.shasta.ca.us)

27 With copies sent to:

28 Katherine J. Hart  
29 Leslie Z. Walker  
30 Abbott & Kindermann, LLP  
31 2100 21<sup>st</sup> Street  
32 Sacramento, CA 95818  
33 Tel: (916) 456-9595  
34 Fax.: (916) 456-9599  
35 E-mail: [khart@aklandlaw.com](mailto:khart@aklandlaw.com)  
36 [lwalker@aklandlaw.com](mailto:lwalker@aklandlaw.com)

37 Each Party shall promptly notify the other of any change in the above-listed contact  
38 information.

39 **28.** Signatures of the Parties transmitted by facsimile or email shall be deemed  
40 binding.

41 **29. Force Majeure.** No Party shall be considered to be in default in the

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1 performance of any of its obligations when a failure to perform is due to a “**Force Majeure.**”  
2 A Force Majeure event is any circumstances beyond the Party’s control, including, without  
3 limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public  
4 authority. A Force Majeure event does not include normal inclement weather or inability to  
5 pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it  
6 could not reasonably have been expected to avoid, and which by exercise of due diligence has  
7 been unable to overcome, the Force Majeure.

8 **30. Non-Approval of Agreement.** If for any reason the United States Department  
9 of Justice, the United States Environmental Protection Agency or the Court should decline to  
10 approve this Agreement in the form presented, the Parties shall use their best efforts to work  
11 together to modify the Agreement within thirty (30) days so that it is acceptable to the United  
12 States Department of Justice, the United States Environmental Protection Agency or the Court.  
13 If the Parties are unable to modify this Agreement in a mutually acceptable manner, this  
14 Agreement shall become null and void.

15 **31.** This Agreement shall be deemed to have been drafted equally by the Parties, and  
16 shall not be interpreted for or against any Party on the ground that any such party drafted it.

17 **32. Entire Agreement.** This Agreement and the attachments contain all of the terms  
18 and conditions agreed upon by the Parties relating to the matters covered by the Agreement,  
19 and supersede any and all prior and contemporaneous agreements, negotiations,  
20 correspondence, understandings, and communications of the Parties, whether oral or written,  
21 respecting the matters covered by this Agreement.

22 **33. Modification.** This Agreement may be amended or modified only by a writing  
23 signed by the Parties or their authorized representatives, and then by order of the Court.

24 **34. Breach of Agreement.** Except in case of an emergency but subject to the  
25 regulatory authority of any applicable governmental authority, any breach of or default under  
26 this Agreement capable of being cured shall be deemed cured if, within five (5) days of first  
27 receiving notice of the alleged breach or default, or within such other period approved in  
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1 writing by the Party making such allegation, which approval shall not be unreasonably  
2 withheld, the party allegedly in breach or default has completed such cure or, if the breach or  
3 default can be cured but is not capable of being cured within such five (5) day period, has  
4 commenced and is diligently pursuing to completion such cure.

5 The Parties hereto enter into this Agreement and respectfully submit it to the Court for  
6 its approval and entry as an Order and Final Judgment.

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**[SIGNATURES ON FOLLOWING PAGE]**

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Dated: 23 Nov 2010

California Sportfishing Protection Alliance

By: Bill Jennings  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_

City of Redding

By: \_\_\_\_\_  
Kurt Starman, City Manager

Dated: \_\_\_\_\_

County of Shasta

By: \_\_\_\_\_  
Rubin E. Cruse, Jr., County Counsel

Dated: \_\_\_\_\_

Kurt Starman

By: \_\_\_\_\_  
Kurt Starman

**APPROVED AS TO FORM:**

FOR DEFENDANT COUNTY:  
ABBOTT & KINDERMANN, LLP

Dated: November \_\_, 2010

By: \_\_\_\_\_  
Katherine J. Hart

FOR DEFENDANTS CITY AND STARMAN:  
CITY OF REDDING, CITY ATTORNEY

Dated: November \_\_, 2010

By: \_\_\_\_\_  
Rick Duvernay

1 Dated: \_\_\_\_\_

California Sportfishing Protection Alliance

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By: \_\_\_\_\_  
Bill Jennings, Executive Director

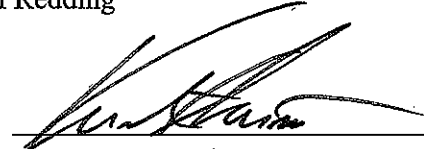
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5 Dated: 11/23/10

City of Redding

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By:   
Kurt Starman, City Manager

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County of Shasta

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By: \_\_\_\_\_  
Rubin E. Cruse, Jr., County Counsel


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14 Dated: 11/23/10

Kurt Starman

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16

By:   
Kurt Starman

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18 **APPROVED AS TO FORM:**

FOR DEFENDANT COUNTY:

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ABBOTT & KINDERMANN, LLP

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Dated: November \_\_, 2010

By: \_\_\_\_\_  
Katherine J. Hart

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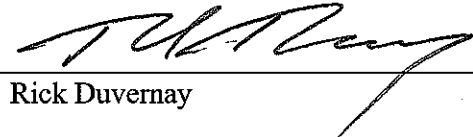
FOR DEFENDANTS CITY AND STARMAN:

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CITY OF REDDING, CITY ATTORNEY

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26 Dated: November 23, 2010

By:   
Rick Duvernay

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Dated: \_\_\_\_\_

California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

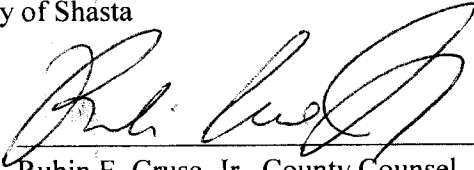
Dated: \_\_\_\_\_

City of Redding

By: \_\_\_\_\_  
Kurt Starman, City Manager

Dated: 11/23/10

County of Shasta

By:   
Rubin E. Cruse, Jr., County Counsel

Dated: \_\_\_\_\_

Kurt Starman

By: \_\_\_\_\_  
Kurt Starman

**APPROVED AS TO FORM:**

FOR DEFENDANT COUNTY:  
ABBOTT & KINDERMANN, LLP

Dated: November \_\_, 2010

By: \_\_\_\_\_  
Katherine J. Hart

FOR DEFENDANTS CITY AND STARMAN:  
CITY OF REDDING, CITY ATTORNEY

Dated: November \_\_, 2010

By: \_\_\_\_\_  
Rick Duvernay

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Dated: \_\_\_\_\_

California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: \_\_\_\_\_

City of Redding

By: \_\_\_\_\_  
Kurt Starman, City Manager

Dated: \_\_\_\_\_

County of Shasta

By: \_\_\_\_\_  
Rubin E. Cruse, Jr., County Counsel

Dated: \_\_\_\_\_

Kurt Starman

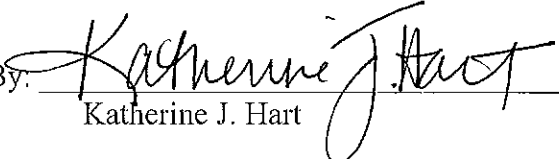
By: \_\_\_\_\_  
Kurt Starman

**APPROVED AS TO FORM:**

FOR DEFENDANT COUNTY:

ABBOTT & KINDERMANN, LLP

Dated: November 23, 2010

By:   
Katherine J. Hart

FOR DEFENDANTS CITY AND STARMAN:

CITY OF REDDING, CITY ATTORNEY

Dated: November \_\_\_\_, 2010

By: \_\_\_\_\_  
Rick Duvernay

**EXHIBIT A – Facility Site Map**



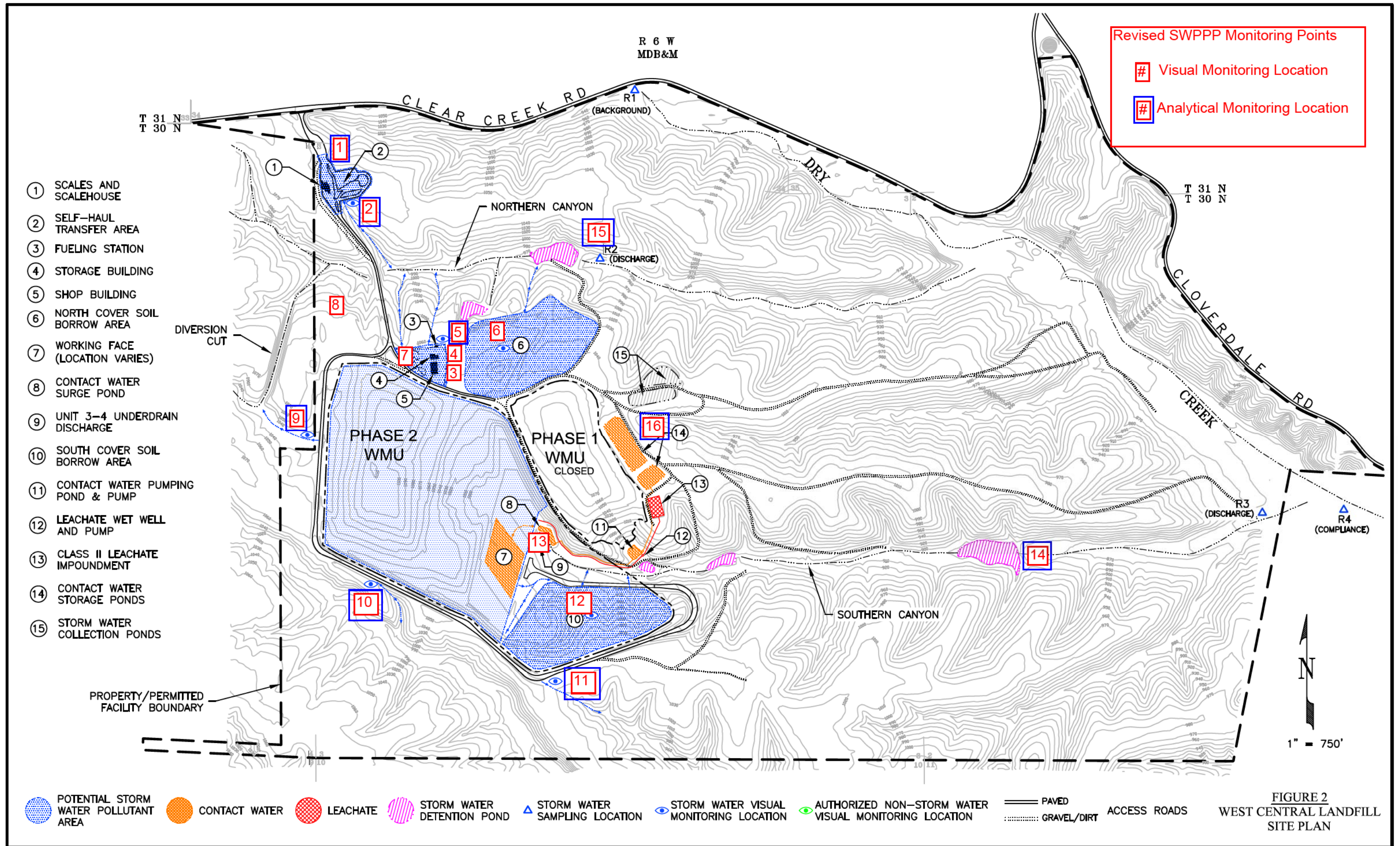


FIGURE 2  
WEST CENTRAL LANDFILL  
SITE PLAN

**EXHIBIT B – Notices of Violation**





## California Sportfishing Protection Alliance

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

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

April 8, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. John Heath, Associate Engineer  
Mr. Casey R. Scott, Supervising Engineer  
West Central Landfill  
14095 Clear Creek Rd.  
Igo, CA 96047

Mr. Andy Clemens  
City of Redding  
777 Cypress Ave.  
Redding, CA 96001

Mr. Kurt Starman, City Manager  
City of Redding  
777 Cypress Ave.  
Redding, CA 96001

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

---

Dear Messrs. Starman, Heath, Scott and Clemens:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the West Central Landfill (hereafter, "WCL") facility located at 14095 Clear Creek Road in Igo, California ("the Facility"). The WDID identification number for the Facility is 5R45I002913. The City of Redding ("the City") is the operator of the Facility. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Dry Creek, Cottonwood Creek, the Sacramento River and other California

waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility.

This letter addresses the City's unlawful discharges of pollutants from the Facility to Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit"). Although the City discharges pollutants from the Facility into Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Delta, the City has not obtained a National Pollutant Discharge Elimination System ("NPDES") permit authorizing these discharges. The City's ongoing discharges of pollutants from the Facility to these waters of the United States violate Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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, the City of Redding is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the City of Redding, and Messrs. Heath, Scott and Clemens under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

The City owns and/or operates the Facility as a landfill facility approximately 12 miles southwest of Redding, California, near the unincorporated town of Igo, California. The Facility is primarily used to dispose of municipal solid waste; other current activities at the Facility include the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to, from and within the Facility.

On April 2, 1992, the County of Shasta (i.e., the former operator of the Facility) submitted its notice of intent ("NOI") to operate the Facility in compliance with the terms of the General Industrial Storm Water Permit ("the General Permit"). Based on its review of publicly available documents CSPA is informed and believes that the City of

Redding (i.e., the current operator of the Facility) has never filed a NOI indicating its intent to operate the Facility in compliance with the terms of the General Permit.

The Facility collects and discharges storm water from its 1,058-acre industrial site through at least four discharge points indirectly to Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface

waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. See <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional parameters for pollutants that CSPA believes are being discharged from the Facility are: aluminum – 0.75 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and zinc – 0.117 mg/L.

## **II. The City is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States Without a NPDES Permit.**

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. § 122.21(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 discernable, 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). A landfill 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).

Dry Creek and Cottonwood Creek are waters of the United States, which flow into the Sacramento River and ultimately to the Sacramento-San Joaquin Delta. Accordingly, the Facility’s discharges of storm water containing pollutants to Dry Creek are discharges to waters of the United States.

CSPA anticipates the City will assert it is lawfully operating the Facility under the General Permit because the former operator of the Facility, the County of Shasta, filed a NOI to operate the Facility in compliance with the terms of the General Permit on April 2, 1992. However, the plain language of the General Permit compels the opposite conclusion. Attachment 3 to the General Permit (**NOTICE OF INTENT (NOI) INSTRUCTIONS**) states, in relevant part:

### **Change of Information**

If the information provided on the NOI or site map changes, you should report the changes to the State Water Board using an NOI form. Section I of the line-by-line instructions includes information regarding changes to the NOI.

### **NOI LINE-BY-LINE INSTRUCTIONS**

#### **Section I – NOI STATUS**

Check box “B” if you are reporting changes to the NOI (e.g., new contact person, phone number, mailing address). Include the facility WDID #.  
Highlight all the information that has been changed.

Please note that a change of information **does not** apply to a change of facility operator or a change in the location of the facility. These changes require a Notice of Termination (NOT) and submittal of a new NOI and annual fee.

#### **Section II – Facility Operator Information**

Part A: The facility operator is the legal entity that is responsible for all permit related compliance activities at the facility. In most cases, the facility operator is the owner of the business or operation where the industrial activity occurs. Give the legal name and the address of the person, firm, public organization, or any other entity that is responsible for complying with the General Permit. (Emphasis in original).

Based on the above-cited portion of the General Permit and its review of publicly available documents, CSPA is informed and believes that: (1) the County of Shasta filed the only NOI ever filed for the Facility in 1992; (2) the County of Shasta has never filed a Notice of Termination (NOT) for the Facility; (3) the City has never filed a NOI for the Facility since it began operating the Facility; and, (4) the City has operated the Facility unlawfully without a permit every day for the last five years.

For at least the last five years, the City has discharged pollutants from the Facility into Dry Creek and, ultimately, the Sacramento River and Delta without a NPDES permit. CSPA is informed and believes, and thereupon alleges, that the City has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. 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, the City is subject to penalties for violations of the Act since April 8, 2005.

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

The City 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 (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Receiving Water Limitation C(1) of the General Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an

exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Based on its review of publicly available documents, CSPA is informed and believes that the Facility continues to operate the Facility in violation of the General Permit. The City's ongoing violations are discussed further below.

**A. The Facility Has Likely Discharged Storm Water Containing Pollutants in Violation of the Permit.**

CSPA is informed and believes that the Facility has likely discharged and likely continues to discharge stormwater with unacceptable levels of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb) in violation of the General Permit. CSPA notes that every Annual Report on file for the Facility at the office of the Regional Board reports that the Facility is purportedly exempt from the General Permit requirement to collect and analyze samples of storm water from at least two storm events annually. The asserted exemption is based on a letter dated July 8, 1996, from the Regional Board's Carole Crowe to the Shasta County Department of Public Works ("the Exemption Letter"). The Exemption Letter purports to approve the Shasta County Department of Public Works' requested exemption from the sampling requirements of the General Permit. However, the Regional Board has never approved any requested exemption from the General Permit's storm water sampling requirements made by the City, the current operator of the Facility. CSPA is further informed and believes that Ms. Crowe lacked the legal authority to approve the storm water sampling exemption for the Facility requested by the Shasta County Department of Public Works in 1996. Alternatively, CSPA is informed and believes that even if Ms. Crowe did have legal authority to grant the exemption requested, the current operator of the Facility, the City, lacks the legal authority to rely on any exemption granted to the former operator of the Facility, the Shasta County Department of Public Works.

In any event, the purported exemption is facially invalid. Accordingly, the City may not rely on the Exemption Letter as the basis for having violated and continuing to violate the General Permit requirement to annually collect and analyze samples of storm water from each of the Facility's four discharge points from at least two storm events between the months of October through May. Based on its failure to sample its storm water discharges of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb), CSPA is informed and believes that the Facility is discharging storm water containing pollutants in violation of the General Permit.

CSPA is informed and believes that the City has known that the Facility's storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 8, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event

that has occurred since April 8, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that the Facility discharged storm water containing impermissible levels of TSS, O&G, Iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General 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, the City is subject to penalties for violations of the General Permit and the Act since April 8, 2005.

**B. The City Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon.

The Facility’s NOI designates the Facility as conforming to SIC Code 4953 – an SIC which requires the sampling and analysis of additional parameters found in Table D of the General Permit. Under Table D, facilities designated as SIC Code 4953 must analyze samples of storm water for Iron (Fe) and Total Suspended Solids (TSS). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that the City has failed to develop and implement an adequate Monitoring & Reporting Plan at the Facility. First, the City has failed to collect storm water samples from each discharge point at the Facility during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, the City has failed to analyze the Facility’s



storm water samples for all additional analytical parameters required for facilities designated under SIC 4953 (i.e., iron and TSS) during each of the past five years. Finally, CSPA is informed and believes that the City has failed to conduct all required visual observations of non-storm water and storm water discharges at 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, the City is subject to penalties for violations of the General Permit and the Act since April 8, 2005. These violations are set forth in greater detail below.

**1. The City Has Failed to Collect Storm Water Samples from Each of the Facility's Discharge Points During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that the City has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that for each Annual Report filed with the Regional Board for the Facility from the 2004-2005 wet season through the 2008-2009 wet season, the City has completely failed to collect any storm water samples from any of the Facility's discharge points. Each storm season the City failed to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by the City. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Permit and the Clean Water Act.

**2. The City Has Failed to Analyze the Facility's Storm Water for All Pollutants Required by the General Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that the City has failed to monitor for pollutants likely to be present in storm water discharges in significant quantities. The City's failure to monitor for such pollutants extends back at least until April 8, 2005. The City's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. The City Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 8, 2005.**

CSPA is informed and believes that available documents demonstrate the City's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in

violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City is subject to penalties for these violations of the General Permit and the Act since April 8, 2005.

**C. The City Has Failed to Implement BAT and BCT at the Facility.**

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 the City has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) 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, the City 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 information available regarding the internal structure of the Facility, CSPA believes that at a minimum, the City 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, treatment boxes or oil/water separator units), and/or prevent storm water discharge altogether. The City has failed to implement such measures adequately.

The City was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the City 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 the City fails to implement BAT and BCT. The City is subject to penalties for violations of the Order and the Act occurring since April 8, 2005.

**D. The City Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan for the Facility.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate 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 the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA’s investigation and review of available documents regarding conditions at the Facility indicate that the City has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The City has therefore been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that the City fails to develop and implement an adequate SWPPP. The City is subject to penalties for violations of the Order and the Act occurring since April 8, 2005.

**E. The City 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, CSPA is informed and believes the Facility is likely discharging elevated levels of total suspended solids, Iron (Fe), O&G, Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD) and Lead (Pb) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, the City 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, the City was aware of high levels of these pollutants prior to April 8, 2005. Likewise, the City has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). the City has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since April 8, 2005, and will continue to be in violation every day that the City fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The City is subject to penalties for violations of the General Permit and the Act occurring since April 8, 2005.

**F. The City 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 Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial

Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that the City has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. As indicated above, the City has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, the City has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time the City submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. The City's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The City is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since April 8, 2005.

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

CSPA hereby puts the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens 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 the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens 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, Esq.  
Erik Roper, Esq.  
Law Offices of Andrew L. Packard  
100 Petaluma Blvd North, Suite 301  
Petaluma, California 94952  
Tel. (707) 763-7227  
Fax. (707) 763-9227  
Email: Andrew@PackardLawOffices.com

And to:

Robert J. Tuerck, Esq.

Notice of Violation and Intent To File Suit

April 8, 2010

Page 14 of 12

Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

**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 subjects the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the City of Redding, Mr. Kurt Starman, Mr. John Heath, Mr. Casey R. Scott and Mr. Andy Clemens for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

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

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

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

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

Rick Duvernay, City Attorney  
City of Redding  
City Hall, 3<sup>rd</sup> Floor  
777 Cypress Ave.  
Redding, CA 96001

**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* April 8, 2005-April 8, 2010**

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

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



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

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

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Significant Rain Events,\* April 8, 2005-April 8, 2010**

|       |    |      |       |    |      |
|-------|----|------|-------|----|------|
| April | 01 | 2010 | April | 03 | 2010 |
| April | 02 | 2010 |       |    |      |

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



## California Sportfishing Protection Alliance

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

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

May 24, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Patrick Minturn, Director  
Department of Public Works  
Shasta County  
1855 Placer Street  
Redding, CA 96001

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

---

Dear Mr. Minturn:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Federal Water Pollution Control Act (the "Clean Water Act" or "the Act") occurring at the West Central Landfill facility ("WCL") facility located at 14095 Clear Creek Road in Igo, California ("the Facility"). The WDIID identification number for the Facility is 5R45I002913. The City of Redding ("the City") and County of Shasta ("the County") are joint operators of the Facility. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Dry Creek, Cottonwood Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility.

This letter addresses the County's unlawful discharges of pollutants from the Facility to Dry Creek, Cottonwood Creek, the Sacramento River and the Sacramento-San Joaquin Bay Delta ("the Delta"). This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("General Industrial Storm Water Permit" or "General

Permit”). The County’s ongoing discharges of pollutants from the Facility to these waters of the United States violate Section 301(a) of the Act, 33 U.S.C. § 1311(a).

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, the County of Shasta is hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the County of Shasta and Mr. Patrick Minturn under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

## **I. Background.**

The County owns and/or operates the Facility as a landfill facility approximately 12 miles southwest of Redding, California in the unincorporated town of Igo, California. The Facility is primarily used to dispose of municipal solid waste; other current activities at the Facility include the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to, from and within the Facility.

On May 27, 1992 the County submitted its notice of intent (“NOI”) to operate the Facility in compliance with the terms of the General Industrial Storm Water Permit (“the General Permit”). The Facility collects and discharges storm water from its 100-acre industrial site through at least four discharge points indirectly to Dry Creek, a tributary of Cottonwood Creek, which ultimately drains to the Sacramento River and the Sacramento-San Joaquin Bay Delta (“the Delta”). The Delta, the Sacramento River, and the creeks that receive storm water discharges from the Facility are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (“Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; cadmium – 0.00022 mg/L; copper – 0.0056 mg/L; iron – 0.3 mg/L; and zinc – 0.016 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as

domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial

storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by the Facility: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; and, iron – 1.0 mg/L. The State Water Quality Control Board also recently proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional parameters for pollutants that CSPA believes are being discharged from the Facility are: aluminum – 0.75 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; copper – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and, zinc – 0.117 mg/L.

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

The County 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 (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”) and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

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

Based on its review of publicly available documents, CSPA is informed and believes that the County continues to operate the Facility in violation of the General Permit. The County’s ongoing violations are discussed further below.

### **A. The Facility Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

CSPA is informed and believes that the Facility has discharged and likely continues to discharge storm water with unacceptable levels of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), lead (Pb), chemical oxygen demand (COD) and zinc (Zn) in violation of the General Permit.

CSPA notes that every Annual Report on file for the Facility at the office of the Regional Board reports that the Facility is purportedly exempt from the General Permit requirement to collect and analyze samples of storm water from at least two storm events annually. The asserted exemption is based on a letter dated July 8, 1996, from the Regional Board's Carole Crowe to the Shasta County Department of Public Works ("the Exemption Letter"). The Exemption Letter purports to approve the Shasta County Department of Public Works' requested exemption from the sampling requirements of the General Permit.

CSPA is informed and believes that Ms. Crowe lacked the legal authority to approve the storm water sampling exemption for the Facility requested by the Shasta County Department of Public Works in 1996. As such, the purported exemption is facially invalid. Accordingly, the County may not rely on the Exemption Letter as the basis for having violated and continuing to violate the General Permit requirement to annually collect and analyze samples of storm water from each of the Facility's four discharge points from at least two storm events between the months of October through May. Based on its failure to sample its storm water discharges of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb), CSPA is informed and believes that the Facility is discharging storm water containing pollutants in violation of the General Permit.

CSPA is informed and believes that the County has known that the Facility's storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least May 24, 2005. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since May 24, 2005, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that the Facility discharged storm water containing impermissible levels of TSS, O&G, Iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) and other un-monitored pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit.

Based on its failure to sample its storm water discharges of pH, total suspended solids (TSS), specific conductivity (SC), Iron (Fe), Oil and Grease (O&G), aluminum (Al), zinc (Zn), chemical oxygen demand (COD) and lead (Pb), CSPA is informed and believes that the Facility is discharging storm water containing pollutants in violation 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, the County is subject to penalties for violations of the General Permit and the Act since May 24, 2005.

**B. The County Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon.

The Facility’s NOI designates the Facility as conforming to SIC Code 4953 – an SIC which requires the sampling and analysis of additional parameters found in Table D of the General Permit. Under Table D, facilities designated as SIC Code 4953 must analyze samples of storm water for Iron (Fe) and Total Suspended Solids (TSS). Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that the County has failed to develop and implement an adequate Monitoring & Reporting Plan at the Facility. First, the County has failed to collect storm water samples from each discharge point at the Facility during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, the County has failed to analyze the Facility’s storm water samples for all additional analytical parameters required for facilities designated under SIC 4953 (i.e., iron and TSS) during each of the past five years. Finally, CSPA is informed and believes that the County has failed to conduct all required visual observations of non-storm water and storm water discharges at 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, the County is subject to penalties for violations of the General Permit and the Act since May 24, 2005. These violations are set forth in greater detail below.



**1. The County Has Failed to Collect Storm Water Samples from Each of the Facility's Discharge Points During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that the County has failed to collect at least two storm water samples from all discharge points during qualifying rain events at the Facility during each of the past five years. For example, CSPA notes that for each Annual Report filed with the Regional Board for the Facility from the 2004-2005 wet season through the 2008-2009 wet season, the County has completely failed to collect any storm water samples from any of the Facility's discharge points. Each storm season the County failed to sample two qualifying storm events constitutes an additional and separate violation of the General Permit.

Moreover, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than those currently designated by the County. Each of these failures to adequately monitor storm water discharges constitutes a separate and ongoing violation of the General Permit and the Clean Water Act.

**2. The County Has Failed to Analyze the Facility's Storm Water for All Pollutants Required by the General Permit.**

Section B(5)(c)(ii) of the General Permit requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Based on its investigation, CSPA is informed and believes that the County has failed to monitor for pollutants likely to be present in storm water discharges in significant quantities. The County's failure to monitor for such pollutants extends back at least until May 24, 2005. The County's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**3. The County Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since May 24, 2005.**

CSPA is informed and believes that available documents demonstrate the County's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the County is subject to penalties for these violations of the General Permit and the Act since May 24, 2005.

**C. The County Has Failed to Implement BAT and BCT at the Facility.**

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 the County has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids (TSS), Oil and Grease (O&G), iron (Fe), Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD), Lead (Pb) 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, the County 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 information available regarding the internal structure of the Facility, CSPA believes that at a minimum, the County 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, treatment boxes or oil/water separator units), and/or prevent storm water discharge altogether. The County has failed to implement such measures adequately.

The County was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the County 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 the County fails to implement BAT and BCT. The County is subject to penalties for violations of the Order and the Act occurring since May 24, 2005.

**D. The County Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan for the Facility.**

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate 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 the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General

Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)).

The SWPPP is required to include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that the County has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. The County has therefore been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that the County fails to develop and implement an adequate SWPPP. The County is subject to penalties for violations of the Order and the Act occurring since May 24, 2005.

**E. The County 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, CSPA is informed and believes the Facility is likely discharging elevated levels of total suspended solids, Iron (Fe), O&G, Specific Conductivity (SC), Aluminum (Al), Zinc (Zn), Chemical Oxygen Demand (COD) and Lead (Pb) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, the County 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, the County was aware of high levels of these pollutants prior to May 24, 2005. Likewise, the County has not filed any reports describing its noncompliance with the General Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). the County has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since May 24, 2005, and will continue to be in violation every day that the County fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The County is subject to penalties for violations of the General Permit and the Act occurring since May 24, 2005.

**F. The County 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 Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that the County has signed and submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. As indicated above, the County has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, the County has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time the County submitted an incomplete or incorrect annual report that falsely certified

compliance with the Act in the past years. The County's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The County is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since May 24, 2005.

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

CSPA hereby puts the County of Shasta and Mr. Patrick Minturn 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 the County of Shasta and Mr. Patrick Minturn 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:

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Erik Roper, Esq.  
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100 Petaluma Blvd North, Suite 301  
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And to:

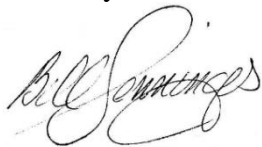
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**VII. Penalties.**

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 subjects the County of Shasta and Mr. Patrick Minturn to civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the County of Shasta and Mr. Patrick Minturn for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with a large initial "B" and "J".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
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Pamela Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
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Rancho Cordova, CA 95670-6114

Rick Duvernay, City Attorney  
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Rubin E. Cruse, Jr., County Counsel  
County of Shasta  
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**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* May 24, 2005-May 24, 2010**

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

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



**ATTACHMENT A**

**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* May 24, 2005-May 24, 2010**

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

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**Notice of Intent to File Suit, West Central Landfill (Igo, CA)  
Significant Rain Events,\* May 24, 2005-May 24, 2010**

|       |    |      |       |    |      |     |    |      |     |    |      |
|-------|----|------|-------|----|------|-----|----|------|-----|----|------|
| April | 16 | 2010 | April | 23 | 2010 | May | 01 | 2010 | May | 20 | 2010 |
| April | 17 | 2010 | April | 24 | 2010 | May | 02 | 2010 | May | 21 | 2010 |
| April | 18 | 2010 | April | 25 | 2010 | May | 10 | 2010 | May | 23 | 2010 |
| April | 19 | 2010 | April | 26 | 2010 | May | 17 | 2010 |     |    |      |
| April | 20 | 2010 | April | 29 | 2010 | May | 19 | 2010 |     |    |      |

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