



## California Sportfishing Protection Alliance

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

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February 12, 2010

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Baldwin Contracting Co., Inc.  
c/o C T Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

Mr. Ted Hale  
Plant Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Bryan Morgan  
Operations Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Mason Richardson  
Facility Manager  
Baldwin Contracting Co., Inc.  
4970 Wheelock Rd.  
Oroville, CA 95965

Mr. Rene Vercruyssen  
Facility Operator  
Baldwin Contracting Co., Inc.  
1764 Skyway  
Chico, CA 95928

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

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Dear Messrs. Hale, Morgan, Richardson and Vercruyssen:

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 Baldwin Contracting Co., Inc. ("BCCI") construction sand and gravel facility located at 4970 Wheelock Road in Oroville, California ("the Facility"). The WDID identification number for the Facility is 5R04I011757. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of Sawmill Ravine Creek, Dry Creek, the Sacramento River and other California waters. This letter is being sent to you as the responsible owners, officers and/or operators of the Facility.

This letter addresses BCCI's unlawful discharges of pollutants from the Facility

to Sawmill Ravine Creek and Dry Creek, all of which ultimately drain 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”).

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, BCCI 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 BCCI 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.**

BCCI owns and operates a sand and gravel mining and processing facility about 11 miles north of Oroville, California. The Facility is primarily used to mine and process construction sand and gravel; other current activities at the Facility include mining, washing and screening of sand, gravel, crushed rock and asphaltic concrete, and the use, storage, and maintenance of motorized vehicles, including trucks used to haul materials to and from the Facility.

On May 16, 1997, BCCI submitted its notice of intent (“1997 NOI”) to comply with the terms of the General Industrial Storm Water Permit. The Facility is primarily classified as a construction sand and gravel mining and processing operation under Standard Industrial Classification code 1442 (“Construction Sand & Gravel”). The Facility collects and discharges storm water from its approximately 60-acre industrial site to Sawmill Ravine Creek (“SRC”) and Dry Creek, all of which ultimately drain 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 CSPA believes are being discharged by BCCI: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; iron – 1.0 mg/L; and, nitrate + nitrite – 0.68 mg/L. The State Water Quality Control Board has also issued a proposed benchmark level for specific conductance of 200 µmho/cm. Additional parameters for pollutants that CSPA believes may be discharged from the Facility are: 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.**

BCCI 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.

Publicly available documents indicate that on May 17, 2007 (“May 17, 2007, Regional Board Record Of Communication”), the Regional Board’s Carole Crowe met with Bryan Morgan of BCCI to discuss, among other things, the Facility’s failure to adequately limit and/or prevent stormwater discharges to Sawmill Ravine Creek (“We discussed the fact that Sawmill Ravine Creek has been greatly disturbed through the years. Apparently, Fish and Game and the USACOE never issued permits for any of the

mining activities. I explained that they should minimize all impacts to Sawmill Ravine Creek (avoid any work in the stream channel) and protect storm water outfalls to the Creek.”). The May 17, 2007, Regional Board Record Of Communication indicates that during this meeting, Ms. Crowe reminded BCCI of its commitment to submit to the Board a revised SWPPP “in the next several weeks” implementing certain amendments recommended by Ms. Crowe. SWPPP amendments recommended by Ms. Crowe during the meeting included:

- Identify all potential storm water outfalls to SRC;
- Reduce all sediment and other pollutants to SRC;
- Prepare map(s) that provide all information required by the General Permit;
- Ensure that all employees understand that “NO” water from wash ponds may discharge to surface waters. And, generally, make sure employees get trained on how to comply with the General Permit;
- Describe existing BMPs for cliff mining (retention ponds, trench, etc.);
- Sample any storm water discharge locations;
- When rain exceeds 1”, sample above and below SRC. The existing WDRs require that samples be collected in SRC above the working area of the mine and also below the bridge at the plant entrance. Ms told Morgan that the downstream Receiving Water sample should be collected on SRC, located at the “concrete apron” immediately above Dry Creek. “The WDR reference to the “bridge” appears to be incorrect.”

Based on its review of available public documents, CSPA is informed and believes that BCCI failed to comply with the Board’s recommendations as expressed in its May 17, 2007 Record Of Communication. For example, Ms. Crowe ordered BCCI to update its SWPPP in order to, among other things, reduce all sediment and other pollutants going into Sawmill Ravine Creek. However, its 2008-2009 Annual Report reveals BCCI has failed to comply to the extent it reported discharging a level of total suspended solids well in excess of the EPA benchmark for TSS. CSPA is informed and believes that BCCI has continued to operate in violation of the General Permit despite the Regional Board’s inspection and subsequent follow up requests described above. BCCI’s ongoing violations are discussed further below.

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

BCCI has discharged and continues to discharge stormwater with unacceptable levels of total suspended solids (“TSS”) and other pollutants in violation of the General Industrial Storm Water Permit. High TSS levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. BCCI’s Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit

are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Total Suspended Solids at Concentrations in Excess of EPA Multi-Sector Benchmark Values.**

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
2/17/2009	1	TSS	6200 mg/L	100 mg/L

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

CSPA is informed and believes that BCCI has known that its stormwater contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 12, 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 February 12, 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 BCCI has discharged storm water containing impermissible levels of TSS 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 stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

**B. BCCI 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. Facilities, such as BCCI, designated under SIC 1442 are also required to sample for nitrates + nitrites (N+N). 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 BCCI has failed to develop and implement an adequate Monitoring & Reporting Plan. First, BCCI has failed to collect storm water samples from each discharge point during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, BCCI 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 Act, BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since February 12, 2005. These violations are set forth in greater detail below.

**1. BCCI Has Failed to Collect Storm Water Samples from Each Discharge Point During at least Two Rain Events In Each of the Last Five Years.**

Based on its review of publicly available documents, CSPA is informed and believes that BCCI 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 during the 2004-2005, 2005-2006, 2006-2007 and 2007-2008 wet seasons, BCCI failed to collect any storm water samples from any discharge point. (*See, e.g., BCCI, 2005-2006 Annual Report, at p. 3*). CSPA anticipates BCCI will assert that its failure to sample from any discharge point during those wet seasons was excused because all water was contained on site. However, given the Facility’s topography and the above-discussed comments of the Board’s Ms. Crowe found in the May 17, 2007, Regional Board Record Of Communication, such an assertion strains credulity. Further, contrary to its affirmative response to item D.1. in Annual Reports filed for the 2004-2005, 2005-2006 and 2006-2007 wet seasons, BCCI was *not*

exempt from collecting and analyzing samples from two storm events in accordance with sections B.12 or B.15 of the General Permit. Notwithstanding BCCI's assertion, found in the 2005-2007 Annual Reports, that "sampling is not required [because] all water is contained on site," as amply demonstrated by the exempt categories presented by Annual Report item D.2(i)-(v), BCCI was not exempt from the sampling and analysis required under the General Permit. Moreover, this conclusion is compelled by BCCI's failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v). Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

With respect to the Annual Report filed by BCCI for the 2008-2009 wet season, CSPA is informed and believes that February 17, 2009 was not the first qualifying storm event for the 2008-2009 wet season. As with its ongoing failure to collect two samples from all discharge points during each of the past five years, BCCI's ongoing failure to sample the first qualifying storm event constitutes additional and separate violations 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 BCCI. Each of these failures to adequately identify and monitor storm water discharges constitutes a separate and ongoing violation of the General Industrial Storm Water Permit and the Clean Water Act as well.

**2. BCCI Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Industrial Storm Water 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 BCCI has failed to monitor for at least eleven other pollutants likely to be present in storm water discharges in significant quantities – aluminum, arsenic, chemical oxygen demand, chromium, copper, lead, manganese, mercury, nickel, nitrate+nitrite and zinc. BCCI's failure to monitor these pollutants extends back at least until February 12, 2005. BCCI's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the Permit and the Act.

**3. BCCI Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 12, 2005.**



CSPA is informed and believes that available documents demonstrate BCCI's consistent and ongoing failure to implement an adequate Monitoring & Reporting Plan in violation of Section B of the General Industrial Storm Water Permit. As recently as December 15, 2009, the Board informed BCCI that in order "to reduce or eliminate the discharge of pollutants" from the Facility in compliance with the General Permit, BCCI "must modify [its] existing...Monitoring Plan...." Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its Monitoring Plan as requested by the Board and required by the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, BCCI is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since February 12, 2005.

**C. BCCI Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that BCCI has not implemented BAT and BCT at the Facility for its discharges of TSS and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

To meet the BAT/BCT requirement of the General Permit, BCCI must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the current internal structure and operations of the Facility, CSPA believes that at a minimum BCCI must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether, through infiltration and evaporation measures. BCCI has failed to implement such measures adequately.

BCCI was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, BCCI 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 BCCI fails to implement BAT and BCT. BCCI is subject to penalties for violations of the General Permit and the Act occurring since February 12, 2005.

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

Section A(1) and Provision E(2) of the General Industrial Storm Water Permit

require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate 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 BCCI has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. BCCI has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. As recently as December 15, 2009, the Board informed BCCI that in order “to reduce or eliminate the discharge of pollutants” from the Facility in compliance with the General Permit, BCCI

“must modify [its] existing Storm Water Pollution Prevention Plan (SWPPP)....” Based on its review of publicly available documents, CSPA is informed and believes BCCI has failed to update its SWPPP or Monitoring Plan as requested by the Board and required by the General Permit. BCCI has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that BCCI fails to develop and implement an effective SWPPP. BCCI is subject to penalties for violations of the Order and the Act occurring since February 12, 2005.

**E. BCCI 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, BCCI is discharging elevated levels of total suspended solids and likely other pollutants, causing or contributing to exceedances of applicable water quality standards. For each of these pollutants, BCCI 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. It has not done so.

Based on CSPA’s review of available documents, BCCI was aware of high levels of these pollutants prior to February 12, 2005. Likewise, BCCI 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). BCCI 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 February 12, 2005, and will continue to be in violation every day that BCCI fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include appropriate BMPs. BCCI is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

**F. BCCI Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that BCCI has signed and submitted incomplete Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, based on its review of publicly available documents, CSPA is informed and believes that BCCI submitted an incomplete Annual Report for the 2008-2009 wet season. To wit, on December 15, 2009, the Board sent BCCI a Notice of Violation indicating BCCI is "in violation of the General Permit (Section B-16), the California Water Code, and the federal Clean Water Act, for failure to submit a complete 2008-2009 annual report."

As discussed further above, BCCI's pattern and practice of submitting incomplete reports is further evidenced by its repeated and ongoing failure to check off any one of the boxes corresponding to the five recognized categories of exempt facilities presented by Annual Report item D.2(i)-(v).

As indicated above, BCCI has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, BCCI has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time BCCI submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. BCCI's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. BCCI is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since February 12, 2005.

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

CSPA hereby puts BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen 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 BCCI on notice that it intends to include those persons in this enforcement action.

**IV. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

**V. Counsel.**

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

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

**VI. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen 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 BCCI, Ted Hale, Mason Richardson, Bryan Morgan and Rene Vercruyssen for

Notice of Violation and Intent To File Suit

February 12, 2010

Page 14 of 14

the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style with a large initial "B".

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

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

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

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

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

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

## ATTACHMENT A

### Notice of Intent to File Suit, BCCI (Oroville, CA) Significant Rain Events,\* February 12, 2005-February 12, 2010

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

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



**ATTACHMENT A**

**Notice of Intent to File Suit, BCCI (Oroville, CA)  
Significant Rain Events,\* February 12, 2005-February 12, 2010**

Jan.	12	2010	Jan.	19	2010	Jan.	25	2010	Feb.	06	2010
Jan.	13	2010	Jan.	20	2010	Jan.	26	2010	Feb.	09	2010
Jan.	17	2010	Jan.	21	2010	Jan.	30	2010			
Jan.	18	2010	Jan.	24	2010	Feb.	04	2010			

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