

## 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)

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

June 1, 2010

Paul Hart – President  
John Geisler – Operations Manager  
Davis Waste Removal Co., Inc.  
2727 2nd Street  
Davis, CA 95616

Paul Hart – President  
John Geisler – Operations Manager  
Davis Waste Removal Co., Inc.  
P.O. Box 1170  
Davis, CA 95617-1170

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

Dear Messrs Hart and Geisler:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“Act”) that CSPA believes are occurring at Davis Waste Removal Co., Inc., located at 2727 2nd Street in Davis, California (“Facility”). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Sacramento-San Joaquin River Delta (the “Delta”), and other California waters. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as “Davis Waste”).

This letter addresses Davis Waste’s unlawful discharge of pollutants from the Facility into the City of Davis storm drain system, the Yolo Bypass, and the Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, State Water Resources Control Board (“State Board”), Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “General Permit”). The Waste Discharge Identification Number (“WDID”) for the Facility listed on documents submitted to the State Board is 5S57I013120. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Davis Waste on formal notice that, after the expiration of sixty days from the date of this Notice of Violation and Intent to Sue, CSPA intends to file suit in federal court against Davis Waste, including the responsible managers, directors, or operators, under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

## **I. Background.**

On April 17, 1997, Davis Waste filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). Davis Waste certified that the Facility is classified under SIC code 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”). The Facility collects and discharges storm water from its approximately seven (7) acre industrial site into at least one (1) storm water discharge location at the Facility. The storm water discharged by Davis Waste is discharged to the City of Davis storm drain system which empties into the Yolo Bypass which is part of the Delta.<sup>1</sup>

The Regional Board has identified beneficial uses of the Central Valley Region’s waters and established water quality standards for the Delta in “The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin,” generally referred to as the Basin Plan. *See* [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf). The beneficial uses of these waters include, among others, water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. Basin Plan at II-1.00 – II-2.00. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking,... camping, boating,..., hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs peoples’ use of the Delta for contact and non-contact water recreation.

For the Delta, the Basin Plan establishes trace element water quality objectives for several metals, including 0.1 mg/L for zinc, 0.3 mg/L for iron, and 0.01 mg/L for copper. *Id.* at III-4.00.

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<sup>1</sup> *See* The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin, Figure III-1. The Yolo Bypass is adjacent to the Sacramento River Deep Water Channel on its northwest side. *See also* map at [http://ca.water.usgs.gov/user\\_projects/toxics/images/YoloBypassSidePic\\_Full.jpg](http://ca.water.usgs.gov/user_projects/toxics/images/YoloBypassSidePic_Full.jpg)

For waters like the delta that are designated for use as domestic or municipal supply (MUN), the Basin Plan incorporates maximum contaminant levels (MCLs) as the applicable water quality objectives, including 1.0 mg/L for Aluminum. 22 CCR § 64431. The Basin Plan also sets a water quality objective of 0.015 mg/L for lead where discharges are to domestic or municipal drinking waters. Basin Plan at III-3.00. 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.” *Id.* at III-8.01. The Basin Plan also includes a narrative oil and grease standard which states 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-6.00. The Basin Plan provides that “[w]aters shall not contain chemical constituents in concentrations that adversely affect beneficial uses.” *Id.* at III-3.00. The Basin Plan states that “[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses. *Id.* at III-5.00. The Basin Plan provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at III-7.00. The Basin Plan provides that “[t]he suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.” *Id.* The Basin Plan strictly limits increases in turbidity in Central Valley waters. *Id.* at III-9.00. The Basin Plan states that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan provides that “[w]ater shall not contain...odor-producing substances in concentrations that impart undesirable...odors to domestic or municipal water supplies..., or that cause nuisance, or otherwise affect beneficial uses.” *Id.* at III-7.00. The Basin Plan establishes a standard for electrical conductivity in the Sacramento River and Delta of 450 µmhos/cm from April 1 through August 15, as well as less stringent standards for various low flow conditions. Table III-5, p. 2.

The EPA has published benchmark levels 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”). 65 Fed. Reg. 64767 (October 30, 2000). The following benchmarks have been established for pollutants discharged by Davis Waste: pH – 6.0-9.0 units; total suspended solids (“TSS”) – 100 mg/L; total organic carbon (“TOC”) – 110 mg/L; oil and grease (“O&G”) – 15 mg/L; aluminum – 0.75 mg/L; iron – 1 mg/L; copper – 0.0636 mg/L; zinc – 0.117 mg/L, and chemical oxygen demand (“COD”) – 120 mg/L. The State Water Quality Control Board also has proposed adding a benchmark level to the General Permit for specific conductance of 200 µmho/cm.

## **II. Alleged Violations of the NPDES Permit.**

### ***A. Discharges in Violation of the Permit.***

Davis Waste has violated and continues to violate the terms and conditions of the General Industrial Storm Water 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 or authorized non-storm water discharges 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.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

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 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. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility’s discharge monitoring locations.

Davis Waste has discharged and continues to discharge storm water with unacceptable levels of TSS, specific conductivity, oil and grease, TOC, aluminum, iron, COD, zinc, copper, and possibly other pollutants in violation of the General Permit. Davis Waste’s sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water 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). *See also Inland Empire Waterkeeper v. Uniweb, Inc.*, 2008 U.S. Dist. LEXIS 75585, 26 (C.D. Cal., Aug. 6, 2008).

The following discharges of pollutants from the Facility include discharges of materials other than storm water and contained concentrations of pollutants in excess of narrative and numeric water quality standards established in the Basin Plan or promulgated by EPA and thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Basin Plan Water Quality Objective</b>	<b>Location (as identified by the Facility)</b>
1/3/2008	pH	6.44	6.5 – 8.5	South Outfall
4/7/2009	Aluminum	1.9 mg/L	1.0 mg/L	South Outfall
1/22/2009	Aluminum	2.16 mg/L	1.0 mg/L	South Outfall
1/3/2008	Aluminum	2.41 mg/L	1.0 mg/L	South Outfall
10/1/2007	Aluminum	1.09 mg/L	1.0 mg/L	South Outfall
11/2/2006	Aluminum	5.1 mg/L	1.0 mg/L	South Outfall
1/30/2006	Aluminum	5.6 mg/L	1.0 mg/L	South Outfall
4/7/2009	Iron	2.3 mg/L	0.3 mg/L	South Outfall
1/22/2009	Iron	4.04 mg/L	0.3 mg/L	South Outfall
1/3/2008	Iron	4.65 mg/L	0.3 mg/L	South Outfall
10/1/2007	Iron	5.73 mg/L	0.3 mg/L	South Outfall
2/22/2007	Iron	1.5 mg/L	0.3 mg/L	South Outfall
11/2/2006	Iron	7.9 mg/L	0.3 mg/L	South Outfall
1/30/2006	Iron	8.4 mg/L	0.3 mg/L	South Outfall
11/28/2005	Iron	1.5 mg/L	0.3 mg/L	South Outfall
4/7/2009	Zinc	0.33 mg/L	0.1 mg/L	South Outfall
1/22/2009	Zinc	0.865 mg/L	0.1 mg/L	South Outfall
1/3/2008	Zinc	0.253 mg/L	0.1 mg/L	South Outfall
10/1/2007	Zinc	0.662 mg/L	0.1 mg/L	South Outfall
2/22/2007	Zinc	0.15 mg/L	0.1 mg/L	South Outfall
11/2/2006	Zinc	0.74 mg/L	0.1 mg/L	South Outfall
1/30/2006	Zinc	0.4 mg/L	0.1 mg/L	South Outfall
10/1/2007	Lead	0.053 mg/L	0.015 mg/L	South Outfall
4/7/2009	Copper	0.38 mg/L	0.01 mg/L	South Outfall
1/3/2008	Copper	0.022 mg/L	0.01 mg/L	South Outfall
10/1/2007	Copper	0.022 mg/L	0.01 mg/L	South Outfall
11/2/2006	Copper	0.042 mg/L	0.01 mg/L	South Outfall
1/30/2006	Copper	0.026 mg/L	0.01 mg/L	South Outfall

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) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit:

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
4/7/2009	Specific Conductivity	350 µmho/cm	200 µmho/cm	South Outfall

<b>Date</b>	<b>Parameter</b>	<b>Observed Concentration</b>	<b>Benchmark Value</b>	<b>Location (as identified by the Facility)</b>
4/7/2009	Aluminum	1.9 mg/L	0.75 mg/L	South Outfall
4/7/2009	Iron	2.3 mg/L	1.0 mg/L	South Outfall
4/7/2009	COD	230 mg/L	120 mg/L	South Outfall
4/7/2009	Zinc	0.33 mg/L	0.117 mg/L	South Outfall
4/7/2009	Copper	0.38 mg/L	0.0636 mg/L	South Outfall
1/22/2009	Aluminum	2.16 mg/L	0.75 mg/L	South Outfall
1/22/2009	Iron	4.04 mg/L	1.0 mg/L	South Outfall
1/22/2009	Zinc	0.865 mg/L	0.117 mg/L	South Outfall
1/3/2008	TSS	360 mg/L	100 mg/L	South Outfall
1/3/2008	Oil & Grease	24.1 mg/L	15 mg/L	South Outfall
1/3/2008	Aluminum	2.41 mg/L	0.75 mg/L	South Outfall
1/3/2008	Iron	4.65 mg/L	1.0 mg/L	South Outfall
1/3/2008	Zinc	0.253 mg/L	0.117 mg/L	South Outfall
10/1/2007	TSS	170 mg/L	100 mg/L	South Outfall
10/1/2007	Specific Conductivity	470 µmho/cm	200 µmho/cm	South Outfall
10/1/2007	TOC	130 mg/L	110 mg/L	South Outfall
10/1/2007	Aluminum	1.09 mg/L	0.75 mg/L	South Outfall
10/1/2007	Iron	5.73 mg/L	1.0 mg/L	South Outfall
10/1/2007	COD	460 mg/L	230 mg/L	South Outfall
10/1/2007	Zinc	0.662 mg/L	0.117 mg/L	South Outfall
2/22/2007	Aluminum	0.88 mg/L	0.75 mg/L	South Outfall
2/22/2007	Iron	1.5 mg/L	1.0 mg/L	South Outfall
2/22/2007	Zinc	0.15 mg/L	0.117 mg/L	South Outfall
11/2/2006	TSS	120 mg/L	100 mg/L	South Outfall
11/2/2006	Specific Conductivity	220 µmho/cm	200 µmho/cm	South Outfall
11/2/2006	TOC	150 mg/L	110 mg/L	South Outfall
11/2/2006	Aluminum	5.1 mg/L	0.75 mg/L	South Outfall
11/2/2006	Iron	7.9 mg/L	1.0 mg/L	South Outfall
11/2/2006	COD	340 mg/L	120 mg/L	South Outfall
11/2/2006	Zinc	0.74 mg/L	0.117 mg/L	South Outfall
1/30/2006	TSS	180 mg/L	100 mg/L	South Outfall
1/30/2006	Oil & Grease	15 mg/L	15 mg/L	South Outfall
1/30/2006	TOC	120 mg/L	110 mg/L	South Outfall
1/30/2006	Aluminum	5.6 mg/L	0.75 mg/L	South Outfall
1/30/2006	Iron	8.4 mg/L	1.0 mg/L	South Outfall
1/30/2006	COD	130 mg/L	120 mg/L	South Outfall
1/30/2006	Zinc	0.4 mg/L	0.117 mg/L	South Outfall
11/28/2005	TSS	120 mg/L	100 mg/L	South Outfall

Date	Parameter	Observed Concentration	Benchmark Value	Location (as identified by the Facility)
11/28/2005	Aluminum	0.84 mg/L	0.75 mg/L	South Outfall
11/28/2005	Iron	1.5 mg/L	1.0 mg/L	South Outfall
11/28/2005	COD	120 mg/L	120 mg/L	South Outfall

CSPA's investigation, including its review of Davis Waste's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, EPA's benchmark values, and the State Board's proposed benchmark for electrical conductivity, indicates that Davis Waste has not implemented BAT and BCT at the Facility for its discharges of TSS, specific conductivity, oil and grease, TOC, aluminum, iron, COD, zinc, copper, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Davis Waste was required to have implemented BAT and BCT by no later than October 1, 1992. Thus, Davis Waste is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the above numbers and observations indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CSPA also alleges that such violations have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least June 2, 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 Davis Waste has discharged storm water containing impermissible levels of TSS, specific conductivity, oil and grease, TOC, aluminum, iron, COD, zinc, and copper in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants 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, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

***B. Failure to Sample and Analyze Storm Events and Mandatory Parameters***

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit, Section B(5)(a). "Facility operators 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." *Id.* "All storm water discharge locations shall be sampled." *Id.* "Facility operators that do not collect samples from the first storm event of the wet season are still required to collect samples from two other storm events of the wet season and shall explain in the

Annual Report why the first storm event was not sampled.” *Id.* Collected samples must be analyzed for TSS, pH, specific conductance, and either TOC or O&G. *Id.* at Section B(5)(c)(i). CSPA’s review of Davis Waste’s monitoring data indicates that it failed to collect a storm water sample during the first hour of discharge during the storm water event sampled on January 22, 2009. This failure to sample storm water in the first hour of discharge is a violation of General Permit, Section B(5)(a). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

***C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.***

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

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).



CSPA's investigation of the conditions at the Facility and review of Davis Waste's Annual Reports indicate that Davis Waste has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Davis Waste has failed to evaluate the effectiveness of its BMPs, to implement structural BMPs, and to revise its SWPPP as necessary. Davis Waste has been in continuous violation of Section A and Provision E(2) of the General Permit every day since at least June 2, 2005, and will continue to be in violation every day that Davis Waste fails to prepare, implement, review, and update an effective SWPPP. Davis Waste is subject to penalties for violations of the Order and the Act occurring since June 2, 2005.

***D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program***

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event." Section B(14) requires all facility operators to submit a yearly Annual Report. The Annual Report "shall include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, [and] laboratory reports...." (Section B(14)). CSPA's review of Davis Waste's Annual Reports indicates that it failed to include laboratory reports in its 2007-2008 Annual Report. This failure to include the laboratory reports is a violation of General Permit, Section B(14). These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

Additionally, Davis Waste's storm water data indicates high concentrations of oil and grease in its storm water on specific dates. At the same time, Davis Waste's annual reports certify that visual observations of storm water discharges at the same drop inlets showed no pollutants. Oil and grease at concentrations of 15 mg/L or greater will always be accompanied by a sheen on the water. Accordingly, CSPA believes that each day that Davis Waste certified through its staff that it did not observe any pollutants at times and locations where the Facility measured levels of oil & grease at 15 mg/L or greater, the claimed visual observations are inconsistent and inaccurate. Davis Waste misreported its visual observations on the following dates at the following discharge locations:

<b>Date</b>	<b>Discharge Location</b>	<b>Observer</b>
1/3/2008	South Outfall	John Geisler
1/30/2006	South Outfall	John Geisler

These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Davis Waste is subject to penalties for violations of the General Permit and the Act since June 2, 2005.

The above referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by Davis Waste is not representative of the quality of the Facility's various storm water discharges, and/or Davis Waste failed to sample for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities" (Section B(5)(c)(ii)), CSPA, on information and belief, alleges that the Facility's monitoring program violates Sections B(3), (4), (5) and (7) 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, Davis Waste is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since June 2, 2005.

***E. Failure to File True and Correct Annual 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) & (10) and B(14).

In addition, in every Annual Report submitted since 2005, Davis Waste and its agent, John Geisler, inaccurately certified that the Facility was in compliance with the General Permit. Consequently, Davis Waste has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Davis Waste failed to submit a complete or correct report and every time Davis Waste or its agents falsely purported to comply with the Act. Davis Waste is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since June 2, 2005.

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

CSPA puts Davis Waste, Paul Hart, and John Geisler on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified

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Davis Waste Removal Co., Inc.  
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as also being responsible for the violations set forth above, CSPA puts Davis Waste, Paul Hart, and John Geisler on notice that it intends to include those persons in this action.

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

Our name, address, and contact information is as follows:

Bill Jennings, Executive Director;  
California Sportfishing Protection Alliance,  
3536 Rainier Avenue,  
Stockton, CA 95204  
Tel. (209) 464-5067  
Fax (209) 464-1028  
E-Mail: deltakeep@aol.com

**VI. Counsel.**

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

Michael R. Lozeau  
Lozeau Drury LLP  
1516 Oak Street, Suite 216  
Alameda, California 94501  
Tel. (510) 749-9102  
michael@lozeaudrury.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; 73 FR 75340) each separate violation of the Act subjects Davis Waste to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Davis Waste and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of

Paul Hart, John Geisler  
Davis Waste Removal Co., Inc.  
June 1, 2010  
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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 style with a large, looping 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

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

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

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

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

## ATTACHMENT A

### Rain Dates, Davis Waste Removal Co., Inc., Davis, California

June 8, 2005	March 3, 2006	December 10, 2006
June 9, 2005	March 5, 2006	December 11, 2006
June 16, 2005	March 6, 2006	December 12, 2006
October 28, 2005	March 7, 2006	December 13, 2006
November 4, 2005	March 8, 2006	December 21, 2006
November 7, 2005	March 10, 2006	December 22, 2006
November 8, 2005	March 12, 2006	December 29, 2006
November 25, 2005	March 13, 2006	February 7, 2007
November 28, 2005	March 14, 2006	February 8, 2007
November 29, 2005	March 16, 2006	February 9, 2007
December 1, 2005	March 20, 2006	February 10, 2007
December 7, 2005	March 24, 2006	February 12, 2007
December 17, 2005	March 25, 2006	February 22, 2007
December 18, 2005	March 27, 2006	February 24, 2007
December 19, 2005	March 28, 2006	February 25, 2007
December 20, 2005	March 29, 2006	February 26, 2007
December 21, 2005	March 31, 2006	February 27, 2007
December 22, 2005	April 2, 2006	March 20, 2007
December 25, 2005	April 3, 2006	March 26, 2007
December 26, 2005	April 4, 2006	April 10, 2007
December 27, 2005	April 5, 2006	April 11, 2007
December 28, 2005	April 7, 2006	April 14, 2007
December 29, 2005	April 11, 2006	April 21, 2007
December 30, 2005	April 12, 2006	April 22, 2007
December 31, 2005	April 16, 2006	May 1, 2007
January 1, 2006	April 22, 2006	May 2, 2007
January 2, 2006	April 23, 2006	May 3, 2007
January 7, 2006	May 19, 2006	May 4, 2007
January 11, 2006	May 21, 2006	May 5, 2007
January 14, 2006	May 22, 2006	May 11, 2007
January 17, 2006	August 10, 2006	May 12, 2007
January 18, 2006	November 2, 2006	May 13, 2007
January 20, 2006	November 3, 2006	October 1, 2007
January 21, 2006	November 4, 2006	October 5, 2007
January 28, 2006	November 11, 2006	October 9, 2007
January 30, 2006	November 12, 2006	October 10, 2007
February 1, 2006	November 13, 2006	October 12, 2007
February 17, 2006	November 14, 2006	October 16, 2007
February 18, 2006	November 15, 2006	October 17, 2007
February 26, 2006	November 17, 2006	October 29, 2007
February 27, 2006	November 20, 2006	November 10, 2007
February 28, 2006	November 26, 2006	November 11, 2007
March 1, 2006	December 8, 2006	November 18, 2007
March 2, 2006	December 9, 2006	December 4, 2007

## ATTACHMENT A

### Rain Dates, Davis Waste Removal Co., Inc., Davis, California

December 6, 2007	February 23, 2008	February 10, 2009
December 7, 2007	February 24, 2008	February 11, 2009
December 17, 2007	March 27, 2008	February 13, 2009
December 18, 2007	March 29, 2008	February 14, 2009
December 19, 2007	October 3, 2008	February 15, 2009
December 20, 2007	October 4, 2008	February 16, 2009
December 27, 2007	October 30, 2008	February 17, 2009
December 28, 2007	October 31, 2008	February 22, 2009
December 29, 2007	November 1, 2008	February 23, 2009
January 3, 2008	November 3, 2008	March 1, 2009
January 4, 2008	November 26, 2008	March 2, 2009
January 5, 2008	November 28, 2008	March 3, 2009
January 6, 2008	November 29, 2008	March 4, 2009
January 7, 2008	November 30, 2008	April 7, 2009
January 8, 2008	December 1, 2008	April 8, 2009
January 9, 2008	December 2, 2008	April 9, 2009
January 10, 2008	December 5, 2008	May 1, 2009
January 11, 2008	December 6, 2008	May 2, 2009
January 12, 2008	December 8, 2008	May 3, 2009
January 13, 2008	December 9, 2008	May 4, 2009
January 14, 2008	December 14, 2008	May 5, 2009
January 15, 2008	December 15, 2008	June 2, 2009
January 16, 2008	December 16, 2008	June 4, 2009
January 17, 2008	December 18, 2008	June 5, 2009
January 18, 2008	December 19, 2008	October 13, 2009
January 19, 2008	December 20, 2008	October 14, 2009
January 21, 2008	December 21, 2008	October 15, 2009
January 22, 2008	December 22, 2008	October 19, 2009
January 23, 2008	December 24, 2008	November 17, 2009
January 24, 2008	December 25, 2008	November 20, 2009
January 25, 2008	December 26, 2008	November 27, 2009
January 26, 2008	December 31, 2008	December 6, 2009
January 27, 2008	January 5, 2009	December 7, 2009
January 29, 2008	January 21, 2009	December 10, 2009
January 31, 2008	January 22, 2009	December 11, 2009
February 2, 2008	January 23, 2009	December 12, 2009
February 3, 2008	January 24, 2009	December 13, 2009
February 19, 2008	January 30, 2009	December 16, 2009
February 20, 2008	February 5, 2009	December 18, 2009
February 21, 2008	February 6, 2009	December 20, 2009
February 22, 2008	February 8, 2009	December 21, 2009

## ATTACHMENT A

### Rain Dates, Davis Waste Removal Co., Inc., Davis, California

December 27, 2009	April 4, 2010
December 29, 2009	April 11, 2010
December 30, 2009	April 12, 2010
January 1, 2010	April 20, 2010
January 3, 2010	April 21, 2010
January 8, 2010	April 27, 2010
January 9, 2010	April 28, 2010
January 12, 2010	May 6, 2010
January 13, 2010	May 10, 2010
January 16, 2010	May 17, 2010
January 17, 2010	May 25, 2010
January 18, 2010	May 26, 2010
January 19, 2010	May 27, 2010
January 20, 2010	
January 21, 2010	
January 22, 2010	
January 23, 2010	
January 24, 2010	
January 25, 2010	
January 26, 2010	
January 29, 2010	
February 1, 2010	
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February 9, 2010	
February 12, 2010	
February 17, 2010	
February 18, 2010	
February 23, 2010	
February 24, 2010	
February 26, 2010	
February 27, 2010	
March 2, 2010	
March 3, 2010	
March 12, 2010	
March 24, 2010	
March 29, 2010	
March 31, 2010	
April 2, 2010	